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Federal Register

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- WHEN:** March 30 at 9:00 am
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Contents

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 1994

Agency for International Development

NOTICES

Housing guaranty program:
Israel, 8596

Agricultural Marketing Service

RULES

Prunes (dried) produced in California, 8517-8518

PROPOSED RULES

Milk marketing orders:
Pacific Northwest et al., 8546-8565

Agriculture Department

See Agricultural Marketing Service

See Farmers Home Administration

NOTICES

Timber sales in Oregon, Washington, and California,
agreement between Agriculture and Interior
Departments, 8596-8597

Army Department

NOTICES

Environmental statements; availability, etc.:
United States Army Kwajalein Atoll, 8603

Meetings:

Science Board, 8603

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention

NOTICES

Meetings:

Vital and Health Statistics National Committee, 8648

Civil Rights Commission

NOTICES

Meetings; State advisory committees.
Wyoming, 8597

Commerce Department

See International Trade Administration

See National Institute of Standards and Technology

See National Oceanic and Atmospheric Administration

NOTICES

Voting age population, 1993 census count, 8597-8598

Committee for the Implementation of Textile Agreements

NOTICES

Textile consultation; review of trade:
China, 8602-8603

Consumer Product Safety Commission

NOTICES

Meetings; Sunshine Act, 8681

Defense Department

See Army Department

See Navy Department

Education Department

NOTICES

Grants and cooperative agreements; availability, etc.:
Star schools program, 8766-8786, 8788

Nondiscrimination in federally-assisted programs; Title VI
of Civil Rights Act of 1964; minority scholarships;
policy guidance, 8756-8764

State educational agencies; submission of expenditure and
revenue data, etc., 8604

Employment and Training Administration

NOTICES

Adjustment assistance:

Hollywood Shake, Inc., et al., 8661-8662

Mann Industries, Inc., et al., 8662-8663

Energy Department

See Energy Efficiency and Renewable Energy Office

See Federal Energy Regulatory Commission

NOTICES

Floodplain and wetlands protection, environmental review
determinations; availability, etc.

Paducah Gaseous Diffusion Plant, KY, 8605-8606

Grant and cooperative agreement awards:

Nature Conservancy, 8604-8605

Prairie View A&M University, 8605

Energy Efficiency and Renewable Energy Office

NOTICES

Consumer product test procedures; waiver petitions
Goodman Manufacturing Co., 8606-8610

Environmental Protection Agency

RULES

Air quality implementation plans, approval and
promulgation, various States.

Florida, 8542-8544

Hazardous waste program authorizations.

Missouri, 8544-8545

Superfund program:

National oil and hazardous substances contingency
plan—

National priorities list update, 8724-8746

PROPOSED RULES

Air quality implementation plans, approval and
promulgation, various States.

Minnesota, 8578-8581

Hazardous waste:

Reportable quantity adjustments, correction, 8683-8684

Specific hazardous waste management standards;
recyclable materials used in manner constituting
disposal, 8583-8587

Pesticides; tolerances in food, animal feeds, and raw
agricultural commodities:

d-Limonene, 8581-8583

NOTICES

Grants, State and local assistance:

Pollution prevention incentives for States program, 8613-
8615

Meetings:

Environmental Financial Advisory Board, 8615

Pesticide registration, cancellation, etc.:

Dragon 5% Malathion Dust, etc., 8616-8618

Riverdale MCPP Low Volatile Ester, etc., 8619-8624

Pesticides; experimental use permits, etc.:

Elf Atochem North America, Inc., et al., 8618-8619

Postal Service**PROPOSED RULES**

Domestic Mail Manual:

Computer-readable periodical publications; admissibility into second-class mail, 8575-8576

NOTICES

Meetings; Sunshine Act, 8681-8682

Public Health Service

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Health Resources and Services Administration

Railroad Retirement Board**NOTICES**

Agency information collection activities under OMB review, 8669

Securities and Exchange Commission**NOTICES**

Meetings; Sunshine Act, 8682

Social Security Administration**RULES**

Social security benefits and supplemental security income:

Determinations and decisions; reopening policy regulations, 8532-8536

Travel expenses limitations for representation of claimants at administrative proceedings, 8530-8532

Supplemental security income:

Indian judgment funds and per capita distributions, 8536-8539

NOTICES

Social security acquiescence rulings:

Rescissions—

McCuin v. HHS Secretary; Administrative Law Judge decision reopening only on claimant's motion, 8650-8651

State Department**NOTICES**

Garnishment of Federal employees wages for payment of debt, 8669

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Thrift Supervision Office**NOTICES**

Applications, hearings, determinations, etc.:

Long Island Savings Bank, FSB, 8677

Perpetual Savings Bank, FSB, 8677

Princeton Federal Savings & Loan Association, 8677

Southern Missouri Savings Bank, 8677

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See National Highway Traffic Safety Administration

NOTICES

Transportation-related national service programs; request for proposals, 8790-8822

Treasury Department

See Thrift Supervision Office

Veterans Affairs Department**NOTICES**

Privacy Act:

Systems of records, 8677-8680

Workers' Compensation Programs Office**RULES**

Federal Employees' Compensation Act:

Compensation claims—

Medical benefits, 8529-8530

Separate Parts in This Issue**Part II**

Department of Commerce, International Trade Administration, 8686-8700

Part III

Department of Commerce, International Trade Administration, 8702-8711

Part IV

Department of Commerce, International Trade Administration, 8714-8717

Part V

Department of Commerce, International Trade Administration, 8720-8722

Part VI

Environmental Protection Agency, 8724-8746

Part VII

Department of Transportation, Federal Highway Administration, 8748-8753

Part VIII

Department of Education, 8756-8764

Part IX

Department of Education, 8766-8786

Part X

Department of Education, 8788

Part XI

Department of Transportation, 8790-8822

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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.

- North American Free Trade Agreement (NAFTA):
 Article 1904 binational panel reviews; procedure rules, 8686-8700
 Article 1904 extraordinary challenge committees; procedure rules, 8702-8711
 Article 1905 special committees; procedure rules, 8714-8717
 Proceedings under Chapters Nineteen and Twenty; conflict of interests, 8720-8722

International Trade Commission

NOTICES

- Import investigations:
 Anisotropically etched one megabit and greater DRAMS, components, and products containing DRAMS, 8656
 Coumarin from China, 8656-8657
 Devices for connecting computers via telephone lines, 8657
 Grain-oriented silicon electrical steel from—
 Italy and Japan, 8658-8659
 Stainless steel bar from—
 Brazil et al., 8659

Interstate Commerce Commission

NOTICES

- Railroad services abandonment:
 Chicago & North Western Transportation Co., 8659-8660

Justice Assistance Bureau

NOTICES

- Grants and cooperative agreements; availability, etc.:
 Discretionary programs (1994 FY), 8661

Justice Department

See Justice Assistance Bureau

NOTICES

- Privacy Act:
 Systems of records, 8660-8661

Labor Department

See Employment and Training Administration

See Workers' Compensation Programs Office

Land Management Bureau

NOTICES

- Oil and gas leases:
 Wyoming, 8652

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

Mines Bureau

NOTICES

- Agency information collection activities under OMB review, 8656

National Aeronautics and Space Administration

NOTICES

- Meetings:
 Agency's procurement policies and practices, 8663-8664

National Credit Union Administration

NOTICES

- Meetings; Sunshine Act, 8681

National Foundation on the Arts and the Humanities

NOTICES

- Grants and cooperative agreements; availability, etc.:
 Museum leadership initiatives program, 8664-8665

National Highway Traffic Safety Administration

NOTICES

- Motor vehicle safety standards:
 Nonconforming vehicles—
 Annual list, 8671-8677

National Institute of Standards and Technology

NOTICES

- Meetings:
 Advanced Technology Visiting Committee, 8600-8601

National Oceanic and Atmospheric Administration

PROPOSED RULES

- Fishery conservation and management:
 Bering Sea and Aleutian Islands king and tanner crab, 8595
 Summer flounder, 8592-8595

NOTICES

- Marine mammals:
 Incidental taking; authorization letters, etc.—
 Western Geophysical, 8601
 Permits:
 Endangered and threatened species, 8601-8602
 Marine mammals, 8602

National Science Foundation

NOTICES

- Meetings:
 Biological Sciences Special Emphasis Panel, 8665
 Human Resource Development Special Emphasis Panel, 8665

Navy Department

NOTICES

- Privacy Act:
 Systems of records, 8603

Nuclear Regulatory Commission

NOTICES

- Agency information collection activities under OMB review, 8665-8666
 Meetings:
 Medical Uses of Isotopes Advisory Committee, 8665
 Reactor Safeguards Advisory Committee, 8666-8667
 Organization, functions, and authority delegations:
 Region V office consolidation with Region IV office; emergency response functions and responsibilities, 8667
Applications, hearings, determinations, etc.:
 Cameo Diagnostic Centre, Inc., 8667-8668
 North Atlantic Energy Service Corp., 8668-8669

Pension Benefit Guaranty Corporation

RULES

- Single-employer plans:
 Terminating and terminated plans; restoration, 8539

Postal Rate Commission

RULES

- Practice and procedure rules:
 Domestic mail revenues; forecast data and procedures, description, 8539-8542

PROPOSED RULES

- Practice and procedure rules:
 Service requirements applicable to requests for written discovery and answers thereto, etc., 8576-8578

Monsanto Co., 8616
 Toxic and hazardous substances control:
 Premanufacture exemption approvals; correction, 8684

Equal Employment Opportunity Commission

NOTICES

Meetings; Sunshine Act, 8681

Farmers Home Administration

RULES

Program regulations:

Construction and repair—

Limited resource loan reviews, 8518-8519

Federal Aviation Administration

RULES

Airworthiness directives:

Mitsubishi Heavy Industries, Ltd., 8520-8521

Rockwell International/Collins Air Transport, 8519-8520

Class D airspace, 8523

Class E airspace, 8521-8522, 8523-8524

Standard instrument approach procedures, 8524-8527

PROPOSED RULES

Air carrier certification and operations:

Digital flight data recorders on stage 2 airplanes;
 compliance date extension, 8570-8575

Class D airspace, 8565-8566, 8567-8568

Class E airspace, 8566-8567, 8568-8570

NOTICES

Meetings:

RTCA, Inc., 8669-8670

Federal Energy Regulatory Commission

NOTICES

Electric rate and corporate regulation filings:

Commonwealth Edison Co. et al., 8610-8612

Electric utilities (Federal Power Act):

Transmission services; pricing policy; technical
 conference, 8612

Applications, hearings, determinations, etc.:

Algonquin Gas Transmission Co., 8612

Tennessee Gas Pipeline Co., 8612-8613

Transok, Inc., 8613

Federal Highway Administration

RULES

Motor carrier safety standards:

Private motor carriers of passengers, 8748-8753

NOTICES

Environmental statements; notice of intent:

Pitkin County, CO, 8670-8671

Snohomish County, WA, 8670

Federal Mine Safety and Health Review Commission

NOTICES

Meetings; Sunshine Act, 8681

Federal Reserve System

NOTICES

Meetings; Sunshine Act, 8681

Applications, hearings, determinations, etc.:

Cardinal Bancshares, Inc., 8627-8628

Swiss Bank Corp., 8624-8627

Federal Trade Commission

RULES

Industry guides:

Greeting card industry; discriminatory practices;
 withdrawn, 8527

Trade regulation rules:

Men's and boy's tailored clothing industry;

discriminatory practices; withdrawn, 8527-8529

NOTICES

Prohibited trade practices:

American Society of Interpreters et al., 8628-8635

Columbia Hospital Corp., 8635-8638

Eggland's Best, Inc., 8638-8643

Jockey International, Inc., 8643-8645

Synchronal Corp. et al., 8645-8648

White Castle System, Inc., 8648

Fish and Wildlife Service

NOTICES

Coastal Barrier Resource System:

Pacific study and maps; availability, 8652-8655

Endangered and threatened species:

Recovery plans—

Snake River aquatic species, 8655-8656

Food and Drug Administration

NOTICES

Meetings:

Pharmaceuticals for human use, international conference
 on harmonisation of technical requirements for
 registration, 8648-8649

General Services Administration

PROPOSED RULES

Acquisition regulations:

Multiple award schedule price reductions clause, 8590-
 8592

Federal Information Resources Management Regulation:

GSA nonmandatory schedule contracts use for Federal
 Information Processing resources; provisions
 removed, 8588-8589

Federal property management:

Federal Supply Service schedule ordering instructions
 removed, 8587-8588

Multiple award schedule; ordering procedures, 8589-8590

Health and Human Services Department

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Health Resources and Services Administration

See Social Security Administration

Health Resources and Services Administration

NOTICES

Grants and cooperative agreements; availability, etc.:

New community health centers, etc., 8649-8650

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See Mines Bureau

International Development Cooperation Agency

See Agency for International Development

International Trade Administration

NOTICES

Antidumping:

Ferrosilicon from—

Brazil, 8598-8599

Solid urea from—

Estonia, 8600

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

993.....8517
1924.....8518

Proposed Rules:

1124.....8546
1135.....8546

14 CFR

39 (2 documents).....8519,
8520
71 (4 documents).....8521,
8522, 8523
97 (2 documents).....8524,
8525

Proposed Rules:

71 (4 documents).....8565,
8566, 8567, 8568
121.....8570

16 CFR

244.....8527
412.....8527

20 CFR

10.....8529
404 (2 documents).....8530,
8532
416 (3 documents).....8530,
8532, 8536

29 CFR

2625.....8539

39 CFR

3001.....8539

Proposed Rules:

111.....8575
3001.....8576

40 CFR

52.....8542
117.....8683
271.....8544
300.....8724
302.....8683
355.....8683

Proposed Rules:

52.....8578
180.....8581
266.....8583

41 CFR**Proposed Rules:**

101-26.....8587
201-39.....8588

48 CFR**Proposed Rules:**

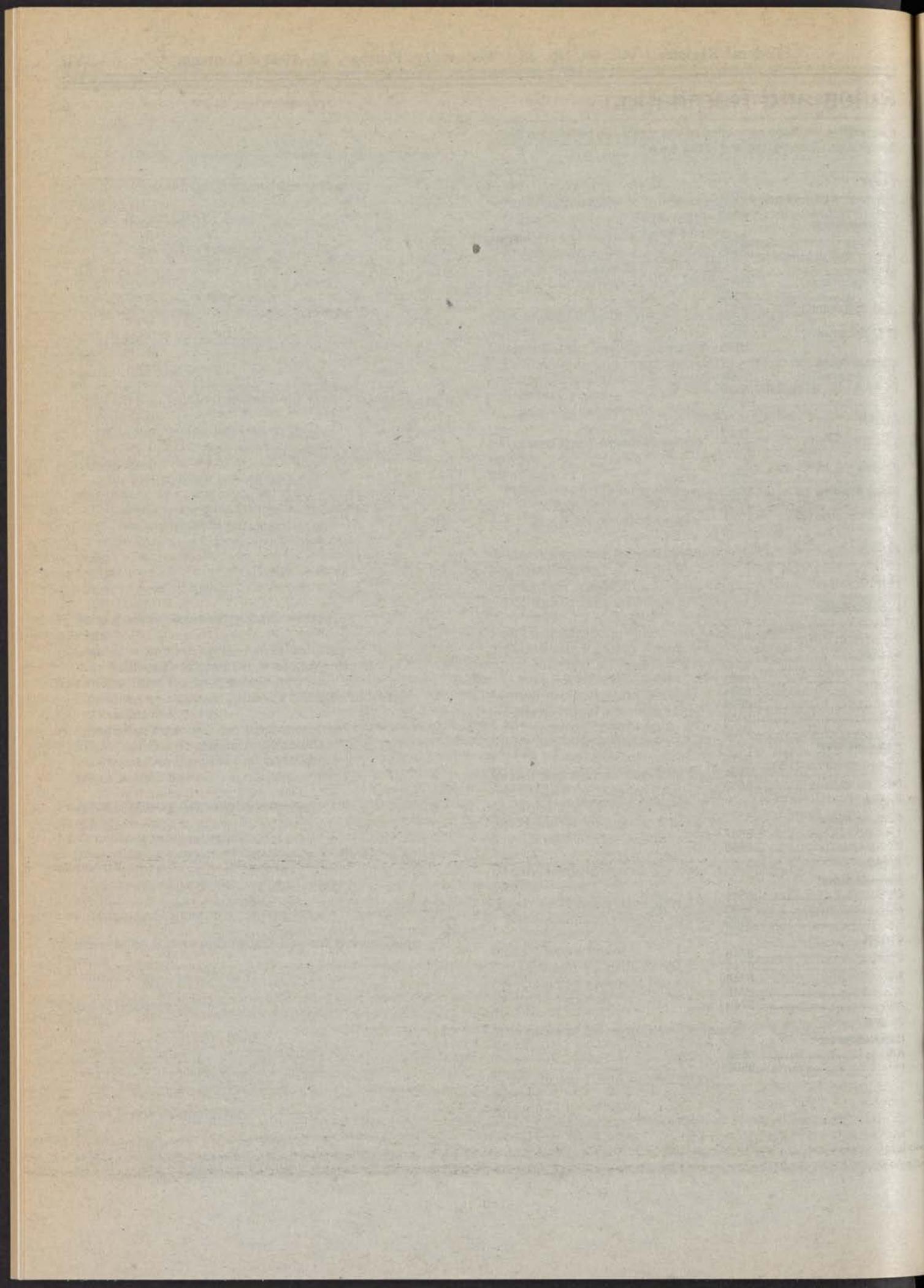
Ch. 5.....8589
538.....8590
552.....8590

49 CFR

390.....8748
391.....8748
393.....8748
395.....8748
396.....8748

50 CFR**Proposed Rules:**

625.....8592
671.....8595



Rules and Regulations

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 1994

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV93-993-31FR]

Dried Prunes Produced In California; Changes In Producer District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the administrative rules and regulations established under the Federal marketing order for dried prunes produced in California. This rule realigns the boundaries of seven districts established for independent producer representation on the Prune Marketing Committee (Committee). The realignment provides for more equitable representation for those members, and makes provisions of the order consistent with current industry demographics. This rule is based on a unanimous recommendation of the Committee, which is responsible for local administration of the order.

EFFECTIVE DATE: The interim final rule is effective February 23, 1994. Comments which are received by March 25, 1994 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456, FAX number (202) 720-5698. Comments should reference this docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the

Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487-5901, or FAX (209) 487-5906; or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20050-6456; Telephone: (202) 205-2829, or FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), regulating the handling of dried prunes produced in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of dried prunes who are subject to regulation under the dried prune marketing order and approximately 1,360 producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$3,500,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This interim final rule realigns the boundaries of the seven districts established for independent producer representation on the Committee. To be consistent with current industry demographics, this interim rule ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers. The change will not impose any additional regulatory, informational, or cost requirements on handlers or producers.

This action revises § 993.128 of Subpart—Administrative Rules and Regulations and is based on a unanimous recommendation of the Committee and other available information.

Section 993.24 of the order provides that the Committee shall consist of 22 members, of which 14 shall represent producers, 7 shall represent handlers, and 1 shall represent the public. The 14 producer member positions are apportioned between cooperative producers and independent producers in the same proportion, insofar as is

practicable, as the percentage of the total prune tonnage handled by the cooperative and independent handlers during the year preceding the year in which nominations are made is to the total handled by all handlers. In recent years and currently, cooperative producers and independent producers each have been eligible to nominate seven members.

Section 993.28 of the order provides that, for independent producers, the Committee shall, with the approval of the Secretary of Agriculture, divide the production area into districts, giving, insofar as practicable, equal representation throughout the production area by numbers of independent producers and production of prune tonnage by such producers. When revisions are required, the Committee must make its recommendations to the Secretary of Agriculture to change the district boundaries prior to January 31 of any year in which nominations are to be made. Nominations are made in all even-numbered years, including 1994.

The Committee recommended this change at its December 8, 1993, meeting. Since the last redistricting in 1990, the number of producers and volume of production in most districts has changed, causing imbalances among some districts. Thus, redistricting is needed to bring the districts in line with order requirements and current California prune industry demographics.

This interim final rule establishes Colusa and Glenn counties as District 1 and adds Tehama and Shasta counties to District 4. It also moves the boundary between the central Sutter and southern Sutter districts north from Oswald Road to Bogue Road, and makes the central Sutter County area a part of District 2. This rule also designates the portion of District 4, which includes the San Joaquin Valley counties, as District 7. This rule also adds northern Sutter County to Butte County to become a new District 5. District 6 will continue to be Yuba County.

The Committee calculated the percentage of total independent prune growers and the percentage of total independent grower prune tonnage for each proposed new district. The two percentages were averaged for each district to determine a representation factor for each district. The optimal representation factor is determined to be 14.29 percent (100 percent divided by 7 districts).

The representation factors for the seven old and the seven new districts are shown below, based on the 1992-93 crop year.

District	Representation factor	
	Old districts (percent)	New districts (percent)
1	7.52	12.81
2	21.02	14.89
3	11.07	15.09
4	14.27	12.78
5	9.15	16.67
6	16.10	16.10
7	20.88	11.67

The redistricting recommendation is desirable because it allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district. In addition, several of the districts whose representation factors are below the optimum are expected to experience production increases in the next few years which are likely to be above the industry average.

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

After consideration of all relevant information presented, including the Committee's unanimous recommendation and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) The order requires that independent producer nomination meetings be held for each of the seven districts prior to March 8, 1994, for the term of office beginning June 1, 1994 and this action should be in place before those meetings; (2) this action does not impose additional regulatory requirements on handlers or producers and, therefore, neither handlers nor producers need additional time to comply; (3) the industry is aware of this action, which was unanimously recommended by the Committee at an open meeting; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 993.128 is amended by revising paragraph (a) to read as follows:

§ 993.128 Nominations for membership.

(a) *Districts.* In accordance with the provisions of § 993.28, the districts referred to therein are described as follows:

District No. 1. The counties of Glenn and Colusa.

District No. 2. That portion of Sutter County north of a line extending along Bogue Road easterly to the Yuba County line and westerly to the Colusa County line and south of a line extending along Clark Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 3. All of Yolo County and that portion of Sutter County south of a line extending along Bogue Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 4. The counties of Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.

District No. 5. All of Butte County, and that portion of Sutter County north of a line extending along Clark Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 6. Yuba County.

District No. 7. The counties of Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare and all other counties not included in Districts 1, 2, 3, 4, 5 and 6.

* * * * *

Dated: February 17, 1994.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 94-4120 Filed 2-22-94; 8:45 am]
BILLING CODE 3410-02-P

Farmers Home Administration

7 CFR Part 1924

Limited Resource Loan Reviews

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its

regulation with regard to the annual review of borrowers with limited resource Farm Ownership (FO), Soil and Water (SW), and Operating (OL) loans. The amendments are necessary to clarify annual review procedures for limited resource loan borrowers. The intended effect is to reduce the number of borrowers who are past due for limited resource loan reviews.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Aleta Rhone-Williams, Accounting Policy and Procedures Branch, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, telephone 314-539-6026.

SUPPLEMENTARY INFORMATION: This rule is not subject to the provisions of Executive Order 12866 because it has no impact on FmHA borrowers or other members of the public. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because it involves only internal Agency management and publication for comment is unnecessary.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575-0061 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This final rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Environmental Impact Statement

This document has been revised in accordance with 7 CFR 1940, Subpart G, Environmental Program. FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an environmental impact statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers: 10.406 Farm Operating Loans. 10.407 Farm Ownership Loans. 10.416 Soil and Water Loans.

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, Subpart V, (48 FR 29115, June 24, 1983), Farm Ownership Loans and Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials. The Soil and Water program, however, is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

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

PART 1924—CONSTRUCTION AND REPAIR

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

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

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.60 is amended by adding the words "(The date of the Farm and Home Plan will become the anniversary date for the limited resource loan review.)" at the end of paragraph (c)(3); revising the reference "paragraph (c)" to read "paragraphs (c)(1), (c)(2), and (c)(4)," in the first sentence of paragraph (d)(2); and adding the words "For borrowers receiving limited resource rates of interest, complete the initial analysis within the 18-month period after loan closing and near the end of the borrower's production/marketing cycle (period of the Farm and Home Plan)." after the first sentence in paragraph (d)(2).

Dated: February 4, 1994.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94-3957 Filed 2-22-94; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

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

Airworthiness Directives: Rockwell International/Collins Air Transport Division DME-700 Distance Measuring Equipment; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 94-02-02 concerning Rockwell International/Collins Air Transport Division (Collins) DME-700 distance measuring equipment (DME) installed on aircraft, which was published in the *Federal Register* on January 18, 1994 (59 FR 2519). That publication inadvertently referenced Collins Service Bulletin (SB) 25, DME-700-34-25, as Collins SB 25, DME-600-34-25, in paragraph (f) of the AD. All other reference to this service bulletin is correct. This action changes the AD to correctly identify this service bulletin in paragraph (f) of the AD.

EFFECTIVE DATE: February 21, 1994.

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

SUPPLEMENTARY INFORMATION: On January 11, 1994, the Federal Aviation Administration (FAA) issued AD 94-02-02, Amendment 39-8799 (59 FR 2519), which applies to certain Collins DME-700 distance measuring equipment installed on aircraft. This AD requires modifying these DME units to ensure that they are functioning properly.

The AD inadvertently referenced Collins Service Bulletin (SB) 25, DME-700-34-25, as Collins SB 25, DME-600-34-25, in paragraph (f) of the AD. All other reference to this service bulletin is correct. This action changes the AD to correctly identify this service bulletin in paragraph (f) of the AD.

Need for Correction

As published, the final regulations have incorrectly referenced Collins SB 25, DME-700-34-25, as SB 25, DME-600-34-25, in paragraph (f) of AD 94-02-02. This could cause confusion when obtaining the proper procedures

to follow in accomplishing the required modifications.

Correction of Publication

Accordingly, the publication of January 18, 1994 (59 FR 2519) of Amendment 39-8799; AD 94-02-02, which was the subject of FR Doc. 94-1088, is corrected as follows:

§ 39.13 [Corrected]

On page 2521, in the first column, in § 39.13, in line 5 of paragraph (f) of AD 94-02-02, replace:

"Service Bulletin 25, DME-600-34-25, dated"

with:

"Service Bulletin 25, DME-700-34-25, dated"

Issued in Kansas City, Missouri, on February 15, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3964 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 92-CE-50-AD; Amendment 39-8836; AD 94-04-16]

Airworthiness Directives: Mitsubishi Heavy Industries, Ltd., MU-2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Mitsubishi Heavy Industries, Ltd. (Mitsubishi), MU-2B series airplanes. This action requires reducing the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. Analysis of service history on the affected airplanes has revealed one accident and two incidents where the existing elevator nose-down trim deflection caused excessive control wheel force. The actions specified by this AD are intended to prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane.

DATES: Effective April 11, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho,

Minato-Ku, Nagoya, Japan. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mr. William Roberts, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; telephone (310) 988-5228; facsimile (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Mitsubishi MU-2B series airplanes was published in the *Federal Register* on December 14, 1992 (57 FR 58999). The action proposed to require reducing the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. The proposed action would be accomplished in accordance with Mitsubishi Service Bulletin No. 216, dated September 11, 1992.

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

The commenter supports the proposed action, but recommends that, to eliminate any applicability questions from the field, the FAA issue one AD to cover the Mitsubishi MU-2B series airplanes covered under two FAA Type Certificates: A2PC and A10SW. The FAA concurs that one AD may eliminate applicability questions from the field; however, ADs are issued against airplanes of the same type design. Since these airplanes are certificated under two separate type designs, the FAA is issuing an AD on each type design. The proposed AD is unchanged as a result of this comment.

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

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

The FAA estimates that 252 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish the required action, and that the average

labor rate is approximately \$55 an hour. Parts cost approximately \$300 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$158,760. This figure is based on the assumption that none of the affected airplane operators have accomplished the required action.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD to read as follows:

94-04-16 Mitsubishi Heavy Industries, Ltd.: Amendment 39-8836; Docket No. 92-CE-50-AD.

Applicability: The following model and serial number airplanes, certificated in any category.

Model	Serial Nos.
MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, and MU-2B-26.	008 through 312, 314 through 320, and 322 through 347.
MU-2B-30, MU-2B-35, and MU-2B-36.	501 through 651, 653 through 660, and 662 through 696.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane, accomplish the following:

(a) Reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range in accordance with the Instructions section of Mitsubishi Service Bulletin No. 216, dated September 11, 1992.

(b) Special flight permits may be issued in accordance with 14 CFR 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, Los Angeles Aircraft Certification Office (ACO), FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(d) The modification required by this AD shall be done in accordance with Mitsubishi Service Bulletin No. 216, dated September 11, 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 Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-8836) becomes effective on April 11, 1994.

Issued in Kansas City, Missouri, on February 14, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3965 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-U-M

14 CFR Part 71

[Airspace Docket No. 93-AGL-19]

Establishment of Class E Airspace; Appleton, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Appleton, MN, to accommodate a new Nondirectional Beacon (NDB) runway 13 Standard Instrument Approach Procedure (SIAP) to Appleton Municipal Airport, Appleton, MN. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, November 30, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to accommodate a new Nondirectional Beacon (NDB) runway 13 Standard Instrument Approach Procedure (SIAP) to Appleton Municipal Airport, Appleton, MN (58 FR 63127). The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. 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.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in

this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Appleton, MN, to accommodate a new Nondirectional Beacon (NDB) runway 13 Standard Instrument Approach Procedure (SIAP) to Appleton Municipal Airport, Appleton, MN. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rules 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, 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; 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.

AGL MN E5 Appleton, MN [New]

Appleton Municipal Airport, MN
(lat. 45°13'41"N, long. 96°00'19"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Appleton Municipal Airport, MN, and within 2.5 miles each side of the 326° bearing from the airport extending from the 6.4-mile radius to 7 miles northwest of the airport.

Issued in Des Plaines, Illinois on February 4, 1994.

James H. Washington,

Acting Manager, Air Traffic Division.

[FR Doc. 94-4006 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-ANM-38]

Amendment of Class E Airspace; West Yellowstone, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the West Yellowstone, Montana, Class E airspace. This action corrects an error in the airspace description inadvertently omitted during the airspace reclassification process. This action amends the West Yellowstone, Montana Class E airspace from full-time back to part-time. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace."
EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM-537, Federal Aviation Administration, Docket No. 93-ANM-38, 1601 Lind Avenue SW., Renton, Washington 98055-4056; Telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

History

On December 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the West Yellowstone, Montana, Class E airspace (58 FR 63905). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. Class E airspace designations for airspace areas extending 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Class E airspace at West Yellowstone, Montana, to correct an error in the airspace description inadvertently omitted during the airspace reclassification process. This action amends the West Yellowstone Class E airspace from full-time back to part-time.

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, 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 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.

ANM MT E5 West Yellowstone, MT [Amended]

West Yellowstone, Yellowstone Airport, MT
(lat. 44°41'19"N, long. 111°07'04"W)

Targy NDB

(lat. 44°34'32"N, long. 111°11'51"W)

That airspace extending upward from 700 feet above the surface within 4.3 miles west and 8.3 miles east of the 026 degree and 206 degree bearings from the Targy NDB extending from 15.7 miles northeast to 16.1 miles southwest of the NDB; that airspace extending upward from 1,200 feet above the surface within 4.3 miles each side of the 209 degree bearing from the NDB extending from the NDB to 36.2 miles southwest of the NDB, and within 4.3 miles each side of the 304 degree bearing from the NDB extending from the NDB to the east edge of V-343; that airspace extending upward from 10,700 feet MSL within a 25.3-mile radius of the Targy NDB extending clockwise from the 081 degree bearing from the NDB to 4.3 miles east of the 236 degree bearing from the NDB and within 4.3 miles each side of the 236 degree bearing from the NDB extending from the NDB to 43.5 miles southwest of the NDB; that airspace extending upward from 12,000 feet MSL within a 30.5-mile radius of the Targy NDB extending clockwise from the 026 degree bearing from the NDB to the 081 degree bearing from the NDB; that airspace extending upward from 13,000 feet MSL, within a 30.5-mile radius of the Targy NDB, extending clockwise from the 313 degree bearing to the 026 degree bearing from the NDB, excluding that portion that overlies V-298 and V-343. The Class E airspace shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective dates and times thereafter, will be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on February 4, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-4007 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-AWP-17]

**Establishment of Class D Airspace,
Barking Sands, Kauai, HI**AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published on December 10, 1993. This final rule established Class D airspace at Barking Sands Pacific Missile Range Facility (PMRF), Kekaha, Kauai, Hawaii, effective March 3, 1994. This correction to the final rule will establish the effective dates and times as continuously published in the Airport/Facility Directory, Pacific Chart Supplement. The Pacific Chart Supplement had been omitted from the original proposal.

EFFECTIVE DATE: 0901 U.T.C., March 3, 1994.

FOR FURTHER INFORMATION CONTACT:

Gene Enstad, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297-0010.

SUPPLEMENTARY INFORMATION: On December 10, 1993, the Federal Aviation Administration (FAA) published a final rule that established Class D airspace at Barking Sands Pacific Missile Range Facility, Kekaha, Kauai, Hawaii (FR Vol. 58, page 64880). The description of the Class D Airspace omitted any mention of the Pacific Chart Supplement in describing the publication where the effective dates and times of the Class D airspace are published.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on December 10, 1993 (58 FR 64880), and the description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§71.1 [Corrected]

On page 64881, in the first column, last sentence of the description for the Class D airspace is corrected to read "The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement."

Issued in Lawndale on February 10, 1994.

Richard R. Lien,

Manager, Air Traffic Division, AWP-500.

[FR Doc. 94-4003 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-AGL-21]

**Establishment of Class E Airspace;
Port Huron, MI**AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Port Huron, MI. A standard instrument approach procedure (SIAP) has been developed at St. Clair County International Airport. Controlled airspace to the surface is needed to contain instrument flight rules (IFR) operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the recently established SIAP.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT:

Manager, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, telephone 708-294-7568.

SUPPLEMENTARY INFORMATION:**History**

On December 9, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Port Huron, MI (58 FR 64710). An Automated Weather Observation System (AWOS) has been installed at the St. Clair County International Airport that will continuously provide weather data, and a non-federal ILS SIAP has been established. Controlled airspace to the surface 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 objecting to the proposal were received.

Minor changes have been made to the legal description to add an exclusion for the portion overlying Canadian airspace, to eliminate specification of dates and times of operation since this Class E airspace will operate continuously, and to correct the latitude coordinates. Other than these editorial changes, this amendment is the same as that proposed

in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E2 airspace designations are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Port Huron, MI, to provide controlled airspace to the surface for aircraft executing the ILS SIAP into the St. Clair County International 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 16, 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 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.

Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 6002 Class E airspace areas designated as a surface area for an airport

* * * * *
AGL MI E2 Port Huron, MI [New]
St. Clair County International Airport, MI
(lat. 42°54'39" N., long. 82°31'44" W.)

Within a 4-mile radius of the St. Clair County International Airport, excluding the airspace within Canada.

* * * * *
Issued in Des Plaines, Illinois on February 7, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94-3996 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27604; Amdt. No. 1586]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591; or

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

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

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

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

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP

amendments may require making them effective in less than 30 days. For the remaining SIAPs, and effective date at least 30 days after publication is provided.

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air), Standard instrument approaches, Weather.

Issued in Washington, DC, on February 11, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised

Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

* * * Effective April 28, 1994

Oxford, CT, Waterbury-Oxford, VOR/DME RNAV RWY 18, Amdt. 6
 Atchison, KS Amelia Earhart, VOR/DME-A, Amdt. 3
 Beloit, KS, Moritz Memorial, VOR/DME RWY 17, Amdt. 3
 Smith Center, KS, Smith Center Muni, VOR/DME-A, Amdt. 1
 Rockland, ME, Knox County Regional, NDB RWY 3, Amdt. 7, Cancelled
 Wiscasset, ME, Wiscasset, VOR/DME RWY 25 Orig., Cancelled
 Provincetown, MA, Provincetown Muni, NDB RWY 25, Amdt. 1
 Louisburg, NC, Franklin County, VOR/DME-A, Orig.
 New Philadelphia, OH, Harry Clever Field, VOR/DME-A, Amdt. 3, Cancelled
 New Philadelphia, OH, Harry Clever Field, VOR/DME-B, Amdt. 2
 New Philadelphia, OH, Harry Clever Field, VOR-A, Orig.

* * * Effective March 31, 1994

Algona, IA, Algona Muni, VOR/DME-A, Amdt. 5
 Algona, IA, Algona Muni, NDB RWY 12, Amdt. 4
 Monroe, MI, Custer, VOR RWY 3, Amdt. 1
 Monroe, MI, Custer, VOR RWY 21, Amdt. 1
 Drummond Island, MI, Drummond Island, NDB RWY 26, Amdt. 1
 Red Wing MN, Red Wing Muni, NDB RWY 9, Amdt. 3
 Sullivan, MO, Sullivan Regional, NDB RWY 24, Orig.
 Anderson, SC, Anderson County, LOC RWY 5, Amdt. 1A, Cancelled
 Anderson, SC, Anderson County, ILS RWY 5, Orig.

* * * Effective March 3, 1994

Denver, CO, Front Range, ILS RWY 35, Orig.
 Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 27L, Orig.
 Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 27R, Amdt. 10
 Warroad, MN, Warroad Intl-Swede Carlson Field, NDB RWY 31, Amdt. 6, Cancelled
 Warroad, MN, Warroad Intl-Swede Carlson Field, NDB RWY 31, Orig.
 Warroad, MN, Warroad Intl-Swede Carlson Field, ILS RWY 31, Orig.
 Warroad, MN, Warroad Intl-Swede Carlson Field, VOR/DME RNAV RWY 31, Amdt. 3

* * * Effective February 9, 1994

Rocky Mount, NC, Rocky Mount-Wilson, NDB RWY 4, Amdt. 8
 Rocky Mount, NC, Rocky Mount-Wilson, ILS RWY 4, Amdt. 15

* * * Effective February 4, 1994

Pittsburgh, PA, Pittsburgh International, ILS RWY 28L, Amdt. 6

* * * Effective February 3, 1994

Los Angeles, CA, Whiteman, VOR-A, Orig.

* * * Effective February 1, 1994

Hilton Head Island, SC, Hilton Head, LOC/DME RWY 21, Amdt. 1

[FR Doc. 94-3998 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27603; Amdt. No. 1585]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from: 1. FAA Public Inquiry

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

By Subscription

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

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

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

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific

changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only those specific conditions existing at the affected airports.

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control Approaches, Standard Instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC on February 11, 1994.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

Effective	State	City	Airport	FDC No.	SIAP
02/01/94 ...	AK	Galena	Galena	FDC 4/0577	VOR Rwy 25 Amdt 9A...
02/01/94 ...	AK	Galena	Galena	FDC 4/0578	ILS/DME Rwy 25 Orig...
02/01/94 ...	TX	Georgetown	Georgetown Muni	FDC 4/0580	NDB Rwy 18 Amdt 4...
02/02/94 ...	RI	Providence	Theodore Francis Green State	FDC 4/0587	VOR Rwy 5L/R Amdt 11...
02/04/94 ...	LA	Patterson	Harry P. Williams Memorial	FDC 4/0642	NDB Rwy 5 Amdt 8...
02/04/94 ...	LA	Patterson	Harry P. Williams Memorial	FDC 4/0643	LOC/DME Rwy 23 Amdt 2...
10/28/93 ...	NE	Valentine	Miller Field	FDC 3/5907	NDB Rwy 31 Amdt 6...

Galena

Galena

Alaska

VOR Rwy 25 Amdt 9A ...

Effective: 02/01/94

FDC 4/0577/GAL/FI/P Galena, Galena, AK. VOR Rwy 25 Amdt 9A... VOR/DME or Tacan Rwy 7 Amdt 6A; CIRC CAT A MDA/HAA 620/468. These become VOR Rwy 25 Amdt 9B; and VOR/DME or Tacan Rwy 7 Amdt 6B.

Galena

Galena

Alaska

ILS/DME Rwy 25 Orig...

Effective: 02/01/94

FDC 4/0578/GAL/FI/P Galena, Galena, AK. ILS/DME Rwy 25... HOL D IN Lieu of PT... 2000; 10 DME ARC ALT... 2300; CAT A Circ MDA/HAA 620/648; DLT CAT E MINS. This becomes ILS/DME Rwy 25 Orig-A.

Patterson

Harry P. Williams Memorial

Louisiana

NDB Rwy 5 Amdt 8...

Effective: 02/04/94

FDC 4/0642/PTN/FI/P Harry P. Williams Memorial, Patterson, LA. NDB Rwy 5 Amdt 8...Delete All Reference to Rwy 5/23; Chg all reference to Rwy 6/24. This Is NDB Rwy 6 Amdt 8A.

Patterson

Harry P. Williams Memorial

Louisiana

LOC/DME Rwy 23 Amdt 2...

Effective: 02/04/94

FDC 4/0643/PTN/ FI/P Harry P. Williams Memorial, Patterson, LA. LOC/DME Rwy 23

Amdt 2...Delete All Reference to Rwy 5/23;
Chg All Reference to Rwy 6/24. This is LOC/
DME Rwy 24 Amdt 2A

Valentine

Miller Field

Nebraska

NDB Rwy 31 Amdt 6...

Effective: 10/28/93

FDC 3/5907/VTN/FI/P Miller Field,
Valentine, NE. NDB Rwy 31 Amdt 6...MSA
VTN 25NM 350-170 4000, 170-350 4600.
This is NDB Rwy 31 Amdt 6A.

Providence

Theodore Francis Green State

Rhode Island

VOR Rwy 5L/R Amdt 11...

Effective: 02/02/94

FDC 4/0587/PVD/FI/P Theodore Francis
Green State, Providence, RI. VOR Rwy 5L/
R Amdt 11...Change procedure identification
to VOR Rwy 5. Delete S-5L CAT A-D AND
S-5L DME CAT A-D Minimums. This is
VOR Rwy 5 Amdt 11A.

Georgetown

Georgetown Muni

Texas

NDB Rwy 18 Amdt 4...

Effective: 02/01/94

FDC 4/0580/T04/FI/P Georgetown Muni,
Georgetown, TX. NDB Rwy 18 Amdt
4...Remove Note...If LCL ALTM Not
Received, Use Austin ALSTG and Increase all
MDAS 100 Ft. This is NDB Rwy 18 Amdt 4a.

[FR Doc. 94-3997 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 244

Industry Guide: Guides for the Greeting Card Industry Relating to Discriminatory Practices

AGENCY: Federal Trade Commission.

ACTION: Final rules; Notice of repeal of industry guide.

SUMMARY: The Federal Trade Commission announces the repeal of the guides concerning discriminatory practices in the greeting card industry, hereinafter referred to as the "Greeting Card Guides" or the "Guides." The Commission has reviewed the provisions of the Guides, and has concluded that due to substantial duplication by later-adopted statements of policy of general application, the Guides are no longer in the public interest and should be withdrawn. Accordingly, the Greeting Card Guides are rescinded.

EFFECTIVE DATE: February 23, 1994.

ADDRESSES: Requests for copies of this notice should be sent to the Public

Reference Branch, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil W. Averitt, Esq., Office of Policy & Evaluation, Bureau of Competition, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-2885.

SUPPLEMENTARY INFORMATION:

Background

The "Guides for the Greeting Card Industry Relating to Discriminatory Practices" were published in 1968. They discuss the ways in which the Robinson-Patman Act, 15 U.S.C. 13, will apply to that industry. The primary purpose of the Guides was to describe the principles that the Federal Trade Commission would follow in applying sections 2 (d) and (e) of the Act, which require that promotional allowances and services be made available on nondiscriminatory terms.¹

The same year that the Guides were issued, the Supreme Court decided the case of *FTC v. Fred Meyer, Inc.*, 390 U.S. 341 (1968). In that opinion the Court suggested that the Commission might wish to expand on earlier guidance and issue detailed guidelines to promotional allowances under sections 2 (d) and (e). The Commission accepted this invitation the following year by publishing the so-called "Fred Meyer Guides." See 16 CFR part 240. These set out general standards for promotional allowances, applicable to all industries. The Fred Meyer Guides have since been amended as necessary to keep them current, most recently in 1990.

With the Fred Meyer Guides in place, the Commission grew concerned that earlier, industry-specific guidelines had become redundant and a potential source of confusion. In July of 1993 it therefore requested public comment on a proposal to repeal the Greeting Card Guides. Only one comment was received.

Analysis

The Commission believes that the Greeting Card Guides are duplicated and made redundant by the Fred Meyer Guides. Although the Greeting Card Guides are tailored for the industry (e.g., "supplier" means any greeting card publisher or distributor," 16 CFR 240.0(d)), the legal principles reflected in the Guides are not specific to that

¹ See 15 U.S.C. 13(d), (e). One other portion of the Guides discussed the standards of price discrimination under section 2(a). See 16 CFR 244.1. The discussion of these issues was cast in fairly general terms, however.

industry. The applicable law is set out in the Robinson-Patman Act, as interpreted and applied in Commission and judicial precedent. The same principles are reflected in the Fred Meyer Guides. The retention of the separate Greeting Card Guides therefore serves no purpose.

No members of the greeting card industry have requested that the Guides be retained, suggesting that industry members do not perceive a need to continue the Guides. The Commission has received a letter from the Executive Vice President of the Greeting Card Association, reporting that the Association "has no objection" to repeal of the Guides, the some retailer members of the Association are already familiar with the Fred Meyer Guides, and that "it seems superfluous to have two sets of the same guidelines."²

In view of these facts the Commission has concluded that the Greeting Card Guides serve no present function and, therefore, has determined to withdraw those Guides.

List of Subjects in 16 CFR Part 244

Greeting card industry, Price discrimination, Promotional allowances, Trade practices, Unfair methods of competition.

PART 244—[REMOVED]

Accordingly, under the authority of 15 U.S.C. *et seq.* and 15 U.S.C. 13, title 16, chapter I, of the Code of Federal Regulations is amended by removing part 244.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-4039 Filed 2-22-94; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 412

Trade Regulation Rule: Discriminatory Practices in Men's and Boys' Tailored Clothing Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule; Notice of repeal of rule.

SUMMARY: The Federal Trade Commission announces the rescission of the rule concerning the need for a written plan to guide a seller's promotional allowances in the men's and boys' tailored clothing industry (hereinafter the "Tailored Clothing

² Letter from Marianne McDermott, Executive Vice President, Greeting Card Association, to Neil Averitt, Office of Policy & Evaluation, Federal Trade Commission (Sept. 14, 1993).

Rule" or the "Rule"). The Commission has reviewed the provisions of the Rule, and has concluded that due to inconsistencies with and duplication by later-adopted statements of policy of general application, the Tailored Clothing Rule is no longer in the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for the repeal of the Rule, and incorporates a regulatory analysis.

EFFECTIVE DATE: March 25, 1994.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to the Public Reference Branch, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil W. Averitt, Esq., Office of Policy & Evaluation, Bureau of Competition, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-2885.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

Background

The Tailored Clothing Rule, promulgated in 1967, was intended to clarify the way in which the Robinson-Patman Act, 15 U.S.C. 13, applies to that industry. Section 2(d) and (e) of the Act require that promotional allowances and services be made available to competing sellers on proportionately equal terms. The Rule established a presumption that allowances in the tailored clothing industry that were not provided in accordance with a written plan were not available on proportionately equal terms.

The year after the Rule was promulgated, the Supreme Court decided the case of *FTC v. Fred Meyer, Inc.*, 390 U.S. 341 (1968). In that opinion the Court suggested that the Commission might wish to expand on earlier guidance and issue detailed guidelines to promotional allowances under sections 2(d) and (e). The Commission accepted this invitation the following year by publishing the so-called "Fred Meyer Guides." See 16 CFR part 240. These set out general standards for promotional allowances, applicable to all industries. The Fred Meyer Guides suggest that sellers "would be well advised" to put complex plans in writing, but they do not penalize the failure to have a written plan. The Fred Meyer Guides have been revised as needed to keep them current, most recently in 1990.

With the Fred Meyer Guides in place, the Commission was concerned that the earlier, industry-specific Rule was

unnecessary, and that its different substantive provisions could be a source of potential confusion. In July of 1993 the Commission therefore requested public comment on a proposal to repeal the Tailored Clothing Rule. No comments were received in response to this request.

The Rulemaking Record

The rulemaking record in this proceeding consists of the Notice of Proposed Rulemaking and Request for Comment dated July 2, 1993 (58 FR 35907), and a memorandum from the Office of the Secretary reporting that no comments were received in response to that request. In addition, the Commission takes notice of published court and agency decisions, and of the existence and provisions of the Fred Meyer Guides.

Analysis of the Rulemaking Record

The rulemaking record indicated that the Tailored Clothing Rule no longer appears to be useful or justified. Since the Rule was promulgated, it does not appear that the agency has ever relied on the Rule in a law enforcement matter, or that any litigant has ever made use of it in a reported private action. Moreover, no industry members responded to the Notice of Proposed Rulemaking to urge retention of the Rule.

Repeal would also resolve the inconsistency between the Rule and the Fred Meyer Guides. The Fred Meyer Guides encourage but do not require sellers to have a written plan for promotional allowances.¹ The Robinson-Patman Act also does not require sellers to have a written plan. The Tailored Clothing Rule, on the other hand, states that promotional payments "will be presumed not to have been made available on proportionately equal terms" unless they are made available under a written plan.²

Although this dichotomy creates no inconsistent legal obligations, there is a significant policy discrepancy in that the tailored clothing industry is treated differently from other industries. Since the Commission's post-enactment experience has not confirmed the relevance or utility of treating this industry differently, this is an additional reason for repeal of the Rule.

Final Regulatory Analysis

The following discussion constitutes the Commission's Final Regulatory

¹ See 16 CFR 240.8 ("If there are many competing customers to be considered or if the plan is complex, the seller would be well advised to put the plan in writing.")

² 16 CFR 412.6.

Analysis of the proposed repeal of the Rule, as called for by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and by section 22 of the Federal Trade Commission Act, 15 U.S.C. 57b-3.

A description of the reasons why action is being considered and the objectives of and legal basis for the repeal of the Rule have been explained in prior parts of this Statement of Basis and Purpose.

Repeal of the Rule would appear to have little or no effect on small business. Because it does not appear that the Rule is currently relied upon, its repeal should not have significant effects on business in general, and therefore should not have any significant effects on small businesses in particular.

The Tailored Clothing Rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501-18. Repeal of the Rule would remove any other compliance requirements that are associated with the Rule, such as the costs associated with becoming familiar with its provisions.

The only significant alternative to repeal of the Rule is to take no action and preserve the Rule in its present form. Due to the subsequent publication of the Fred Meyer Guides, however, the Rule no longer serves a meaningful purpose. Under these circumstances, retaining the Rule would run counter to the goal of achieving efficiencies by repealing rules that are no longer useful.

The benefits of repealing this Rule include removal of an unnecessary provision from the Code of Federal Regulations, the increased efficiency of law enforcement when uniform standards are applicable, and the increased respect for the law that may be anticipated when regulations are current and relevant.

The Commission believes that the above benefits are sufficient to support its determination to rescind this Rule.

List of Subjects in 16 CFR Part 412

Advertising, Clothing, Promotional allowances, Trade practices, Unfair methods of competition.

PART 412—[REMOVED]

Accordingly, under the authority of 15 U.S.C. 41 *et seq.* and 15 U.S.C. 13, title 16, chapter I, of the Code of Federal Regulations is amended by removing part 412.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-4040 Filed 2-22-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215-AA

Claims for Medical Benefits Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: On November 24, 1993, the Department of Labor published proposed revisions to the rules establishing a fee schedule and procedures for submitting bills for reimbursement for medical procedures and services provided to injured federal employees under the Federal Employees' Compensation Act (FECA) (58 FR 62063). The Office of Workers' Compensation Programs (OWCP) proposed to: Adopt where applicable the relative value units (RVUs) devised by the Department of Health and Human Services, Health Care Finance Administration (HCFA), published most recently on December 2, 1993, 58 FR 63626; eliminate the requirement to use the Washington State conversion factors; and allow the use of Geographic Practice Cost Indices (GPCIs) developed by the Urban Institute for HCFA to determine geographic adjustment factors. The rules also eliminate the requirement for original signatures on the bills.

The comment period closed January 24, 1994, and no comments were received; the rules are now published in final in the same form as they were proposed.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT:

Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, room S-3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION: The preamble to the proposed rule explained in detail the background of the schedule of maximum allowable charges for most medical services provided to injured

workers under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* See 51 FR 8276, for a complete explanation of the background and purpose of the schedule.

Under the fee schedule and billing system individual procedures are assigned a descriptor code using the Physicians' Current Procedural Terminology (CPT) scheme developed by the American Medical Association. Each code is then assigned a relative value unit (RVU) reflecting the relative skill, effort, risk, and time required to perform the procedure. The maximum allowable amount payable for a given service is calculated by multiplying the RVU by a conversion factor (CF). This product is in turn multiplied by a geographic index (GI) which allows for regional variations in medical costs.

The components of the fee schedule served OWCP well until recently, when the State of Washington (the system on which several factors of the fee schedule were based), announced that it was adopting a new fee schedule based on the newly published Health Care Financing Administrations (HCFA) RVUs for physicians' services, with modifications peculiar to Washington State.

Rather than continue to use the Washington State system, the Office of Workers' Compensation Programs (OWCP) proposed to adopt elements of the HCFA fee schedule directly. OWCP will continue to use geographic localities (using Metropolitan Statistical Areas) designed by the Urban Institute for application of Geographic Practice Cost Indices (GPCIs), since Medicare pricing localities are carrier specific. Finally, the conversion factors (see 57 FR 5186) will be changed to accommodate the change in scale of the relative unit values.

The proposed rules also change the provision requiring that the medical provider sign the billing form, in order to accommodate the practice of electronic transmission of medical bills and other similar practices.

No comments at all were received on the proposed rules. Accordingly, the proposed changes are being implemented in final unchanged, except for minor changes to correct grammatical and typographical errors.

Statutory Authority

5 U.S.C. 8149 provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Federal Employees' Compensation Act.

5 U.S.C. 8145 provides that the Secretary of Labor shall administer the

Act, may appoint employees to administer it, and may delegate powers conferred by the Act to any employee of the Department of Labor.

5 U.S.C. 8103 (a) and (b) specifies that the Secretary may approve or authorize "necessary and reasonable" expenses to be paid from the Employees' Compensation Fund; may issue regulations governing the provision of services, appliances and supplies; and may prescribe the form and content of the authorization certificate.

Classification

The Department of Labor has concluded that the regulatory proposal is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations have previously been approved by OMB.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although this rule will be applicable to small entities it should not result in or cause any significant economic impact, since the changes in the method of calculating the maximum allowable payments will not result in a significant difference in the outcome from that in the present method. The Secretary has so certified to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Labor, Workers' compensation.

For the reasons set out in the preamble, part 10 of chapter 1 of title 20 of the Code of Federal Regulations is amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8149; Secretary's Order 1-93, 58 FR 21190.

2. Section 10.411 is amended by revising paragraphs (b) and (d)(3) to read as follows:

10.411 Submission of bills for medical services, appliances and supplies; limitation on payment for services

* * * * *

(b) By submitting a bill and/or accepting payment, the physician or other medical provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the physician or other provider thereby agrees to comply with all rules and regulations set forth in this subchapter concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

* * * * *

(d) * * *

(3) The Director shall assign the relative value units (RVUs) published by the Health Care Finance Administration (HCFA) to all services for which HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may develop and assign any that he/she considers to be appropriate RVUs. The Director will also devise conversion factors for each category of service, and in devising such factors the Director may adapt the HCFA conversion factors as appropriate using OWCP processing experience and internal data. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA by the Urban Institute and published February 1, 1991, as *Refining the Malpractice Geographic Cost Index*, as updated or revised from time to time.

* * * * *

Signed at Washington, DC, this 15th day of February, 1994.

Shelby Hallmark,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 94-4069 Filed 2-22-94; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AD46

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Limitation of Travel Expenses for Representation of Claimants at Administrative Proceedings

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our regulations concerning payment of certain travel expenses to implement section 5106(c) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990). Section 5106(c) amends certain sections of the Social Security Act (the Act) to limit the amount available for payment under those sections for travel expenses of individuals who represent claimants at certain administrative proceedings.

EFFECTIVE DATE: These final rules are effective February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1769.

SUPPLEMENTARY INFORMATION: We published proposed rules to implement section 5106(c) of OBRA 1990, Public Law 101-508, in a Notice of Proposed Rulemaking in the *Federal Register* on January 19, 1993 (58 FR 4950). We provided interested individuals and organizations 60 days within which to submit comments on the proposed rules. The comment period closed March 22, 1993. We did not receive any comments on the proposed rules. Therefore, except for a technical correction discussed below and some editorial changes, these final rules are the same as the proposed rules.

These final rules amend our regulations on the payment of travel expenses of individuals who represent claimants at certain administrative proceedings to implement the amendments to sections 201(j), 1631(h) and 1817(i) of the Act made by section 5106(c) of OBRA 1990. In general, sections 201(j), 1631(h) and 1817(i) of the Act provide authority to reimburse certain persons for certain travel expenses which they incur in connection with the Social Security,

Supplemental Security Income (SSI) or Medicare program under titles II, XVI and XVIII of the Act, respectively. Among other things, these sections of the Act authorize the payment of certain travel expenses to a claimant's representative for travel to attend a reconsideration interview or a proceeding before an administrative law judge (ALJ).

Section 5106(c) of OBRA 1990 amends sections 201(j), 1631(h) and 1817(i) of the Act to limit the amount available for payment under these sections of the Act for travel by a representative to attend an administrative proceeding before an ALJ or other adjudicator. The amendments under section 5106(c) specify that the amount available for such payment shall not exceed the maximum amount allowable under these sections of the Act for a representative's travel originating within the geographic area of the office having jurisdiction over the proceeding. The Conference Committee Report on OBRA 1990 states that under the amendments the reimbursement for travel by a representative "could not exceed the maximum amount that would be payable for travel to the site of the reconsideration interview or proceeding before an ALJ from a point within the geographical area served by the office having jurisdiction over the interview or proceeding." H.R. Rep. No. 964, 101st Cong., 2d Sess. 934 (1990).

The final regulations amend our regulations relating to the payment of travel expenses of a claimant's representative for travel to attend a disability hearing or hearing before an ALJ under the Social Security or SSI programs to implement the amendments made by section 5106(c) of OBRA 1990. The title II regulations on travel reimbursement, like the rules in subpart J of 20 CFR part 404 generally, are made applicable to certain proceedings under the Medicare program pursuant to 42 CFR 405.701(c). Therefore, the changes to the title II regulations on travel reimbursement also affect reimbursement of travel expenses of a representative in connection with those Medicare proceedings under the Medicare program and, thus, implement the amendment to section 1817(i) of the Act made by section 5106(c) of OBRA 1990.

Our existing regulations on the payment of certain travel expenses, §§ 404.999a *et seq.* and §§ 416.1495 *et seq.*, implement the pertinent provisions of the Act regarding travel reimbursement that were in effect prior to April 1, 1991, the effective date of section 5106(c) of OBRA 1990. With respect to travel expenses incurred prior

to that date, we reimbursed a representative for allowable expenses for travel to a disability hearing or ALJ hearing site from the representative's residence or office (depending upon whether the representative's travel originated from his or her residence or from the office) regardless of its geographic location. Based on travel distance between the hearing site and the representative's travel origination point (residence or office) and subject to the limitations in §§ 404.999c(d) and 416.1498(d), we determined the amount allowable for reimbursement for the ordinary expenses of transportation (§§ 404.999c(a) and 416.1498(a)) and for unusual travel costs (§§ 404.999c(b) and 416.1498(b)) pursuant to the applicable rules governing rates and conditions of payment (§§ 404.999c(c) and 416.1498(c)).

Effective with travel expenses incurred by a representative on or after April 1, 1991, however, section 5106(c) of OBRA 1990 provides that the amount of reimbursement for such expenses shall not exceed the allowable amount that we could reimburse the representative for travel originating within the geographic area of the office having jurisdiction over the proceeding. Accordingly, the final regulations amend our regulations to provide that the amount available to reimburse a representative for travel to attend a disability hearing or a hearing before an ALJ shall not exceed the maximum amount allowable for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

The final rules explain that the geographic area of the office having jurisdiction over the hearing means, as appropriate—

- The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;
- If a Federal disability hearing officer holds the disability hearing, the geographic area of the State in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing; or
- The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the hearing before an ALJ.

In cases in which a Federal disability hearing officer holds the disability hearing, the hearing officer travels to the State in which the claimant resides to hold the hearing. In those infrequent cases in which the claimant is not a

resident of a State, the Federal disability hearing officer holds the disability hearing in a location in a State that is convenient for the claimant and the hearing officer. With respect to these cases, the final regulations define the geographic area of the office having jurisdiction over the hearing to mean the geographic area of the State in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing. This definition is consistent with the congressional intent underlying section 5106(c) of OBRA 1990 in that it treats the claimant and his or her representative in the same manner as if a State agency hearing officer held the disability hearing. In the final title II regulations relating to cases in which a Federal disability hearing officer holds the disability hearing, the term "State" has the meaning assigned to it in current § 404.2(c)(5), except that the term also includes the Northern Mariana Islands. In the final title XVI regulations relating to such cases, the term "State" means a State as defined in current § 416.120(c)(9). This definition of "State" in the final title XVI regulations § 416.1498(d)(3)(i)(B), was omitted from the text of the proposed rules, although it was discussed in the preamble to those rules (58 FR 4950, 4951). Its inclusion in the final rules represents a technical correction.

We are basing the maximum amount allowable on the distance to the hearing site from the farthest point within the appropriate geographic area. We will determine the maximum amount allowable for travel between these two points under the existing regulations, i.e., subject to the existing limitations in paragraph (d)(1) and paragraph (d)(3) (herein to be redesignated as paragraph (d)(4)) of §§ 404.999c and 416.1498 (relating to travel within the United States and a claimant's request for a change to a more distant hearing site) and pursuant to the applicable rules governing rates and conditions of payment under paragraphs (a) through (c) of §§ 404.999c and 416.1498. Under our existing regulations, we will not reimburse a representative's travel expenses unless the distance he or she travels, i.e., the distance to the hearing site from the representative's residence or office (whichever he or she travels from), exceeds 75 miles (§§ 404.999c(d)(2) and 416.1498(d)(2)). The final regulations provide a similar limitation. Under the final rules, we will use the point within the appropriate geographic area that is the farthest point from the hearing site as the representative's travel origination point

(equivalent to residence or office under the existing regulations) for purposes of determining the maximum amount allowable for reimbursement. The final rules provide that if the distance to the hearing site from the farthest point within the appropriate geographic area does not exceed 75 miles, we will not reimburse a representative for any travel expenses. This is consistent with the 75-mile rule in the current regulations.

Under the final regulations, actual reimbursement for a representative's travel expenses is limited to the lesser of: (1) Actual travel expenses incurred and allowable under the regulations (whether travel actually originates within the designated geographic area or outside that area); or (2) the maximum amount allowable for travel to the hearing site from the farthest point within the geographic area of the office having jurisdiction over the hearing.

In practice, the final rules will not affect reimbursement of travel expenses of a representative whose travel originates within the geographic area of the office having jurisdiction over the hearing. This is because the expenses incurred and allowable under the regulations for such travel would be less than, or equal to, the maximum amount allowable for travel to the hearing site from the farthest point within the appropriate geographic area.

We are amending §§ 404.999c and 416.1498 by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to state and define the limit on the amount of reimbursement for a representative's travel expenses mandated by section 5106(c) of OBRA 1990. The final regulations state that the amount of reimbursement for travel expenses for a representative shall not exceed the maximum amount allowable for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing; define the geographic area of the office having jurisdiction over the hearing; and explain how we determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area.

We also are amending §§ 404.999c(c) and 416.1498(c) to change the reference from 41 CFR Part 101-7 to 41 CFR chapter 301, where the Federal Travel Regulations are now codified.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities

because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 and 93.774, Medicare; 93.802-93.805, Social Security; and 93.807, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Death benefits, Disability benefits, Insurance, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public Assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: November 19, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 8, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)-(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405 (a), (b), and (d)-(h), 421(d), and 1302.

§ 404.999c [Amended]

2. In § 404.999c(c) introductory text, the reference to "41 CFR part 101-7" is revised to read "41 CFR chapter 301".

3. Section 404.999c is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 404.999c What travel expenses are reimbursable.

* * * * *

(d) * * *

(3) For travel expenses incurred on or after April 1, 1991, the amount of reimbursement under this section for travel by your representative to attend a disability hearing or a hearing before an administrative law judge shall not exceed the maximum amount allowable under this section for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

(i) The geographic area of the office having jurisdiction over the hearing means, as appropriate—

(A) The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

(B) If a Federal disability hearing officer holds the disability hearing, the geographic area of the State (which includes a State as defined in § 404.2(c)(5) and also includes the Northern Mariana Islands) in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing; or

(C) The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the hearing before an administrative law judge.

(ii) We or the State agency determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area. In determining the maximum amount allowable for travel between these two points, we or the State agency apply the rules in paragraphs (a) through (c) of this section and the limitations in paragraph (d) (1) and (4) of this section. If the distance between these two points does not exceed 75 miles, we or the State agency will not reimburse any of your representative's travel expenses.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart N of part 416 is revised to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b.

§ 416.1498 [Amended]

2. In § 416.1498(c) introductory text, the reference to "41 CFR part 101-7" is revised to read "41 CFR chapter 301".

3. Section 416.1498 is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 416.1498 What travel expenses are reimbursable.

* * * * *

(d) * * *

(3) For travel expenses incurred on or after April 1, 1991, the amount of reimbursement under this section for travel by your representative to attend a disability hearing or a hearing before an administrative law judge shall not exceed the maximum amount allowable under this section for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

(i) The geographic area of the office having jurisdiction over the hearing means, as appropriate—

(A) The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

(B) If a Federal disability hearing officer holds the disability hearing, the geographic area of the State (as defined in § 416.120(c)(9)) in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing; or

(C) The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the hearing before an administrative law judge.

(ii) We or the State agency determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area. In determining the maximum amount allowable for travel between these two points, we or the State agency apply the rules in paragraphs (a) through (c) of this section and the limitations in paragraph (d) (1) and (4) of this section. If the distance between these two points does not exceed 75 miles, we or the State agency will not reimburse any of your representative's travel expenses.

* * * * *

[FR Doc. 94-3961 Filed 2-22-94; 8:45 am]
BILLING CODE 4190-29-P

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AD12

Reopening Determinations and Decisions

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules revise our regulations to clarify the longstanding

policy of the Social Security Administration (SSA) that the Agency on its own initiative, as well as at the request of any person claiming a right under the Social Security or supplemental security income (SSI) programs, may reopen and revise a final administrative determination or decision.

EFFECTIVE DATE: The final regulations are effective February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION: We are revising §§ 404.987 and 416.1487 of our regulations to clarify that we may reopen and revise a final administrative determination or decision either on our own initiative or at the request of a person who was a party to the determination or decision.

Prior to August 5, 1980, our regulations expressly provided that we had the discretion to reopen and revise a final determination or decision, including a final revised determination or decision, either on our own motion or upon the request of any party to the determination or decision. See 20 CFR 404.956, 404.957, 416.1475 and 416.1477 (1980). On August 5, 1980, however, we published, pursuant to the notice of proposed rulemaking procedures, final regulations which reorganized and restated in simpler language our rules on the administrative review process, including our rules for reopening and revising final determinations and decisions. This recodification was undertaken as part of a Department-wide effort to make the rules clearer and easier for the public to use and understand (45 FR 52078, August 5, 1980).

Our existing regulations on the procedures for reopening and revising a determination or decision were a part of the recodification that was published and became effective on August 5, 1980. Although no substantive changes were intended with regard to the authority to reopen on our own initiative, the regulations, as recodified, have been read by some to permit reopening and revision of a final determination or decision only when the beneficiary or claimant requests reopening.

With respect to the reopening and the revising of a final determination or decision, §§ 404.987 and 416.1487 of our existing regulations state that "[y]ou may ask that a determination or a decision to which you were a party be revised." These sections have created some confusion and have been read by

some courts to mean that we may not reopen and revise a final determination or decision on our own initiative.

The final rules eliminate the ambiguity that exists in our regulations regarding our authority to reopen and revise a final determination or decision on our own initiative. The final rules revise §§ 404.987 and 416.1487 to state explicitly that we may reopen a determination or decision that has become final on our own initiative or at the request of an individual who was a party to the determination or decision.

Public Comments

We published the proposed rules with a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* on October 28, 1991 (56 FR 55477). Interested persons and organizations were given 60 days to comment. The comment period closed on December 27, 1991. We received comments from six commenters: Two State agencies which make disability determinations, and three legal services organizations and one private attorney who represent claimants and beneficiaries.

One commenter supported the proposed rules without modification. This commenter agreed with our view that the proposed rules clarified our longstanding policy regarding our authority to reopen a final determination or decision on our own initiative.

The other commenters either opposed the proposed changes to the regulations or conditioned their support for the proposed rules upon our making additional changes to our regulations. Most of these commenters generally perceived the proposed rules to be a policy change that would confer upon SSA a new or expanded authority to reopen and revise determinations or decisions on its own initiative. Many of the comments which were provided by these commenters also reflected a misunderstanding of the requirements and procedures for reopening a determination or decision. Some of these commenters recommended that the proposed rules be modified or withdrawn. Some recommended that they be expanded to clarify or further limit the specific conditions, which are stated elsewhere in our regulations, under which a final determination or decision may be reopened.

We considered carefully all of the comments which we received on the proposed rules. However, for the reasons stated below, we did not adopt the recommendation to withdraw the proposed rules or any of the recommendations to modify or expand the changes to the regulations. The

changes to the regulations do not represent a substantive change in policy. The sole purpose of the changes is to clarify in the regulations our longstanding policy that we may reopen and revise a final determination or decision on our own initiative as well as upon the request of a party to the determination or decision. Accordingly, the final rules are the same as the proposed rules.

A summary of the comments that raised issues concerning the proposed rules and our responses to the comments are provided below. For ease of comprehension, we have consolidated the comments and organized them according to the general issues raised in the comments.

Comment: Three commenters thought that the proposed rules would be inconsistent with a decision of a circuit court which had concluded that our regulations should be interpreted to allow the Appeals Council to reopen a final decision of an administrative law judge (ALJ) only on the basis of a request by a claimant or beneficiary. One commenter stated that the proposed rules would circumvent judicial decisions, but did not mention any specific court decisions.

Response: As discussed earlier in this preamble and in the preamble to the NPRM, the regulations which we are revising, §§ 404.987 and 416.1487, were a part of the regulations that were published on August 5, 1980, which reorganized and restated in simpler language all of our rules on the administrative review process. Although no substantive changes were intended with regard to our authority to reopen final determinations or decisions on our own initiative, this authority was not stated as clearly in the recodified rules as it had been in the longer, more detailed prior rules. As a result, several lawsuits were brought challenging our authority under the recodified regulations to continue our longstanding policy to reopen and revise final determinations or decisions on our own initiative. All but one of the circuit courts that have directly addressed this issue have concluded, however, that our regulations on reopening do provide authority for us to reopen and revise final determinations or decisions on our own initiative, including authority for the Appeals Council to reopen and revise a final decision of an ALJ on its own initiative. Only the circuit court mentioned by the three commenters above and some Federal district courts have concluded that our existing regulations should be interpreted to allow the reopening and revision of a final determination or decision only

when a claimant or beneficiary requests reopening. These final rules revise the regulations to eliminate the ambiguity which led these courts to interpret the regulations to mean that only a claimant or beneficiary may initiate reopening. We are revising §§ 404.987 and 416.1487 to state explicitly that we may reopen a final determination or decision either on our own initiative or at the request of a party to the determination or decision.

Comment: Several commenters thought that the time periods within which a final decision of an ALJ may be reopened under current § 404.988 (a) or (b) or § 416.1488 (a) or (b), which we did not propose to change, are measured from the date of the ALJ decision. Some commenters opposed the proposed revisions of §§ 404.987 and 416.1487 because they believed that the Appeals Council would have the discretion under § 404.988(b) or § 416.1488(b) to reopen a final decision of an ALJ on its own initiative within 4 years of the date of the ALJ decision if the Council finds good cause to reopen. One commenter stated that the proposed rules would render meaningless the 60-day time limit within which the Appeals Council may decide to review a decision by an ALJ on its own initiative under §§ 404.969 and 416.1469. This statement was based on the commenter's belief that §§ 404.988(a) and 416.1488(a), when read together with the proposed rules, give the Appeals Council the discretion to reopen a final decision of an ALJ on its own initiative within 1 year of the date of the ALJ decision for any reason.

Response: Sections 404.988 and 416.1488 state the conditions under which we may reopen final determinations or decisions under the Social Security and SSI programs, respectively. We are not making any changes to these sections of our regulations. Sections 404.988(a) and 416.1488(a) provide that a determination or decision may be reopened within 12 months of the date of the notice of the initial determination for any reason. Sections 404.988(b) and 416.1488(b) provide that a determination or decision may be reopened within 4 years (2 years for SSI cases) of the date of the notice of the initial determination if we find good cause, as defined in §§ 404.989 and 416.1489, to reopen the case. The time periods within which a final decision of an ALJ may be reopened under these sections, therefore, are measured from the date of the notice of the initial determination, not from the date of the ALJ decision. Under these sections, the Appeals Council may reopen a final

decision of an ALJ within 12 months of the date of the notice of the initial determination for any reason, or within 4 years (only 2 years for SSI cases) of the date of the notice of the initial determination if the Council finds good cause to reopen.

These final rules, like the proposed rules, revise §§ 404.987 and 416.1487 to clarify that we may reopen and revise a final determination or decision either on our own initiative or upon the request of a person who was a party to the determination or decision. While the final rules clarify that the Appeals Council has the discretion to reopen a final decision of an ALJ on its own initiative, as well as at the request of a party to the decision, under the conditions specified in §§ 404.988 and 416.1488, they do not make the reopening authority under §§ 404.988(a) and 416.1488(a) inconsistent with the authority provided under §§ 404.969 and 416.1469 for Appeals Council own-motion review of an ALJ decision. Sections 404.988 and 416.1488 state the conditions under which a determination or decision that has become final may be reopened. Sections 404.969 and 416.1469, on the other hand, authorize the Appeals Council to initiate review of an ALJ decision that has not become final. A decision by an ALJ becomes final unless a person who was a party to the decision requests Appeals Council review of the decision within the stated time period, see §§ 404.968 and 416.1468, or the Council itself decides to review the decision within the time period provided in §§ 404.969 and 416.1469. The latter sections provide that any time within 60 days after the date of an ALJ decision or dismissal of a hearing request, the Appeals Council may decide on its own initiative to review the decision or dismissal. By contrast, §§ 404.988(a) and 416.1488(a) allow the Appeals Council to reopen a final decision of an ALJ for any reason only within 12 months of the date of the notice of the initial determination made in the case. In almost all cases in which an ALJ decision becomes final, this 12-month period for reopening for any reason will have expired due to the normal processing time required for the disposition of the case through the reconsideration and ALJ hearing steps of the administrative review process. Therefore, a final decision of an ALJ seldom can be reopened under the conditions specified in §§ 404.988(a) and 416.1488(a).

Comment: Some commenters expressed the view that the proposed rules were unfair to claimants and beneficiaries because they permitted

SSA to reopen on its own initiative a final determination or decision that was favorable to the individual and make a revised determination or decision that could be unfavorable to the individual. One commenter stated that fairness requires that only claimants and beneficiaries be permitted to initiate the reopening and revision of a final determination or decision.

Response: Our authority to initiate reopening gives us the discretion to reopen and revise a final determination or decision on our own initiative under the conditions described in §§ 404.988 and 416.1488 whether such final determination or decision was favorable or unfavorable to the individual. The revised determination or decision which we make may be less favorable or more favorable to the individual than the prior determination or decision, or it may involve merely a technical revision that does not affect the ultimate conclusion regarding the individual's rights under the Social Security or SSI program.

The policy that we may reopen and revise final determinations or decisions on our own initiative is advantageous to many claimants and beneficiaries. While an individual may request that a final determination or decision that was unfavorable to the individual be reopened and revised, it is often SSA, and not the individual, that discovers that an error was made, or that new and material evidence exists, that provides a basis to reopen and revise a final determination or decision that was unfavorable to the individual. The authority to reopen on our own initiative allows us to reopen and revise the determination or decision in these cases even though the individual has not requested reopening. Indeed, in many, if not most, cases in which we reopen and revise a final determination or decision on our own initiative, we do so for the sole purpose of making a revised determination or decision that would be more favorable to the individual than the prior determination or decision.

Our longstanding policy regarding the authority to reopen on our own initiative is intended to ensure that the final determinations and decisions which we make about the rights of individuals under the Social Security and SSI programs are fair and proper. It enables us to protect the integrity of these programs by allowing us to reopen and revise final determinations or decisions on our own initiative, as well as at the request of a party to the determination or decision, in cases where, for example, the determination or decision was obtained by fraud, the

evidence that was considered in making the determination or decision clearly shows on its face that an error was made in the determination or decision, or new and material evidence shows that the determination or decision is incorrect. See §§ 404.988, 404.989, 416.1488 and 416.1489. In addition, if we reopen and revise a final determination or decision on our own initiative, any person who was a party to the revised determination or decision has the opportunity under §§ 404.994 and 416.1494 to request that the revision be reviewed. Under these sections, if an individual is dissatisfied with a revised determination or decision made in his or her case, he or she may request further administrative or judicial review, as appropriate, of our revised determination or decision.

Comment: Two commenters believed that some of the conditions for reopening determinations and decisions provided in §§ 404.988 and 416.1488 are too broad. One of the commenters stated that the criteria in §§ 404.989 and 416.1489 for determining whether good cause exists to reopen under §§ 404.988(b) and 416.1488(b) should be clarified to provide more precise standards for determining good cause to reopen. The other commenter urged that the criteria for determining good cause be modified to limit further the conditions under which a determination or decision may be reopened. This commenter also recommended the elimination of the provisions of §§ 404.988(a) and 416.1488(a) which permit the reopening of a determination or decision within 12 months of the date of the notice of the initial determination for any reason.

Response: We do not believe that there is any need at this time to modify or clarify the specific criteria in §§ 404.989 and 416.1489 for determining whether good cause exists to reopen a determination or decision under §§ 404.988(b) and 416.1488(b). In addition, we believe that the conditions for reopening provided in §§ 404.988 and 416.1488, including the provisions of §§ 404.988(a) and 416.1488(a), are sufficiently restrictive. These sections of the regulations provide that a determination or decision may be reopened only within limited time periods and/or under limited circumstances. They limit the conditions under which we may reopen a final determination or decision either on our own initiative or on the request of a person who was a party to the determination or decision.

The final rules, like the proposed rules, only revise §§ 404.987 and 416.1487. The sole purpose of the revisions is to clarify our longstanding

policy that we may reopen and revise final determinations or decisions on our own initiative as well as at the request of a party to the determination or decision. These final rules, therefore, do not make any changes to § 404.988, § 404.989, § 416.1488 or § 416.1489. For the foregoing reasons, the proposed rules are being adopted as final regulations.

Regulatory Procedures

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect determinations or decisions about the rights of individuals under the Social Security and SSI programs. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Reporting and recordkeeping requirements, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: November 4, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

20 CFR part 404, subpart J, is amended as follows:

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)-(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405 (a), (b), and (d)-(h), 421(d), and 1302.

2. Section 404.987 is revised to read as follows:

§ 404.987 Reopening and revising determinations and decisions.

(a) *General.* Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review and that determination or decision becomes final. However, a determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us.

(b) *Procedure for reopening and revision.* We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen the determination or decision, we may revise that determination or decision. The conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request, are explained in § 404.988.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart N, is amended as follows:

1. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98-460, 98 Stat. 1802.

2. Section 416.1487 is revised to read as follows:

§ 416.1487 Reopening and revising determinations and decisions.

(a) *General.* Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review and that determination or decision becomes final. However, a

determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us.

(b) *Procedure for reopening and revision.* We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen the determination or decision, we may revise that determination or decision. The conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request, are explained in § 416.1488.

[FR Doc. 94-3958 Filed 2-22-94; 8:45 am]
BILLING CODE 4190-29-P

20 CFR Part 416

RIN 0960-AB86

Supplemental Security Income For the Aged, Blind, and Disabled; Indian Judgment Funds and Per Capita Distributions

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations update the lists of types of income and resources that are excluded under the supplemental security income (SSI) program by Federal laws other than the Social Security Act (the Act) by reflecting the provisions of Public Law 97-458, enacted January 12, 1983, Public Law 98-64, enacted August 2, 1983, and Public Law 100-241, enacted February 3, 1988. In addition, we are making two minor technical changes. The effects of these final regulations are, in certain cases, to provide additional exclusions from income and resources permitting eligibility for, or increases in the payment of, SSI benefits.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-8470.

SUPPLEMENTARY INFORMATION:

Background:

Public Law 97-458

Public Law 97-458 was enacted January 12, 1983. Section 4 of this legislation provides that certain Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not

disapproved by a joint resolution of the Congress are excluded from income and resources under the SSI program. Indian judgment funds include interest and investment income accrued while the funds are held in trust. The exclusion extends to initial purchases made with Indian judgment funds. The exclusion does not apply to the proceeds from sales or conversions of initial purchases or to subsequent purchases made with funds derived from sales or conversions of originally excluded purchases, because Congress sought to protect only the distributions made by the Secretary of the Interior.

Section 4 of Public Law 97-458 also excludes from resources any interests of Indians in trust or restricted Indian lands. Our current regulations address only those lands that such individuals may possess. These final regulations now also exclude from resources nonpossessory interests in such lands.

Public Law 98-64

Public Law 98-64 was enacted August 2, 1983. This legislation excludes all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed on a per capita basis from income and resources for SSI purposes.

The Social Security Administration (SSA) sought advice from the Department of the Interior on the issue of whether Alaska Native Regional and Village Corporation (ANRVC) dividends not excluded under the Alaska Native Claims Settlement Act (ANCSA) could be excluded under Public Law 98-64. SSA issued interim instructions directing that ANRVC dividend distributions paid on or after August 2, 1983, whether or not excluded under ANCSA, would be excluded for SSI purposes pending resolution of the issue.

The Department of the Interior has since advised SSA that funds held by ANRVCs are not "funds held in trust by the Secretary of the Interior" within the purview of Public Law 98-64. We therefore concluded that these ANRVC dividend distributions could not qualify for exclusion for SSI purposes under that law.

Public Law 100-241

A new law, Public Law 100-241, was enacted on February 3, 1988. Under this law, none of the following, received from a Native Corporation, is considered income or resources of an individual Alaska Native or a descendant of an Alaska Native: cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per year (the exclusions

are applied each year to the amount received in such year); stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust.

Public Law 100-241 specifically provides that cash received from a Native Corporation (including cash dividends on stock received from a Native Corporation), to the extent that it does not, in the aggregate, exceed \$2,000 per individual per year, shall not be considered or taken into account as an asset or resource. Although this statutory provision does not explicitly mention "income," the legislative history clearly shows that such cash should not be considered a resource or "otherwise utilized in determining eligibility." H.R. Rep. No. 31, 100th Cong., 1st Sess. 20 (1987). This language seems to require the exclusion of the distributions from income as well as resources, to the extent that they do not, in the aggregate, exceed \$2,000 per individual per year in determining eligibility and payment amount. To exclude a portion of the distributions only from resources would result in benefit reductions or ineligibility in months in which the distributions are received and would be contrary to congressional intent. Therefore, we have changed the income provisions of the appendix to subpart K to reflect the exclusion.

In accordance with Public Law 100-241, we exclude ANRVC cash (including cash dividends on stock received from a Native Corporation) to the extent that this ANRVC cash does not, in the aggregate, exceed \$2,000 per individual per year. With respect to resources, we apply the exclusion to each calendar year without regard to the prior year, so that retained cash not exceeding \$2,000 which an individual received from a Native Corporation in a prior year will not be counted in a subsequent year. This interpretation is consistent with the policy of the Aid to Families with Dependent Children program. Any retained cash exceeding \$2,000 per year will be counted toward the SSI resource limit.

Regulations Changes

The appendix to subpart K lists the types of income that are excluded under the SSI program by Federal laws other than the Act and explains how exclusions provided by other Federal statutes apply to income deemed from a sponsor to an alien. We are amending

the appendix to subpart K, IV. *Native Americans*, on the basis of the legislation discussed above by revising paragraph (a), deleting paragraph (b)(4), redesignating paragraphs (b)(5) through (b)(13) as (b)(4) through (b)(12), and adding new paragraphs (g) and (h). In addition, paragraphs (g) and (h) provide that the exclusion applies to the sponsor's income only if the alien lives with the sponsor, because the statute authorizing the exclusions applies only to benefits to which the household or member of the household would be eligible.

Similarly, we are amending subpart L of the regulations, which deals with resources and exclusion of resources under the SSI program, to reflect the above legislation. Specifically, we are amending § 416.1234 regarding exclusion of Indian lands and, § 416.1236, which encompasses resource exclusions provided by other statutes.

Public Comment

A Notice of Proposed Rulemaking (NPRM) was published on July 27, 1992 (57 FR 33137). A 60-day comment period was provided. The comment period ended September 25, 1992. We received 9 comments. The comments generally supported the NPRM. We have summarized and responded to the issues raised in the comments below.

Comment: Seven commenters expressed concern that the Secretary of Health and Human Services (the Secretary) might begin to apply a \$2,000 annual limit to all exclusions of Indian judgment funds and per capita distributions. They stated that the proposed regulations were unclear as to whether ANCSA, as amended by Public Law 100-241, might adversely affect the SSI benefits of Native Americans other than Alaska natives.

Response: ANCSA provides for the exclusion of ANRVC cash to the extent that it does not, in the aggregate, exceed \$2,000 per individual per year. The provisions of ANCSA apply only to ANRVC distributions to Alaska Natives. We believe this is clearly explained in the amended regulations at paragraph IV(a) of the appendix to subpart K and at § 416.1236(a)(10). In accordance with Public Law 97-458 and Public Law 98-64, the Secretary totally excludes all judgment fund and per capita distributions made pursuant to those public laws.

Comment: One commenter asked why the proposed regulations did not refer to a \$2,000 limit for per capita distributions to Indian tribal members other than Alaska Natives, because Public Law 97-458 appears to include

such a limit. Five commenters suggested that instead of applying a \$2,000 annual limit on Indian judgment fund and per capita distributions, the Secretary should apply a \$2,000 per payment limit, in accordance with Public Law 97-458 and Public Law 98-64. Consequently, only Indian judgment funds or per capita distributions in excess of \$2,000 per payment would be countable for SSI purposes.

Response: There appears to be some confusion over whether, as a result of the proposed regulations, SSA would or could begin to apply a \$2,000 exclusion limit to other than ANCSA distributions. SSA never intended to apply a \$2,000 limit to such other distributions and these final regulations clearly do not do so.

Public Law 97-458 provides that any Federal or federally assisted program, other than Social Security Act programs, shall not consider Indian judgment funds except for per capita shares in excess of \$2,000, as income or resources. However, the statute does not limit the amount of payments that can be excluded under the Social Security Act programs. Public Law 98-64 does not provide a \$2,000 limit on exclusion of funds covered by that statute.

Accordingly, for SSI purposes the Secretary excludes from income and resources all judgment fund and per capita distributions made under Public Law 97-458 and Public Law 98-64.

Comment: One commenter proposed that foster care payments paid to tribal members to help defray the costs of basic needs, and that General Assistance payments from the Bureau of Indian Affairs be excluded from income and resources under the SSI program.

Response: We believe that the exclusions proposed by the commenter would require the enactment of new legislation. Accordingly, in the absence of such authority, we have not revised the regulations to incorporate such exclusions.

Comment: One commenter suggested that the proposed regulations not limit the exclusion of purchases contained in Pub. L. 97-458 to initial purchases made with Indian judgment funds and per capita distributions, because that law refers to " * * * any purchases made with such funds * * * "

Response: The exclusion of purchases in Pub. L. 97-458 does not apply to proceeds from the sales or conversions of initial purchases or to purchases made with the money derived from the sales or conversions of initial purchases. As indicated earlier in this preamble, this policy reflects Congressional intent to protect only the distributions made by the Secretary of the Interior. Any

purchases made subsequent to initial purchases would not be made from distributions made by the Secretary of the Interior. Furthermore, tracking the funds beyond the initial purchase would be administratively difficult, if not impossible.

Comment: One commenter suggested that the Secretary correct a conflict between § 416.1210(i) and § 416.1234 as proposed. Section 416.1210 provides a list of resource exclusions with corresponding regulatory citations. Specifically, § 416.1210(i), states that the resource exclusion of restricted allotted land applies to "an enrolled member of an Indian tribe as provided in § 416.1234." Section 416.1234 states that the exclusion applies to "an individual * * * who is of Indian descent from a federally recognized Indian tribe," and does not limit its exclusion to an enrolled member of an Indian tribe.

Response: We agree that § 416.1210(i) may appear to be in conflict with § 416.1234. Although a change to correct this possible inconsistency was not included in the NPRM, we believe a technical change to correct our oversight and make our intent clear is appropriate. Therefore, we are making a technical change to the regulations at § 416.1210(i) to read, "Restricted allotted Indian lands as provided in § 416.1234;" to provide a simplified and more accurate cross-reference.

Other Regulations Changes

The provisions of Public Law 98-64 regarding the exclusion of certain funds from income are reflected in the appendix to Subpart K, IV. *Native Americans*, by the addition of paragraph (h) to these final regulations. This obviates the need for continuance of paragraph (c)(3) which only partially reflects the income exclusion provisions of Public Law 98-64. Paragraph (c)(3) is duplicative and no longer needed. Therefore, we are making a technical change to the regulations by deleting paragraph (c)(3).

Except for the technical change in response to an issue raised by a public comment and the technical change to remove a duplicative provision, we are adopting these regulations as proposed.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

These regulations impose no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance: Program No. 93.837—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: November 19, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 8, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154.

2. In the appendix following subpart K of part 416, under the heading *IV. Native Americans*, the text preceding the note in paragraph (a) is revised, paragraph (b)(4) and the note following it are removed, paragraphs (b)(5) through (b)(13) are redesignated (b)(4) through (b)(12) respectively, paragraph (c)(1) is amended by adding the word "and" after the semicolon, paragraph (c)(2) is amended by removing the semicolon and the word "and" and adding a period, paragraph (c)(3) is removed, and new paragraphs (g) and (h) are added to read as follows:

Appendix to Subpart K of Part 416—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act

* * * * *

IV. Native Americans

(a) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, to the extent that it does not, in the aggregate, exceed \$2,000 per individual each year; stock, including stock issued

or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100-241 (43 U.S.C. 1626(c)), effective February 3, 1988.

* * * * *

(g) Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93-134 as amended by Public Law 97-458 (25 U.S.C. 1407). Indian judgment funds include interest and investment income accrued while such funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion does not apply to sales or conversions of initial purchases or to subsequent purchases.

Note—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(h) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe are excluded from income under Public Law 98-64 (25 U.S.C. 117b). Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from countable income under this exclusion. For ANRVC dividend distributions, see paragraph IV(a) of this Appendix.

Note—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

3. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154.

4. Section 416.1210(i) is revised to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(i) Restricted allotted Indian lands as provided in § 416.1234;

* * * * *

5. Section 416.1234 is revised to read as follows:

§ 416.1234 Exclusion of Indian lands.

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, we will exclude any interest of the individual (or spouse, if any) in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the Federal Government.

6. In § 416.1236, paragraphs (a)(3) and (a)(10) are revised and paragraph (a)(12) is added to read as follows:

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) * * *

(3) Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93-134, as amended by Public Law 97-458 (25 U.S.C. 1407). Indian judgment funds include interest and investment income accrued while the funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion will not apply to proceeds from sales or conversions of initial purchases or to subsequent purchases.

* * * * *

(10) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, is disregarded to the extent that it does not, in the aggregate, exceed \$2,000 per individual each year (the \$2,000 limit is applied separately each year, and cash distributions up to \$2,000 which an individual received in a prior year and retained into subsequent years will not be counted as resources in those years); stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to the exclusion under section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100-241 (43 U.S.C. 1626(c)), effective February 3, 1988.

* * * * *

(12) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under Public Law 98-64. Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from resources under this exclusion. For treatment of ANRVC dividend distributions, see paragraph IV(a)(10) of this appendix.

[FR Doc. 94-3960 Filed 2-22-94; 8:45 am]
BILLING CODE 4190-29-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2625

Restoration of Terminating and Terminated Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations regarding plan restoration obligations and procedures to reflect a change in the Treasury regulations that are referenced therein and to make several corrections.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1301 *et seq.*). Part 2625 of its regulations (29 CFR part 2625), along with Treasury regulations under section 412 of the Internal Revenue Code (26 U.S.C. 412, minimum funding standards), describes certain legal obligations that arise incidental to a plan restoration under section 4047 of ERISA (29 U.S.C. 1347) and establishes procedures with respect to these obligations.

Provisions of part 2625 currently reference temporary Treasury regulations for applying the minimum funding requirements to terminating or terminated single-employer plans restored by the PBGC (26 CFR 1.412(c)(1)-3T). The Internal Revenue

Service ("IRS") has now issued final regulations (26 CFR 1.412(c)(1)-3, TD 8494, 58 FR 54489, October 22, 1993). (The provisions of the final regulations on the restoration funding method differ from those referenced in part 2625 only in minor clarifications made by the IRS in response to comments.) The PBGC is amending §§ 2625.1(a) and 2625.2 (b) through (d) to reflect that action by substituting the final Treasury regulations for the temporary regulations.

This rule also corrects the spelling of two words in § 2625.2(b) ("amortization" and "restoration") and adds language erroneously omitted from § 2625.3(c) ("following a plan year"). (As worded, § 2625.3(c) states that a restored plan may not use the alternative calculation method in § 2610.23(c) of the premium regulation for any plan year for which Form 5500, Schedule B was not filed because the plan was terminated. However, as indicated in the premium regulation, the alternative calculation method requires use of a plan's Schedule B for the preceding plan year. Hence, this method is not available for a plan year that follows a plan year for which Schedule B was not filed, rather than for that plan year.)

Because these amendments only reflect a change in the pertinent Treasury regulations (which were the subject of notice and comment rulemaking) and make corrections, the PBGC has for good cause found advance notice and public procedure thereon and a delayed effective date to be unnecessary (5 U.S.C. 553 (b)(B) and (d)(3)), and it is issuing these amendments as a final rule, effective immediately.

E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

List of Subjects in 29 CFR Part 2625

Employee pension plans, Pension insurance, Pensions.

For the reasons set forth above, the PBGC is amending 29 CFR part 2625 as follows:

PART 2625—RESTORATION OF TERMINATING AND TERMINATED PLANS

1. The authority citation for part 2625 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1347.

§ 2625.1 and § 2625.2 [Amended]

2. Paragraph (a) of § 2625.1 and paragraphs (b), (c), and (d) of § 2625.2 are amended by removing "26 CFR 1.412(c)(1)-3T" each time it appears and adding, in its place, "26 CFR 1.412(c)(1)-3".

§ 2625.2 [Amended]

3. Paragraph (b) of § 2625.2 is amended by removing "amorization" and adding, in its place, "amortization" in the first sentence and by removing "restorative" and adding, in its place, "restoration" in the second sentence.

§ 2625.3 [Amended]

4. Paragraph (c) of § 2625.3 is amended by adding "following a plan year" after "for any plan year".

Issued in Washington, DC, this 17th day of February 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94-4065 Filed 2-22-94; 8:45 am]

BILLING CODE 7708-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM94-2; Order No. 1004]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final Rule.

SUMMARY: In order to expedite litigation of revenue-related issues presented by Postal Service rate change requests, the Commission amends its rules governing the Postal Service's rate filings to require that they include complete descriptions of the data, procedures, and assumptions that underlie the Postal Service's estimate of domestic mail revenues.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Legal Advisor, Postal Rate Commission, suite 300, 1333

H Street, NW., Washington, DC. 20268-0001 (telephone: (202)/789-6820).

SUPPLEMENTARY INFORMATION: The Commission published its Notice of Proposed Rulemaking in this docket on November 2, 1993 [58 FR 58519]. In our Notice we proposed amendments to 39 CFR 3001.54(j), which governs Postal Service presentations concerning estimated volumes and revenues in our proceedings. As discussed in our Notice, during the post-hearing phase of Docket No. R90-1 an issue emerged as to whether the assumptions underlying the billing determinants that the Postal Service used to project revenues were compatible with those underlying the billing determinants that were implicit in the indexed prices that the Postal Service used to project volumes. This caused us to review our rules governing the Postal Service's volume and revenue presentations to see if more complete initial documentation would expedite hearings on these issues in future rate filings.

As part of that review, we noticed that our current rules do not require the Postal Service's revenue presentation to be disaggregated to the billing determinant level, although the Postal Service has done so in recent rate filings. Nor do our current rules specifically require the Postal Service to source the data underlying its revenue presentation. We therefore proposed amendments to Rule § 3001.54(j) designed to bring it into conformity with current practice in these respects.

The amendments that we initially proposed in this docket had three basic objectives: (1) To require that revenue presentations be disaggregated to the billing determinant level [proposed rule § 3001.54(j)(3)], (2) to require that the method of calculating revenues be explained in detail, especially where the calculation involved redesigned rates [proposed rule § 3001.54(j)(4)], and (3) where the assumptions underlying the billing determinants used to calculate revenue differ from those underlying the billing determinants implicit in the corresponding volume estimate that the Postal Service provide an explanation for the difference [proposed rules § 3001.54(j)(5)(iv), (v), and (vi)].

As a result of comments received in response to our Notice of Proposed Rulemaking, we have simplified our proposed amendments in ways that still accomplish the objectives described above. Final rules § 3001.54(j)(3) and § 3001.54(j)(4), as we adopt them here, accomplish the first and second objectives, respectively, with simpler and more concrete language. To accomplish the third objective, we have

deleted proposed rules § 3001.54(j)(5)(iv) through (vi) in favor of a simpler provision that we have incorporated in the preamble of rule § 3001.54(j)(6).

As a result, our final rules largely eliminate the basis for the Postal Service's generalized complaint in its Comments of December 2, 1993, and Reply Comments of December 13, 1993, that our proposed amendments are needlessly burdensome. Final rules § 3001.54(j)(3) and (4) bring our rules into conformity with what is essentially the Postal Service's current practice. Proposed rules § 3001.54(j)(5)(iv) and (v) had asked for revenue presentations for interim years, and the year following the test year. These proposals might have added moderately to the Postal Service's documentation burden. They have been deleted from our final rules.

Only a minor addition to the Postal Service's documentation burden remains in our final rules. That is the simplified requirement, incorporated in final rule § 3001.54(j)(6), that the Postal Service provide supporting rationale where its revenue estimate is based upon billing determinants that differ from those that are implicit in its volume forecast.

Final Rule § 3001.54(j)(3)

The purpose of proposed rule § 3001.54(j)(3) was to require that the Postal Service's revenue presentation be disaggregated to the billing determinant level, consistent with rule § 3001.54(l), which requires the Postal Service to provide class and subclass billing determinants for each "rate element" that it uses to determine revenues. The Office of the Consumer Advocate (OCA) observes that the wording of proposed rule § 3001.54(j)(3) could have been interpreted as applying to elements other than those covered by rule § 3001.54(l). OCA Comments of November 24, 1993, at 3-4. Final rule § 3001.54(j)(3), therefore, adopts the alternate language proposed by the OCA, which requires that the Postal Service's revenue presentation be disaggregated to "each unique rate element."

Final Rule § 3001.54(j)(4)

The purpose of proposed rule § 3001.54(j)(4) was to require that the method of calculating revenues be described in detail, especially where the calculation involved restructured rates. The OCA's comments propose alternative language that is more concrete and less susceptible to subjective interpretation. Instead of requiring an "identification" or "specific description" of its methods of

calculating revenue, the OCA's proposed language would require the Postal Service to document its revenue calculations in such a way that they can be replicated from "primary data sources." OCA Comments of November 24, 1993, at 4-5.

Final Rule § 3001.54(j)(4) adopts the essence of the OCA's proposed alternative. Appropriate sourcing of revenue presentations, however, is most often to companion volume testimony and supporting documents, rather than to "primary data sources." We have modified the OCA's proposed language accordingly. The OCA incorrectly inferred from our Notice an intent to limit rule § 3001.54(j)(4) to estimates of "per piece" revenue. Final rule § 3001.54(j)(4) applies to revenue estimates generally, not just to estimates of "per piece" revenue.

Proposed Rules § 3001.54(j)(5)(iv)-(v)

Proposed rules § 3001.54(j)(iv) and (v) would have required that the Postal Service's revenue presentations include fully disaggregated revenue estimates for interim years (years between the base year and the test year), and for the year following the test year. Interim year estimates would have facilitated tracking of the Postal Service's revenue estimate against actual revenues as a rate hearing progresses. Post-test year estimates would have assisted in evaluating any proposed changes.

Since the added value of either exercise is relatively minor, we have decided to drop these proposed rules. They were the focus of the generalized complaints expressed in the Postal Service's Comments of December 2, 1993, and Reply Comments of December 13, 1993, that the amendments to rule § 3001.54(j) that we propose in this docket are burdensome and unnecessary.

Proposed Rule § 3001.54(j)(5)(vi) and Final Rule § 3001.54(j)(6)

As we discussed in our Notice of Proposed Rulemaking, the Postal Service uses average, or indexed, subclass prices as key variables in its volume forecasting models. Billing determinants are implicit in an indexed price.

The broad purpose of proposed rule § 3001.54(j)(5)(vi) was to ensure that the Postal Service's volume presentation includes a detailed description of how the indexed prices were constructed, especially where they reflected restructured rates. The specific purpose of the proposed rule was to require that the Postal Service identify instances where the billing determinants implicit in the price indices used to forecast

subclass volumes differ from those used to estimate subclass revenues, and that it explain such differences.

Partly in response to the Postal Service's general plea that we not add to the complexity of rule § 3001.54(j) unless it is clearly necessary, we have decided to delete proposed rule § 3001.54(j)(5)(vi) from our final rules. The broad purpose of the proposed rule was to ensure that the Postal Service provides full narrative explanations of how its price indices are constructed. Having focused attention on that purpose with this rulemaking, we believe that current rule § 3001.54(j)(6)(i) and (ii) will be adequate to achieve it.

As noted, the specific purpose of proposed rule § 3001.54(j)(5)(vi) was to require the Postal Service to explain why it sometimes bases its revenue estimates on billing determinants that differ from those implicit in its volume forecasts. We believe that this purpose can be accomplished more economically by adding the following sentence at the end of the current preamble to rule § 3001.54(j)(6): Supporting rationale shall be provided for using billing determinants to estimate revenues for any class, subclass, or rate category of mail that differ from the billing determinants implicit in the estimate of volumes for that class, subclass, or rate category.

We simplified this requirement in response to comments from the Postal Service. The Postal Service interpreted proposed rule § 3001.54(j)(5)(vi) to require it to (1) Multiply the after-rate fixed weight price index by the after-rate volume forecast for each subclass, (2) compare the result with the after-rate revenue forecast for that subclass, (3) determine if the difference exceeded specified thresholds, and (4) explain differences that exceeded the thresholds.

The Postal Service asserts that "comparisons to the suggested thresholds (three percent of subclass revenue or \$20 million) add nothing to the ultimate answer." It characterizes steps "1" through "3," above, as a "wasteful and burdensome exercise." Postal Service Comments of December 2, 1993, at 5. Although the added burden would have been slight, in our view, we have nevertheless decided to delete the requirement that the Postal Service inventory instances in which such differences exceed a threshold.

The Postal Service also asserts that explanations of the difference between estimated and implied subclass revenues would not be "meaningful because, in every instance, the explanation would be the same: any

difference between the two numbers will be attributable to the different billing determinants (before rate and after rates) used in their calculation." *Id.* at 4.

Apparently because proposed rule § 3001.54(j)(5)(vi)(e) asked the Postal Service to "explain" differences between its estimated revenues and those implied by its volume forecasts, the Postal Service interpreted that rule merely to require a recitation that different billing determinants give rise to different revenue results. We agree that such a recitation would not be meaningful. The "explanation" intended by the proposed rule was not the perfunctory one assumed by the Postal Service. The intent of the proposed rule was to elicit from the Postal Service a theoretical or conceptual justification for using different billing determinants to forecast volume than it does to estimate revenue for the same period. If the Postal Service based volume and revenue forecasts on different assumptions as to, for example, the portion of the mailstream impacted by a proposed new rate category, or its implementation date, the proposed rule contemplated that the Postal Service would provide supporting reasons. To clarify this intent, final rule § 3001.54(j)(6) asks for "supporting rationale" rather than an "explanation."

The Postal Service's comments appear to recognize that the Commission's concern is that the Postal Service articulate a rationale for basing volume and revenue forecasts on different assumptions. It argues, however, that it would be more efficient if the desired rationale were asked for and provided after a general rate hearing begins. *Id.* at 5. We disagree. Where it is foreseeable that an aspect of an analytical method will routinely be placed in issue during the hearing, it expedites the hearing if supporting rationale for that method is elicited "up front," through standard filing requirements.

Other Proposals and Comments

The OCA proposes that this docket include rules that would identify a minimum level of sampling error that the Commission will tolerate in the Postal Service's volume estimates. The premise of the OCA's proposal is that the amendments proposed in this docket might require further disaggregation of the volume and revenue estimates presented by the Postal Service, potentially reducing their reliability. OCA Comments of November 24, 1993, at 1.

Although the OCA's objective has merit, it is only indirectly related to the initial proposals in this docket. The

focus of the rules that we adopt in this docket is on documentation of the Postal Service's revenue estimates. Their effect is not to further disaggregate those estimates, but merely to bring our rules into conformity with the Postal Service's recent practice. They do not satisfy the premise of the OCA's proposal. The OCA's proposal should be the focus of a separate rulemaking where its ramifications could be explored in depth.

The Council of Public Utility Mailers (CPUM) proposes that current rule 54 be amended throughout to add "rate categories" to each reference to "all classes and subclasses of mail and service." The objective of CPUM's proposal is to require the Postal Service to present data "at the most discrete, disaggregated level that is feasible." CPUM Comments of November 29, 1993, at 3.

We agree with the objective of CPUM's proposal, but do not think that requiring rate category data throughout rule 54 is feasible or wise. The final rules adopted in this docket require that revenue estimates be disaggregated further than the rate category level. Consequently, the primary impact of CPUM's proposal would be on volumes. Current rules § 3001.54(j) (5) and (6) require that volume forecasts at the class and subclass level be derived from an econometric demand study. It would not be appropriate to extend that requirement indiscriminately to rate categories as well. For small rate categories, sample data are too thin to allow reliable econometric modelling. In this respect, CPUM's proposed language could require data disaggregated beyond the maximum feasible level.

Final rule § 3001.54(j)(6), which applies to both volumes and revenues, moves in the direction of CPUM's proposal, since some of the requirements contained in its preamble now apply at the rate category level. The amended preamble reiterates that estimates required by rules § 3001.54(j) (2), (3), and (5), must be derived from econometric demand studies at the class and subclass level. It is not required that estimates at the rate category level be derived from econometric studies. If they are derived from econometric studies, however, the amended preamble language applies to them the requirement that supporting rationale be provided if the assumptions underlying the estimate depart from those underlying the econometrics. As discussed above, the amended preamble language also requires supporting rationale where the billing determinants underlying a rate category revenue

estimate differ from those implicit in the corresponding volume forecast.

McGraw-Hill, Inc. proposed two refinements to the language of proposed rule § 3001.54(j)(5)(vi). One would have refined the language of paragraph (a) of the proposed rule, which would have required the Postal Service to identify its methods for deriving its price indices. McGraw-Hill's proposed refinement would have specifically required the Postal Service to identify the time period and the rate schedule applicable to the billing determinants reflected in the price indices. Comments of McGraw-Hill, Inc., of December 2, 1993, at 3.

Where price indices reflect billing determinants of a specific time period and rate schedule, the Postal Service should, of course, identify them. But McGraw-Hill's refined language might have been too restrictive to accommodate price indices based on median, composite, or other adjusted billing determinant values. As noted above, we have deleted specific references to price indices in our final rules, with the understanding that full documentation of the manner in which they are derived is required by current rules § 3001.54(j)(6). McGraw-Hill's proposed refinement is therefore moot.

McGraw-Hill also proposed refined language for paragraph (e) of proposed rule § 3001.54(j)(5)(vi), which proposed thresholds that would have triggered the requirement that the Postal Service explain differences between estimated and implied subclass revenue. McGraw-Hill's refinement, though well considered, is moot, since we have deleted threshold tests from our final rules.

McGraw-Hill also proposed that we make the following additions to the Postal Service's ongoing data reporting requirements: (i) the Postal Service shall furnish annually a pro forma Cost and Revenue Analysis ("CRA") report that tracks the determinations made in the preceding omnibus rate case decision; (ii) the CRA report shall identify any change in attribution assumptions from the previous year's report; (iii) if the attribution assumptions employed in a CRA report differ from those used in the Commission's decision in the preceding rate case, the Postal Service shall file a pro forma report that uses the assumptions employed in the Commission's decision; and (iv) billing determinants shall be reported on a quarterly rather than annual basis. [Comments of McGraw-Hill, Inc., of December 2, 1993, at 4-5.]

As McGraw-Hill notes, these requirements were first proposed in Docket No. RM91-1 [57 FR 39160,

39163-39164], but were not actively considered because of subsequent changes in the focus of that docket. Id. at 5. We will defer their consideration. The proposals relating to the CRA are well considered, but are more appropriately dealt with after the impending omnibus rate case has been processed. The proposals regarding billing determinant reports may also be taken up at that time.

Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. § 605(b) that these rules will only affect informational requirements applicable to the United States Postal Service, and it is certified that these rules will not have a significant impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. § 501 *et seq.* Since these rules apply only to the Postal Service, it has also been determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. The rules, which would apply only to the Postal Service in postal rate proceedings, do not contain any information collection requirements as defined in the Paperwork Reduction Act 44 U.S.C. § 3502(4)(B), and consequently the review provisions of 44 U.S.C. § 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 is revised to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662.

2. Section 3001.54 is amended by revising paragraphs (j)(3), (j)(4), and the introductory text to (j)(6) to read as follows:

§ 3001.54 Contents of formal requests.

(j) * * *

(3) Subject to paragraphs (a)(2) of this section, the actual and estimated revenues referred to in paragraphs (j) (1) and (2) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources of revenue. Revenues derived from classes and subclasses of mail shall be disaggregated to each unique rate element.

(4) Each revenue presentation required by paragraph (j)(1), (j)(2), and (j)(3) of this section shall, subject to paragraph (a)(2) of this section, be documented in sufficient detail to allow independent replication. Revenue estimates shall be supported by exhibits or workpapers that reference the source of all data used, including volume levels, billing determinants, and adjustment factors. References may be to published documents, library references, or companion testimony, and shall include document identity, page, and line, as appropriate. All assumptions used to estimate revenue for new or redesigned rate elements shall be identified and explained.

(6) The estimated volumes and revenues referred to in paragraphs (j)(2), (j)(3), and (j)(5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. Supporting rationale shall be provided for any departure from the assumptions and specifications in the demand study made in estimating volumes of any class, subclass, or rate category of mail. Supporting rationale shall be provided for using billing determinants to estimate revenues for any class, subclass, or rate category of mail that differ from the billing determinants implicit in the estimate of volumes for that class, subclass, or rate category.

Issued by the Commission on February 10, 1994.

Charles L. Clapp,
Secretary.

[FR Doc. 94-3675 Filed 2-22-94; 8:45 am]
BILLING CODE 7715-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-53-5923; FRL-4836-8]

Approval and Promulgation of Implementation Plans Florida: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of Florida through the Florida Department of Environmental Regulation (FDER) for the purpose of establishing a Small

Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), which will be fully implemented by November 1994. This implementation plan was submitted by FDER on February 24, 1993, to satisfy the federal mandate, found in section 507 of the Clean Air Act as amended in 1990 (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA.

EFFECTIVE DATES: This action will be effective April 25, 1994, unless notice is received by March 25, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Comments may be mailed to Ms. Carol L. Kemker at the EPA Region IV address listed. Copies of the material submitted by FDER may be examined during normal business hours at the following locations:

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

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT: Ms. Carol L. Kemker of the EPA Region IV Air Programs Branch at 404-347-2864 or at the above address.

SUPPLEMENTARY INFORMATION:

Implementation of the CAA will require small businesses to comply with specific regulations in order for areas to attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee the small business assistance program and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of Title V of the CAA and the EPA guidance document Guidelines for the Implementation of section 507 of the 1990 Clean Air Act Amendments. In order to gain full approval, the state submittal must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a state Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

FDER has met the following requirements of section 507 of Title V of the CAA by submitting a SIP revision that implements the following required PROGRAM elements and implementation schedules. The PROGRAM will be fully implemented by November 15, 1994.

1. Small Business Assistance Program

FDER has established a Small Business Section (SBS) which will incorporate the following six requirements set forth in section 507 of Title V of the CAA:

A. The establishment of adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further comply with the CAA;

B. The establishment of adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

C. The development of a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable permit requirements under the CAA in a timely and efficient manner;

D. The development of adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA;

E. The development of adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors, or at the option of the state, for providing audits of the

operations of such sources to determine compliance with the CAA; and

F. The development of procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

2. Ombudsman

FDER has appointed a Small Business Ombudsman and established a Small Business Ombudsman's office which will act as the small business community's representative as required by section 507(a)(3) of Title V of the CAA.

3. Compliance Advisory Panel

FDER established a Small Business Air Pollution Compliance Advisory Council (SBAP CAP) effective on July 7, 1993, to meet the required November 1994 deadline of section 507(e) of title V of the CAA. The SBAP CAP is composed of seven members as follows:

Two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program.

The SBAP CAP has the following four responsibilities:

(1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions;

(2) To periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;¹

(3) To review and assure that information for small business stationary sources is easily understandable; and

(4) To develop and disseminate the reports and advisory opinions made through the SBAP.

¹ Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since state agencies are not required to comply with them, EPA believes that the state PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these federal statutes.

4. Eligibility

FDER has incorporated section 507(c)(1) and defined a Small Business Stationary Source as a source that:

- (A) Operates in Florida;
- (B) Is owned or operated by a person who employs 100 or fewer individuals,
- (C) Is a small business concern as defined in the Small Business Act;
- (D) Is not a major stationary source;
- (E) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and
- (F) Emits less than 75 tpy of all regulated pollutants.

FDER has established the following mechanisms as required by section 507:

(1) A process for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA;

(2) A process for public notice and comment on grants of eligibility to sources that do not meet the provisions of Sections 507(c)(1) (C), (D), and (E) of the CAA, but do not emit more than 100 tpy of all regulated pollutants; and

(3) A process for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the FDER determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

Final Action

In this action, EPA is approving the PROGRAM SIP revision submitted by the State of Florida through the FDER. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective April 25, 1994. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. Approval of this action relieves EPA of any obligation to promulgate a Federal Implementation Plan for the SBA PROGRAM.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be

filed in the United States Court of Appeals for the appropriate circuit by April 25, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

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

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

Under 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.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval

of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Small business stationary source technical and environmental assistance program.

Dated: January 28, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 K—Florida

2. Section 52.520, is amended by adding paragraph (c) (80) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(80) The Florida Department of Environmental Regulation has submitted revisions to chapter 403.0852 of the Florida Statute on February 24, 1993. These revisions address the requirements of section 507 of title V of the CAA and establish the Small Business Stationary Source Technical and Environmental Assistance Program (PROGRAM).

(i) Incorporation by reference.

(A) Florida Statute 403.031(20), 403.0852(1), (2), (3), (4), 403.0872(10)(b), 403.0873, 403.0851, approved on April 8, 1992.

(ii) Additional information—None.

[FR Doc. 94-3944 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 271

[FRL-4840-2]

Missouri; Interim Authorization of State Hazardous Waste Management Program; Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Missouri has applied for interim authorization of revisions to its hazardous waste program under the

Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Missouri's application and has made a decision, subject to public review and comment, that Missouri's hazardous waste program revision satisfies all of the requirements necessary to qualify for interim authorization. Thus, EPA intends to approve Missouri's hazardous waste program revisions. Missouri's application for program revision is available for public review and comment.

DATES: Interim authorization for Missouri shall be effective April 25, 1994, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Missouri's program revision application must be received by the close of business March 25, 1994.

ADDRESSES: Written comments should be sent to Gary Bertram, USEPA Region VII, RCRA Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of Missouri's program revision application are available for inspection and copying during normal business hours at the following addresses: Hazardous Waste Program, Missouri Department of Natural Resources, Jefferson Building, 205 Jefferson Street, Jefferson City, Missouri 65102, Phone: 314-751-3176; USEPA Region VII Library, 726 Minnesota Avenue, Kansas City, Kansas 66101, Phone: 913-551-7241.

FOR FURTHER INFORMATION CONTACT: Gary Bertram, USEPA Region VII, RCRA Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913-551-7533.

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. 6929(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 124, 260 through 266, 268 and 270.

B. Missouri

On November 20, 1985, EPA published a Federal Register notice announcing its decision to grant final authorization for the RCRA base program to the State of Missouri (50 FR 47740). Authorization revisions to the Missouri hazardous waste program were published on February 27, 1989 (54 FR 8190) and January 11, 1993 (58 FR 3497). Today, Missouri is seeking interim authorization of its program revision in accordance with 40 CFR 271.24.

EPA has reviewed Missouri's application, and has made an immediate final decision that Missouri's hazardous waste program revision satisfies all of the requirements necessary to qualify for interim authorization. Consequently, EPA intends to grant interim authorization for the additional program modifications to Missouri. The public may submit written comments on EPA's immediate final decision up until March 25, 1994. Copies of Missouri's application for program revision are available for inspection and copying at the locations identified in the "ADDRESSES" section of this action.

Approval of Missouri's program revision shall become effective April 25, 1994, unless an adverse comment pertaining to the State's revision 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.

The State has adopted and applied for interim authorization for the corrective action portion of the HSWA Codification Rule (July 15, 1985, 50 FR 28702). For a full discussion of the HSWA Codification Rule, the reader is referred to the Federal Register cited above.

The State will assume lead responsibility for issuing permits for those program areas authorized today.

For those permits which will now change to State lead from EPA, EPA will transfer copies of any pertinent file information to the State. EPA will be responsible for enforcing the terms and conditions of federally issued permits while they remain in force. When the State reissues federally issued permits as State permits, EPA will rely on the State to enforce them.

C. Decision

I conclude that Missouri's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Missouri is granted interim authorization to operate its hazardous waste program as revised. Missouri now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Missouri also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 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 Missouri'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.

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

Dated: January 25, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94-4055 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-F

Proposed Rules

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket Nos. AO-368-A21, AO-380-A11; DA-92-07]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts a proposal for pricing milk on the basis of nonfat solids and protein, in addition to butterfat, for the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing orders, respectively. In addition, it reduces the supply plant shipping percentage for the Pacific Northwest order and modifies the producer-handler regulation to permit a State institution with outside distribution to purchase an average of 1,000 pounds of milk per day from pool plants. The decision denies a proposal to change location adjustments in Yakima County, Washington.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a

substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12278, Civil Justice Reform. This action is not intended to have retroactive effect, nor will it preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

Prior Documents in This Proceeding

Notice of Hearing: Issued July 31, 1992; published August 6, 1992 (57 FR 34694).

Recommended Decision: Issued October 7, 1993; published October 15, 1993 (58 FR 53439).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Pacific Northwest (Order 1124) and Southwestern Idaho-Eastern Oregon (Order 1135) marketing areas. The hearing was held pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900) in Portland, Oregon, on September 9 and 10, 1992.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Administrator, on October 7, 1993, issued a recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. One paragraph is added at the conclusion of the discussion of Issue No. 1, and paragraphs 41-42 are modified.

2. One paragraph is added at the conclusion of the discussion of Issue No. 2.

3. One paragraph is added at the conclusion of the discussion of Issue No. 3.

4. Under Issue No. 4, the sixth-to-last, third-to-last, and last paragraphs are revised, the second-to-last paragraph is deleted, and a new paragraph is added at the conclusion of the discussion.

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

1. Multiple component pricing of milk under both orders.

2. Performance standards for supply plants under the Pacific Northwest order.

3. Status of a milk plant operated by a state institution under the Pacific Northwest order.

4. Plant location adjustments for Yakima County, Washington, under the Pacific Northwest order.

Findings and Conclusions

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

1. *Multiple component pricing of milk under the Pacific Northwest and Southwestern Idaho-Eastern Oregon orders.*

The Pacific Northwest and Southwestern Idaho-Eastern Oregon orders should be amended to provide for multiple component pricing of Class II and Class III (including Class III-A) milk to handlers and for establishing minimum pay prices to producers. Under the Pacific Northwest order, the components to be priced will be nonfat milk solids and butterfat. Under the Southwestern Idaho-Eastern Oregon

order, the components to be priced will be protein and butterfat.

Multiple component pricing for both orders was proposed by Darigold Farms, and Western Dairy Cooperative, Inc., joined as a co-proponent for the Southwestern Idaho-Eastern Oregon proposal. The basic thrust of the proposal was that it was time to change the way milk is priced under both orders such that the pricing system would send a clear economic signal to producers as to which milk components are in the greatest demand and which ones have the greatest economic value in the marketplace.

Two witnesses testified on behalf of Darigold. One witness testified extensively on the general concept of multiple component pricing. He stated that the current pricing system, which is based on the value of butterfat and skim milk, does not reflect changes that have occurred over time in the value of certain milk components. In his view, the current system is based on market conditions that prevailed more than 50 years ago.

The current system, in his opinion, simply encourages producers to increase the volume of skim milk produced without regard to the content of such milk.

The Darigold witness indicated that under the current pricing system, given the current levels of milk prices and fat differentials, one pound of protein, lactose, other solids, or even milk water is now valued at somewhere between nine and ten cents per pound. Thus, the price of one pound of butterfat is about equal to the value attributed to one gallon of milk water. He also indicated that one pound of butterfat is said to be worth seven to eight times as much as one pound of milk protein, even though that appears to be unreasonable. He maintained that these unrealistic price comparisons are nonetheless actual measurements of the incentives that dairymen are expected to respond to under present regulations when they plan their breeding and production activities. He further indicated his strong belief that the present system stands in the way of achieving optimum efficiency. Thus, he urged the adoption of multiple component pricing wherein the marketplace values of various milk components will be reflected in pricing milk to handlers and to producers. In this way, consumers' demands and preferences for milk and other dairy products can be translated into real signals that indicate to producers the milk components consumers want and are willing to pay for.

A second witness spoke on behalf of Darigold Farms, Western Dairy

Cooperative, Inc., Farmers Cooperative Creamery, Northwest Independent Milk Producers Association, Tillamook County Creamery Association, and Magic Valley Quality Milk Producers, Inc. He indicated that in July 1991 these cooperatives represented 88 percent of the producers for the Pacific Northwest market (Order 124) and 84 percent of producers for the Southwestern Idaho-Eastern Oregon market (Order 135). This witness discussed how the proposed multiple component pricing (MCP) system would work, why it should be adopted, and the form it should take for these two markets. He stated that in order for a MCP program to work well it needed to be mandatory under the Federal order. Currently, just over 90 percent of the producers for Order 124 and just over 88 percent of the producers for Order 135 are eligible to receive some component pricing premium. He further stated that the premium programs result from inadequacies inherent in the current butterfat and skim pricing programs.

The witness indicated that another reason why MCP is needed is because of increasing interest by consumers in their diet, especially noting concerns about cholesterol and fat levels in dairy products. He said that consumers now prefer milk products with lower fat content. He went on to say that over the years there has been a general emphasis on the value of fat, but that so far there has been only a general offset of this as values of the nonfat fluid portion of milk, which is largely water, have increased. He stated that the values of specific nonfat components should be recognized and increased so that consumer preferences could be more directly translated into indicating the milk components that dairy farmers should be producing for the market. MCP would achieve this and at the same time promote more orderly marketing for both producers and handlers, according to Darigold's spokesman.

Darigold's witness stated that MCP would contribute to orderly marketing by providing more equity among plants making Class II and Class III products because their raw milk costs would be more uniform. Also, marketing organizations would have more options in marketing individual loads of milk. He explained that plants would be less reluctant to receive a low-testing load of milk because they would pay only for the components received rather than for water that must be removed from the milk. He said that, in turn, producers in effect will have more options in choosing marketing organizations or plants to take their milk.

The witness also pointed to the changing relationship over time between the values of the butterfat and skim portions of milk. For example, he noted that during the 1960's butterfat accounted for about 75 percent of the total value of milk, while the skim value was only about 25 percent. Currently, over 70 percent of the total value of milk is associated with the skim component because over time the value of butterfat has declined and the Commodity Credit Corporation has changed the support prices of butter and nonfat dry milk. He expected that the trend to lower fat values will continue.

The proposed MCP program was modeled after the one now in effect in the Great Basin Federal milk order. It was chosen because it would maintain the current Class I price structure, while applying MCP to Class II and Class III uses of milk where there is a direct relationship between the component content of raw milk and its yield of manufactured milk products.

Because the principal product manufactured from milk not needed for Class I or Class II uses in the Order 124 market is nonfat dry milk, the proponents proposed that the MCP program for that market should be based on butterfat and nonfat milk solids. On the other hand, in the Order 135 market the principal use for surplus milk is in hard cheeses. For that reason, the proponents proposed that the MCP program for that order should be based on butterfat and protein.

As proposed, MCP would not apply to Class I milk, which would continue to be priced to handlers as it now is. Handlers would account for the components (butterfat and nonfat milk solids or protein) used in Class II and Class III at prices per pound as specified in the order. Each producer would be paid a weighted average of the Class I and Class II differentials, plus the value per pound for the components in the producer's milk.

Butterfat would be priced on a per-pound basis. The butterfat price, as proposed, would be the sum of the skim milk value (based on the basic formula price) divided by 100 plus the butterfat differential for the month multiplied by 10.

The prices per pound for nonfat solids or protein, as the case may be, would be determined by subtracting from the basic formula price the value of the butterfat, and dividing the remainder by the market average test for nonfat milk solids or protein in producer milk for the current month.

There were three proposed modifications for determining the value of the components other than butterfat.

One, advocated by a spokesman for Kraft General Foods, would use the average component values (tests) of the milk included in the survey of pay prices that make up the Minnesota-Wisconsin (M-W) estimated price for manufacturing grade milk. The M-W price is the basic formula price for the orders. According to the Kraft witness, use of the M-W milk component tests would provide uniformity of component prices among orders, whereas using market average tests could result in component prices that were not uniform among orders. Darigold's witness indicated that Darigold would accept this approach.

A second modification was advanced by the witness for Northwest Independent Milk Producers (NWI). As proposed, the Class III milk price would be a formula price based on the prices for 40-pound blocks of cheddar cheese, plus a value for whey cream, minus the make allowance used by the Commodity Credit Corporation. The proponent claimed that the current Class III price (the M-W price) may be reflective of cheese production and manufacturing in Minnesota and Wisconsin, but is totally out of sync with the real market situation in the Pacific Northwest region. The proposed Class III price is needed to improve the competitive relationship between cheesemakers in the Northwest and those in California, according to the proponent.

NWI also proposed that the basic formula price provision should be amended by adding the words "or \$12.10 per hundredweight, whichever is higher for the month." In the view of NWI's witness, this proposal would decouple Class I prices from the radical price fluctuations that have occurred.

A witness for Swiss Village Cheese, a proprietary bulk tank handler under Order 135, supported MCP for that market. The witness stated that the failure to recognize varying protein tests for raw milk produces a great inequity in the Federal milk order pricing system and sends the wrong economic message to producers. He noted that the August 1992 M-W price of \$12.54 per hundredweight yields a skim milk price of \$10.09 with a seven cents butterfat differential. The \$10.09 figure is the same, regardless of the protein content of the milk.

This being the case, he said, the value of a pound of protein thus varies as the test varies. If milk tests 4 percent protein, dividing the \$10.09 by 4 yields a value per pound of \$2.52. However, if the test is only 3 percent, the per-pound value is \$3.36, or a difference of 84 cents. Thus, when a cheese plant wants the lowest-priced protein, it would want

to attract the highest testing milk. In order to attract high-testing milk, cheese plant operators pay producers protein premiums or base their price on a cheese yield formula. He stressed that plants can pay a premium over the Federal order price, but cannot lower the price to a producer below the minimum Federal order price based on butterfat content. In his view, this causes handlers or cheese plants to play a price averaging game, which results in producers of low-testing milk getting paid more than their milk is worth, while producers of high-testing milk are paid less than their milk is worth. Adoption of multiple component pricing would correct this situation and provide a basis for making economically correct decisions at both the dairy farm and the plant, he concluded.

The Swiss Village Cheese representative presented what he believes are important factors regarding the future of the dairy industry in Idaho, and in the West in general. He indicated that: (1) Herd size will be large; (2) production per cow will be high; (3) total milk production increases will exceed population increases; (4) nearly all of the increased production will be used to make cheese; and (5) most of this "new" cheese will be sold to consumers in the East. In view of these factors, the witness proposed modifications to the MCP plan proposed for Order 135.

The first proposed modification would use the protein test for milk that is included in estimating the M-W price. The second modification proposes adjusting the M-W price for a transportation differential (minus 10 cents) prior to determining the protein price. This proposal is based on the belief that the market for additional quantities of cheese produced in Idaho will be population centers in the eastern United States. Therefore, a price adjustment is warranted, in the view of this witness, because the cheese produced in Idaho will have to be moved long distances to find customers, and a lower price would help Idaho cheese plants be more competitive with California cheese plants.

A third proposed modification by the Swiss Village Cheese witness called for giving milk buyers the right to reduce a producer's payment if the producer's milk had a high somatic cell count. He testified that cheese yields and cheese quality both suffer when raw milk has somatic cell counts above 300,000 per milliliter. The money deducted from payments for milk with a high somatic cell count would be returned to other producers in the pool whose milk had lower somatic cell counts.

A witness for Avonmore West, a handler under Order 135, testified in support of MCP and urged also that if MCP is adopted, the pricing must recognize the relationship of somatic cells to the true value of protein in the milk. The witness cited the Recommended Decision (57 FR 36536) to adopt MCP in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana orders. The Recommended Decision in that proceeding adopted MCP for the three orders and included adjustments for somatic cells both in prices paid to producers and in prices paid by handlers. He urged USDA to follow its own lead and adopt adjustments for somatic cells based on the evidence presented at this hearing and the Recommended Decision for the three orders noted above. He contended that if MCP is adopted for Orders 124 and 135 without adjustments for somatic cells, producers with a low somatic cell count in their milk will be subsidizing producers with high somatic cell counts in their milk.

The only brief filed on this issue was filed jointly by Darigold, Farmers Cooperative Creamery, and Northwest Independent Milk Producers Association. The brief supported adoption of MCP for both orders and recapped the alternative proposals made at the hearing. The brief concluded that the preferred basis of determining component values (other than butterfat) would be as proposed by NWI, i.e., the Class III price would be based on the Green Bay National Cheese Exchange price. This approach was preferred but the brief also indicated that either the original proposal or the proposal to use the average M-W component tests as the divisor of the skim value to get the per-pound prices for protein or solids nonfat would be acceptable. However, the brief expresses the view that a somatic cell adjuster for paying producers should not be adopted on the basis of the record in this proceeding.

The orders should be amended to provide Class II and Class III milk prices to handlers and payments to producers based on multiple component values. This concept is widely supported and is justified by evidence contained in the hearing record.

MCP should be adopted as a step towards improving the way the Federal order translates market values for dairy products into milk prices that indicate to producers how these products are valued in the marketplace.

As the record indicates, the current pricing system has, over time, placed a greater share of milk value on the skim portion of milk, and a lesser value on the butterfat portion. Nevertheless, a

further recognition of market value as it relates to the value of milk components can be achieved by converting the skim milk value into components, either protein or solids nonfat, on a per-pound basis. As the testimony indicates, it is not sound pricing practice to consider that all skim milk has the same value, regardless of its level of protein or solids nonfat content. The varying values for the components in skim milk can be more properly reflected in handler prices for Class II and Class III milk, and prices to individual producers, if MCP is incorporated into the order. Moreover, incorporating MCP into the orders will tend to insure at least a minimum value of the components for all handlers and producers. This element may be lacking where there are varying premium plans in use in the market, and where perhaps not all producers are involved. Also, providing for MCP in the Federal orders will allow handlers to pay lower prices to producers whose milk tests low for the component other than butterfat. Thus, pricing equity among producers and handlers should be enhanced by adoption of MCP.

Another reason for adopting MCP is that, as a pricing system, MCP will improve how well the pricing system in the orders translates consumer preferences into economic signals that indicate to dairy farmers exactly what consumers want. Data presented at the hearing show clearly that, over time, consumers prefer milk products with less fat. Adopting MCP for Orders 124 and 135 will facilitate sending clear signals to producers that consumers want less fat and more protein or solids nonfat in their dairy products.

Clearly, the vast majority of the milk pooled in these two markets is used for Class II and Class III uses. In the Pacific Northwest market, almost two-thirds of the milk pooled annually in 1989, 1990, and 1991 was classified in Classes II and III combined; and the percentage is increasing, going from 62.51 for 1989 to 64.47 percent for 1991. In the Southwestern Idaho-Eastern Oregon market, over 80 percent of the total milk pooled in the years 1989 through 1991 was used in Class II and Class III products.

As proposed, MCP for Order 124 will utilize a solids nonfat component and MCP for Order 135 will utilize a protein component. Not only will such pricing plans recognize that these markets utilize most of their milk in Class II and Class III uses, they also will recognize the particular principal dominant product manufactured from surplus milk supplied in each market. Moreover, the use of protein as the

second component in Order 135 will make the provisions of that order more compatible with provisions of the neighboring Great Basin Order.

The proponents indicated that at the time of the hearing 59 percent of the Class II and Class III milk pooled under the Pacific Northwest order was being made into nonfat dry milk and 26 percent into cheese. Thus, the use of solids nonfat is appropriate since the majority of manufactured milk is oriented more toward the products and uses in which all the solids nonfat are consumed together.

On the other hand, in the Southwestern Idaho-Eastern Oregon market, nearly 80 percent of the milk is made into cheese, in which protein is an important component. Thus, the use of butterfat and protein for MCP is appropriate for Order 135.

Under the plan adopted herein, the price for a pound of butterfat will be the same for both orders, i.e., the sum of the skim milk price divided by 100 and the butterfat differential multiplied by 10. Since each producer will receive payment for the milkfat on a price-per-pound basis, there will no longer be a need for a producer butterfat differential in either order. Thus, the proposed order language does not contain a provision for a "producer butterfat differential."

The prices per pound for solids nonfat and protein should be based on the basic formula price (i.e., the M-W price). For each component, the skim milk value will be determined by subtracting from the M-W price the butterfat price multiplied by 3.5, and dividing the result by the average percent of solids nonfat or protein (as appropriate) for the month in the milk upon which the M-W price is based, as announced by the Dairy Division. Use of the average tests for the components (other than butterfat) in the M-W milk will be consistent with such a provision recently adopted for the Great Basin, Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana markets. This approach was suggested by several people and was supported in briefs. No one specifically opposed it.

There are two related issues that also should be addressed in connection with determining component prices. First, we should point out that the solids nonfat content of producer milk in the Pacific Northwest market may be higher than the solids nonfat content of the milk that is the basis for the M-W price, based on limited information in the record. For example, Exhibit Number 7, Table 1, shows that Darigold Farms' solids nonfat tests averaged 8.69 percent for the months of January through July

1992. On a monthly basis, the Darigold tests were from .04 to .19 higher than the M-W milk solids nonfat content for the same period. Also, page two of Exhibit 10-B shows that NWI's solids nonfat tests averaged 9.10 percent during January through July 1992. Each of the monthly tests of NWI's milk was more than .5 above the nonfat solids content of the M-W milk. The average percent solids nonfat tests of producer milk included in the M-W "Base Month" Price Series during January through July 1992 were: January, 8.55; February, 8.52; March, 8.55; April, 8.57; May, 8.56; June, 8.56; and July 8.53. Official notice is taken of page 2 of Dairy Market News, Volume 59, Report 46, dated November 13, 1992, issued by the Department of Agriculture, Agricultural Marketing Service, Dairy Division, P.O. Box 8911, Madison, Wisconsin 53708-8911.

The record does not contain data showing the average solids nonfat content of all producer milk for the Pacific Northwest market. Thus, the comparisons made above are not conclusive. However, if the comparison reflects the actual market situation, the price for a pound of solids nonfat would be higher if the M-W test is used as a divisor in the proposed formula for calculating the price than if the market average test is used. As a result, the value of Class II and Class III milk in the pool would increase from current levels.

A second related issue that must be kept in mind is that USDA has already conducted a hearing to consider proposed alternatives to the M-W price as the basic formula price for all the orders. If the Secretary decides to replace the M-W price with some other factor or factors to establish the basic formula price, a question may arise as to what tests for solids nonfat or protein should then be used. Absent any knowledge at this time as to the outcome of that proceeding, it would seem appropriate to continue to use the tests prescribed in this decision. Later, it may be necessary to consider amending the orders in this regard.

NWI's proposal to put a \$12.10 per hundredweight floor under the basic formula price is not adopted. The principal purpose of this proposal relates to Class I milk prices. However, Class I milk prices are not an issue in this proceeding.

Several other proposed modifications to the initial proposal on component prices were offered at the hearing. However, none of these modifications should be adopted.

One of the modifications would provide a location adjustment to the basic formula price for Order 135

because additional milk supplies likely would be made into cheese that would have to be transported elsewhere to be sold. Another reason advanced is because a lower price would improve competition with cheese made from milk priced under the California State milk order, which has a lower price.

This proposed modification should not be adopted. The purpose of the basic formula is to move prices for milk in most uses in all Federal order markets. It should not be modified for the purpose of accommodating expected sales competition for one product under one order.

Similarly, the Class III cheese formula price modification advanced by NWI and endorsed by Darigold in its brief also must be denied. With the exception of consideration of a lower price for milk used to make nonfat dry milk (Class III-A), it has long been the policy of USDA that the lowest-priced class of use under the Federal order program is based on the concept of a national market for products (butter, powder, and cheese) made from milk not needed for Class I use. Those products made from Grade A milk marketed under Federal orders compete with products made from non-grade A milk. Since these products compete in a national market, there has been a common surplus class price in almost all Federal orders for many years. It should be noted, of course, that the policy of uniformly pricing surplus milk was modified with the adoption of a Class III-A pricing formula that was implemented in 27 Federal orders, including the Pacific Northwest order, on December 1, 1993. Despite this change, however, the policy of uniformly pricing all surplus milk, except skim milk used in the production of nonfat dry milk, should be continued, at least for the present.

There are other considerations as well. As noted earlier, a hearing has already been held on a replacement or an alternative to the M-W price for the basic formula price under the orders. Also, as noted above, there is now a separate Class III-A price for skim milk used to produce nonfat dry milk in the Pacific Northwest order. There appears to be a question about whether a separate Class III-A price could be justified if the proposed price to be derived from the cheese exchange prices were adopted as a basic formula price. The record in this proceeding is not adequate to deal with this question.

Also, there appears to be a dilemma in the difference between handler prices for milk to make cheese prescribed under the Federal orders and those provided under the California milk

pricing program. However, we do not feel the proper approach to this problem is to lower the surplus milk price to handlers under one particular order.

Another reason not to adopt the NWI proposal is that it is a product formula price based on cheese, yet the principal use of surplus milk in the Pacific Northwest order is nonfat dry milk. The record simply contains no explanation as to why a proposal for multiple component pricing in this market situation should have the component values based on a price derived from the cheese market only.

Finally, on the basis of the record in this proceeding there should be no adjustments to prices under Order 135 based on the level of somatic cells present in the market's raw milk supply. While the record evidence indicates that somatic cell levels are important, the record lacks sufficient evidence to develop appropriate provisions to implement a price adjustment based on somatic cell levels.

It should also be noted that the brief filed on behalf of Darigold, NWI, and Farmers Cooperative Creamery also concluded that "there is insufficient evidence to warrant adopting an 'SCC Adjuster' in either Order 124 or Order 135." Finally, we would point out that some proponents expressed a desire to keep the MCP provisions in Order 135 compatible with those in the Great Basin order. Since the Great Basin MCP provisions do not include a somatic cell adjuster, it would be contrary to compatibility to include such an adjuster in Order 135.

Incorporation of component pricing in Orders 124 and 135 will necessitate amending provisions of the orders dealing with handler reports, class (and component) prices, the computation of handler's obligations and payments to the producer-settlement fund, and the determination of payments to producers.

For purposes of allocating nonfat milk solids and protein, it is assumed that both components remain evenly distributed within the skim milk portion of milk receipts. This assumption will allow the proration of nonfat solids and protein to skim milk for purposes of determining shrinkage and allocating receipts to utilization.

In addition to the information that is already reported each month to the Market Administrator, each handler under Order 124 will be required to report the average nonfat solids content of milk received from each producer during the month, the amount of nonfat solids in the handler's other receipts, except receipts of other source milk, and the nonfat solids contained in bulk

transfers of milk and cream to other handlers. Partially regulated distributing plant operators will not be required to report information regarding the nonfat solids of their milk receipts unless they elect to have their obligations calculated under the provision that would determine obligations on the same basis as those of fully regulated handlers. Handlers under Order 135 will have to report the protein content of their milk receipts in a similar fashion as that described above.

The amended orders will contain definitions for a skim milk price, a butterfat price, a nonfat dry milk price for Order 124, a milk protein price for Order 135, and the usual class and producer prices. The "skim milk price" will be used to determine the value of the skim milk portion of producer milk that is allocated to Class I. Value adjustments for determining payments by handlers for milk used in Class II and Class III, and to producers, will be made by prices per pound for the butterfat and nonfat dry milk (for Order 124) or protein (for Order 135) contained in the milk. The skim milk price, the butterfat price, the nonfat milk solids price, and the milk protein price will be derived from the Class III price and the butterfat differential.

Payments to producers for deliveries of milk will be determined through the operation of two marketwide pools for each order. Both orders will contain a "differential pool" which will be used to determine producers' share of the Class I and II market. A second pool—the "skim milk nonfat milk solids pool" in the case of Order 124 and the "skim milk protein pool" for Order 135—will be used to determine the price to be paid producers for the nonfat solids or protein in their milk.

Each handler's net obligation to the pool (i.e., the handler's payment to the producer-settlement fund) will be determined by subtracting the differential and nonfat solids (or protein) values due to the handler's producers from the differential and nonfat solids (or protein) values of the producers' milk used by the handler. The value of butterfat in each producer's milk will not be pooled, but will be paid directly to the producer.

The differential value of each handler's receipts of producer milk assigned to Class I and Class II will be calculated by multiplying the hundredweights of producer milk allocated to these classes by the difference between the respective class prices applicable at the location of the plant and the Class III price. In addition, the adjustments to the class values of producer milk that currently are

included in determining a handler's obligation would be included in the differential value. The adjustments include the values of overage, beginning Class III inventory allocated to a higher class, other source and filled milk receipts allocated to Class I, certain receipts from unregulated supply plants that are allocated to Class I, and receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use. Each handler's differential value will be combined and then divided by the hundredweight of producer milk in the differential pool to determine the "weighted average differential price." An "estimated uniform price" can be derived by adding the weighted average differential price to the basic formula price for the month. Although the uniform price would not be applicable to producers under the component pricing plan, it is of value for price comparison purposes with other Federal orders.

Each handler's skim milk-nonfat milk solids value for Order 124 and skim milk-protein value for Order 135 will be determined by combining the skim milk value of the handler's producer milk in Class I with the nonfat solids value (or milk protein value) of the handler's milk in Class II and III. The skim milk value will be determined by multiplying the skim milk in producer milk assigned to Class I by the skim milk price. The nonfat milk solids (or protein) value will be determined by multiplying the nonfat milk solids (or protein) in producer milk assigned to Class II and III by the nonfat milk solids price (or the milk protein price). The amount of nonfat solids or protein in each class will be determined by multiplying the skim milk portion of producer milk allocated to each class by the nonfat solids (or protein) content of all of the handler's producer milk. The price to be paid to producers for the nonfat solids (or protein) in their milk will be determined by combining the individual handler values of skim milk in Class I milk and nonfat solids (or protein) in Class II and III milk, and dividing the resulting total by the pounds of nonfat solids (or protein) in all producer milk. The resulting price will be the "producer nonfat milk solids price" (or the "producer milk protein price").

As a result of the order amendments described, payments to producers will be based on three factors: (1) The weighted average differential price for all of their milk; (2) the nonfat milk solids or protein contained in their milk multiplied by the respective producer nonfat milk solids price or producer protein price; and (3) the butterfat in

their milk multiplied by the butterfat price.

Adoption of multiple component pricing plans requires amending provisions of the orders dealing with handler reports, shrinkage, computation of class and component prices, the computation of a handler's obligation to the pool, computation of a weighted average differential price, and the computation of a producer nonfat milk solids price for Order 124 and a producer protein price for Order 135. These changes have already been discussed.

Several conforming changes must be made in the order language of both orders to implement component pricing. Other minor changes, though not strictly of a conforming nature, have been made to clarify and improve order language.

Other sections of the orders, however, have been changed to accommodate reference changes, date changes, and minor terminology changes resulting from component pricing. These changes require some explanation here.

Section 19 ("product prices") of both orders has been modified to accommodate reference changes, eliminate unnecessary language, and to include the butterfat differential that previously was described in section 74 of both orders. The latter change was made because the description of the butterfat differential fits better with the product prices which are used to compute the butterfat differential and because of the diminished importance of the butterfat differential under a component pricing system. This change also eliminates redundant language that was included in both sections. As a result of making this change, several sections following section 74 (i.e., §§ 1124.75-1124.78 and §§ 1135.75-1135.79) had to be redesignated to close the gap created and several reference changes had to be made as a result.

Sections 30 and 31 of both orders were modified to accommodate the reporting of nonfat milk solids in Order 124 and protein content in Order 135. In addition, under Order 135 the date for filing reports of receipts and utilization was changed from the 7th day to the 9th day after the end of the month, and the date for filing payroll reports was changed from the 20th to the 22nd day after the end of each month. In support of these changes, the spokesman for Darigold Farms testified that the present reporting date for the report of receipts and utilization leaves no time to review the report, investigate apparent errors, or make corrections. He also stated that the modified reporting dates will correspond to those of the

Pacific Northwest order. There was no opposition to these proposals.

The "other reports" section of Order 124 was modified to improve the language of that section. There was no intention to substantively change the meaning of this section.

The present §§ 1124.51a and 1135.51a have been eliminated, but the contents of those sections have been incorporated in §§ 1124.51 and 1135.51, respectively. These changes, which are also of a non-substantive nature, were made in conformance with Federal Register guidelines.

Comments on the component pricing portion of the recommended decision were filed on behalf of Darigold Farms, Farmers Cooperative Creamery, Magic Valley Quality Milk Producers Association, Tillamook Cooperative Creamery Association, and Western Dairy Cooperative, Inc. The commentators stated that they endorsed all aspects of the Recommended Decision which pertain to MCP and urged its prompt implementation.

2. Performance standards for supply plants under the Pacific Northwest order.

The Pacific Northwest order should be amended to provide that the delivery requirements for qualification as a supply plant be not less than 20 percent of the total quantity of milk that is (1) physically received at the plant from dairy farmers eligible to be producers or (2) is diverted as producer milk to another plant.

To qualify as a pool plant, the order currently requires a supply plant to ship "not less than 30 percent" of the total quantity of milk that is physically received at the plant from producers or that is diverted as producer milk to another plant.

Tillamook County Creamery Association (TCCA) proposed a decrease in the shipping percentage from 30 percent to 20 percent. TCCA requested, and was granted, a temporary reduction in the delivery requirements in 1990, 1991, and 1992.

A TCCA spokesman testified that the request to reduce the supply plant shipping percentage was made by TCCA as a result of continuing changes in the industry. He pointed out that the present 30 percent shipping percentage was adopted when the Federal order was adopted February 1, 1989. The witness noted that at the time of order implementation (early 1989), Class I utilization was 155 million pounds, which represented in excess of 39 percent of total producer milk in the Pacific Northwest market. By February 1992, however, Class I utilization was 164 million pounds in the Pacific

Northwest market, and the Class I pool utilization had dropped to 35 percent. By May of 1992, the percent Class I utilization decreased even further to 30.8 percent.

Two other witnesses, one representing Darigold Farms and the other Northwest Independent Milk Producers, testified in favor of TCCA's proposal. No one testified in opposition to it.

The proposal to amend the delivery requirements for qualification as a supply plant should be adopted due to the changing conditions in the market. As a result of increases in milk production, pool supply plants are utilized less by pool distributing plants as a source of milk for bottling. Consequently, they may be unable to meet the order's present shipping requirements and maintain the producer status of dairy farmers that have been historically associated with this market.

Currently, three options are open to the operators of pool supply plants who find that their milk is not needed at pool distributing plants. First, despite the fact that the milk is not needed, they can move milk from the production area to pool plants in the metropolitan area, unload it, and pick up an equal amount of milk from the pool plant and return it to the pool supply plant location where the milk can then be processed into Class III products. This adversely affects the milk quality without even considering the costs of transportation, yield reduction, and milk volume loss. When milk is handled, abuse occurs to some extent. When milk is pumped into a plant, through equipment, and then reloaded and hauled back or hauled to another plant, this process affects the quality of the product. That can affect the milk's use for fluid products, depending on the amount of handling involved. It can also affect the quality of cheese that can be made from milk.

The second alternative is to find another pool plant that has adequate pool sales and combine the two marketing reports. If the combined delivery percentage reaches 30 percent of the total production of the combined supply plants, then both plants qualify to participate in the pool. This option depends entirely on the pool supply plant's ability to find another supplier with adequate sales to cover the deficit and one who is willing to cooperate by allowing its volume to be used.

The third option available to the supply plant operator is to request a temporary reduction in the delivery requirements. Paragraph 1124.7 3(c) allows the director of the Dairy Division to reduce or increase the delivery percentage by 10 percent upon request.

After carefully reviewing the testimony on this issue, it is concluded that the delivery requirements for qualification as a supply plant should be decreased from not less than 30 percent to not less than 20 percent. In view of the increases in milk production and the lower Class I utilization percentage, it is much more appropriate to permanently change the delivery requirements of the order than to rely on temporary revisions in shipping percentages.

The evidence shows that TCCA is committed to meet the needs of the fluid market. For example, on several occasions it has reduced its cheese production to supply loads of fluid milk to the Portland market.

TCCA is the largest Oregon-based dairy cooperative, handling approximately one-third of the milk produced in the State each day. Of the one and a half million pounds of milk handled daily, roughly 1.1 million pounds are used to produce cheese for the retail market and 400,000 pounds are shipped to the Portland market for sale to Class I milk handlers.

The lower shipping percentage for pool supply plants will not jeopardize the needs of the fluid market, particularly with the provision now in the order that permits the Director of the Dairy Division to increase the percentage on short notice should additional shipments become necessary. The lower percentage will, however, permit milk that has been historically associated with this market to continue to participate in the marketwide pool and, for this reason, it should be adopted.

One comment letter was received with respect to this part of the recommended decision. Darigold Farms stated that it was pleased with the adoption of this proposal and urged that it be implemented.

3. Status of a milk plant operated by a State institution under the Pacific Northwest order.

The Pacific Northwest order should be amended to provide that a milk plant operated by a State institution, but which is not exempt from the provisions applicable to a producer-handler, may receive up to an average of 1,000 pounds per day of Class I milk from fully regulated handlers.

The order currently provides that "any State institution shall be a producer-handler exempt from the provisions of this Section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk

to or from a pool plant." Thus, a State institution plant may buy bulk milk or packaged milk products as Class I milk without limits from pool plants for use in State institutions. If such a plant has sales to outlets other than State institutions, a limit on such purchases of 100 pounds per day average is applicable, and the plant must file reports, the same as any other producer-handler.

The Washington State Department of Corrections proposed amending the producer-handler and nonpool plant provisions to provide total exemption from all provisions of the order for "a plant owned and operated by a State institution or establishment which processes or packages fluid milk products."

The witness for the proponent testified that because the Department of Corrections buys milk products from pool plants, there is a continuing conflict between the State law under which the prison dairy is operated, and the Federal order's definition of a producer-handler. He explained that under Chapter 72, Correction Reform Act of 1981, Revised Code of Washington, the Washington State Reformatory Dairy (WSRD) is mandated to "(1) provide a work training program for inmates, (2) imitate private industry as much as possible and thereby be self-supporting, and (3) provide quality products to government and nonprofit agencies at or below market prices." Thus, the WSRD is allowed, under the State law, to buy whatever milk products it needs in order to serve its clients. Such purchases have, on occasion, exceeded the quantity that a producer-handler is allowed to acquire under the Pacific Northwest order, according to the testimony.

The only other witness that testified in favor of the proposal represented the Oregon Department of Corrections. Under cross examination, he indicated that there are no Oregon statutes that apply to the Department of Corrections' dairy facility. On the other hand, he also indicated that the Dairy is prohibited from selling to the private sector.

The proposal to exempt State institutions was opposed by one proprietary handler and by three cooperative associations. The principal thrust of the opposition testimony was that adoption of the proposal would open the door for State institutions to compete against fully regulated handlers for Class I and Class II sales, and that the State institutions would have a competitive advantage by being exempted from the Federal order pricing and pooling regulations.

The proposal to totally exempt a plant operated by a State institution should not be adopted because it would make it possible for the operations to compete for commercial sales against fully regulated handlers. On the other hand, there appears to be a need to provide some relief from the very limited amount of Class I fluid milk products that such a plant may receive from pool plants under the producer-handler provisions of the order.

After reviewing the testimony on this issue, it is concluded that a State institution that is not exempt from the producer-handler limits on receipts of milk from pool plants should be able to receive more fluid milk products from pool sources than the amount allowed for other producer-handlers.

The evidence shows that the WSRD has had problems in conducting its operation in accord with its operating mandate while, at the same time, staying within the limits that the order places on receipts by a producer-handler.

The current limit on receipts of fluid milk products from pool plants by a producer-handler has been in effect for many years (Official Notice is taken of the Order Amending The Order Regulating The Handling Of Milk In The Puget Sound, Washington, Marketing Area, effective September 1, 1959, as published in the *Federal Register* on July 29, 1959, beginning at page 6027).

While this proceeding does not deal with producer-handlers as such, it is clear that the 100 pounds per day limit as applied to a State institution is unreasonably low. This is clearly demonstrated in the testimony that in the last five years the number of inmates in the Washington State Department of Corrections institutions has increased from 6,000 to 10,000 inmates, and that growth to 12,000 is expected in the next three years. Since the Department of Corrections is authorized to purchase products that it does not process or manufacture, the need for greater supplemental purchases is clear. Accordingly, a State institution milk plant should be permitted to receive an average of 1,000 pounds per day of Class I fluid milk products from pool plants during the month. However, no change in the limit should be provided for producer-handlers that are not State institutions.

In commenting on the Department's handling of Issue No. 3, Darigold Farms, the only party commenting on this issue, indicated that it supported the position reached in the recommended decision.

4. Plant location adjustments for Yakima County, Washington, under the Pacific Northwest order.

The proposal to change the location adjustment (No. 3 in the Notice of Hearing) on all producer milk received at plants in Yakima County in Federal Milk Order 124 is denied.

The order defines zones for the purpose of determining location adjustments. The order currently states that Yakima County, Washington, is in Zone 4, which has a 15 cents per hundredweight location adjustment.

Darigold Farms proposed a decrease in the location adjustment from 15 cents per hundredweight to 6 cents per hundredweight, a change of 9 cents. Accordingly, Yakima County would move from Zone 4 to Zone 2.

The witness for the proponent testified that the theory behind a location adjustment is to be able to attract producer milk from outlying areas to market centers or alternatively to attract packaged milk from a pool plant located in outlying areas. The Pacific Northwest order has four market centers: Portland, Oregon; Eugene, Oregon; Seattle, Washington; and Spokane, Washington. Yakima County is roughly in the center of the triangle formed by Portland, Seattle, and Spokane.

The witness noted that the Pacific Northwest Order has relatively low Class I utilization, about 35 percent. There is more than an adequate supply of bulk milk to serve both fluid and manufacturing markets. He also pointed out that in a low utilization market such as Pacific Northwest, location adjustments are seldom needed. There has been no history of handlers in the Pacific Northwest market not being able to obtain bulk milk.

The witness testified that Darigold was not proposing the elimination of location adjustments, but rather to maintain the status quo for all the other fluid milk handlers in the market. The only fluid plant that would be affected is the Darigold plant in Yakima County, which would pay an added nine cents per hundredweight.

The witness' testimony drew a parallel between Yakima County, Washington, and Whatcom County. The two counties are very similar, he noted, in that there's a large concentration of milk in a small area. Moreover, both plants are located outside major market centers, and both counties have small fluid operations which serve the county area but not the market centers.

The witness for the proponent testified that the proposal was being made because of the opening of the Darigold plant in Sunnyside in

December of 1991. The plant was needed to help balance the increased production in the Pacific Northwest and the increase of milk in Yakima County. Comparing December of 1980 to December of 1990, Yakima County dairymen increased their deliveries of producer milk from 18.9 million pounds to 49.7 million pounds per month. The Yakima County producers currently account for 13.5 percent of the milk marketed in the Pacific Northwest order.

The witness noted that, prior to the opening of the Darigold/Sunnyside plant, the milk from Yakima County was sent to plants in Seattle and Chehalis, Washington, which have no location adjustment. No location adjustment was needed since milk production increases in western Washington are expected to keep all plants full.

The witness testified that the 15-cent-per-hundredweight location adjustment at Sunnyside, in effect, constitutes a "penalty" to the Darigold producers who financed the Sunnyside plant, which was needed by all producers to ensure outlets for all milk produced in the marketing area. Had the plant not been built, disorderly market operations surely would have developed, he said. The witness argued that this "penalty" is unnecessary because hauling costs will move the milk to market centers without location adjustments. He pointed out, for example, that Darigold's hauling costs from Sunnyside to Spokane, the closest market center, is 76 cents per hundredweight for a distance of 120 miles, or .6 cents per mile. In comparison, the proposed decrease from 15 cents to 6 cents would move the milk only about 15 miles at the .6-cent-per-hundredweight cost.

The witness testified that for any producer farm located closer to Spokane than to Sunnyside, it is cheaper to move milk to Spokane than to Sunnyside even with no location adjustment. Reducing the location adjustment to six cents merely moves the geographic break-even point 15 miles closer to Sunnyside and enlarges by the same 15 miles the area from which Spokane pool plants can readily attract milk.

The witness testified that within the original area, without the 15-mile adjustment, there already is enough milk to satisfy the needs of Spokane pool plants, so there is no need to provide a further incentive to move milk that is located in that 15-mile area closer to Sunnyside. The Sunnyside milk also can and does supply Seattle pool plants and could service plants in Portland and Spokane. A similar analysis shows that there is far more milk in the areas closer to Seattle and Portland than needed by pool plants in those areas. Therefore,

the 15-mile incentive which the 6-cent location adjustment represents is not really needed as an incentive to move milk to those market centers. The witness noted that the combination of some Yakima Valley milk that is surplus to the Sunnyside plant's capacity, plus the western Washington milk, is adequately supplying the needs of all the plants in western Washington.

Three other witnesses testified on Proposal No. 3. The witnesses for Portland Independent Milk Producers Association and Olympia Cheese Company were opposed to Proposal No. 3, and the witness from Inland Northwest Dairies, Inc., also expressed reservations. Two briefs discussing Proposal No. 3 were filed, one by Darigold Farms in favor of the proposal, and one by Portland Independent Milk Producers Association opposed to the proposal.

Portland Independent Milk Producers Association opposed Proposal No. 3 to change the zone classification for plants in Yakima County from Zone 4 to Zone 2 to reflect the same location adjustment that Whatcom County currently enjoys. The witness testified that the theory behind a location adjustment is to be able to attract producer milk from outlying areas to market centers. He pointed out that the proposed zone change in the proposal appears to have the opposite effect in that it would increase the return to producers delivering milk to plants located in Yakima County.

The witness noted that increased returns could send two signals. One signal is that there is actually an additional demand for fluid milk to be delivered to Yakima County, which is not believed to be the case. There appears to be more than an adequate supply of milk for the Yakima County fluid operations. The second signal sent to producers when there is a situation of increasing returns is to increase production. The witness did not feel that either of these signals is appropriate in light of the theory behind a functioning location adjustment program or the already increasing supplies of milk surplus to fluid market needs in these areas.

The witness also expressed concern that there is an increasing imbalance between freight costs of milk produced in the Yakima Valley area and delivered to local plants and that milk which moves up to 200 miles to the market center. He argued that acceptance of Proposal No. 3 further accentuates the potential imbalance. The witness stated that it was their understanding that Yakima County is the type of market

situation that a location differential program is designed to protect.

In comparing Whatcom County to Yakima County in this proposal, the witness extended that comparison by quoting from the 1988 final decision (53 FR 49165) which merged the Oregon-Washington and Puget Sound-Inland Federal milk orders into the Pacific Northwest order and established the current location adjustment program under the merged order.

Proponents' arguments for reducing the present six cent location adjustment at locations in Whatcom County, Washington, are less persuasive. The location adjustment should not be reduced. One reason given for such a reduction was that the nearby manufacturing plant in Lynden provides an outlet for milk surplus to the market's fluid needs while location adjustments are still needed at locations in southern and central Oregon and central Washington precisely because no nearby manufacturing plant exists to provide an outlet for surplus milk produced in these areas. In fact, the situation thus described by the Darigold witness should result in a greater location adjustment for Whatcom County, for instance, than Jackson County, Oregon. The receipt of milk at a manufacturing plant located in an area of heavy milk production at some distance from the market's center is the classic situation to which location adjustments were designed to apply. Prices paid for such milk are adjusted downward for location to compensate for the fact that the milk has not been hauled to distant bottling plants but instead has been shipped a relatively short distance at a significantly lower hauling cost.

The witness quoted another passage from that decision where it states, these markets, with manufacturing plants located in heavy production areas distant from most distributing plant locations, are more comparable to the situation of Whatcom County. Such increases, that update location adjustments to correspond to the significant increases in hauling costs that have been experienced since most location adjustment provisions were written, are actually the only means of "modernizing" location adjustments. It is very possible that it would be appropriate to modernize or increase the location adjustment at Whatcom County as urged by Northwest Independent Milk Producers Association and Carnation Company. However, there is inadequate data and testimony in the record of this proceeding to determine an appropriate change in the level of location adjustment for Whatcom County.

The witness pointed out that the same theory underlying the 1988 decision relative to Whatcom County is applicable to Proposal No. 3, and expressed the view that based on the current harmonious relationships within the marketplace, the 15-cent location adjustment should be maintained if location adjustments are

going to continue to be recognized within this Federal order.

Olympia Cheese Company opposed Proposal No. 3 relative to changing the zone classification for plants in Yakima County from Zone 4 to Zone 2 to reflect the same location adjustment as Whatcom County. The witness testified that Olympia Cheese Company currently procures a substantial portion of its milk supply in Yakima County. That milk has to be shipped over the mountains in order to get to western Washington where its plant is located. The company subsidizes part of those hauling costs. The witness maintains that the proposed reduction in the location adjustment in Yakima County will further add to milk costs because in order to keep the milk supply from that county, hauling costs will have to be subsidized further by the same amount as the reduction in the location adjustment in order to stay competitive in milk procurement in that region.

The witness testified that Olympia Cheese Company's suppliers are going to be competing precisely against those suppliers in the Yakima County area, forcing them to come up with the same amount, even though its suppliers go across the mountains to western Washington. The witness contends that if its suppliers were breaking even before with respect to hauling cost, with the adoption of Proposal No. 3 they would be nine cents worse off.

The Olympia Cheese Company's witness stated that a location adjustment's traditional role is to reduce the payment to individual farmers for any milk that stays in the county—i.e., that milk which is not shipped to a heavily populated area. This provides a disincentive and promotes the shipment of milk from high production/low population areas to high population areas. The witness stated that in the case of Proposal No. 3, it appears the location adjustment is doing the opposite of intended, in the sense that all of a sudden the incentive is reduced, therefore increasing the incentive for the milk to stay in Yakima County. The witness pointed out that location adjustments are there precisely to promote shipment of milk to populated areas, and that they were used as a mechanism by USDA for this purpose.

Inland Northwest Dairies, Inc., also expressed concerns over the adoption of Proposal No. 3. The witness emphasized that there has been a very harmonious relationship in the marketplace. The witness stated that, with the adoption of Proposal No. 3, the company might be in a much tougher position in the future to recruit milk from producers in the Yakima Valley, from where 80 percent

of its milk supply comes. He contended that because of competitive conditions, Darigold's producers may not have to pay as much in the future to get their milk to the Sunnyside plant as what others would have to pay to bring milk from the Yakima region to Spokane, Washington.

The witness was further concerned with adjusting the location allowance because of the situation that also exists in Moses Lake, where Safeway 85, Inc., a pool plant, has a 15-cent location adjustment. He stated that reducing the location adjustment in Yakima County could create some disparity in the marketplace because Safeway is definitely competition. The witness emphasized that the majority of its milk comes from the Yakima and Benton County region and that in the long-term there may be some inequities should the amount charged Darigold producers in the future be adjusted by the location adjustment in Proposal No. 3.

The purpose and intention of location adjustments is to provide the incentive to move milk from one area to another for fluid uses only. Generally speaking, this means moving milk from outlying production areas to the more heavily populated market centers. It is not the purpose of location adjustments to facilitate the movement of milk to a distant location for manufacturing uses.

The witness for the proponent testified that the proposal was being made because of the opening of the Darigold plant in Sunnyside in December of 1991 to help balance the increased production in the Pacific Northwest and the increase of milk in Yakima County. Prior to the opening of the Darigold/Sunnyside plant, milk from Yakima County was sent to plants in Seattle and Chehalis, Washington, which have no location adjustment. The witness testified that the 15-cent-per-hundredweight location adjustment at Sunnyside in effect constitutes a "penalty" to the Darigold producers who financed the Sunnyside plant. In light of this, however, Darigold producers now have access to the local Sunnyside plant without having to incur the costs of hauling milk to Seattle and Chehalis, Washington.

Current conditions indicate harmonious relationships within the marketplace. The location adjustment change proposed is not needed to prevent disorderly marketing conditions in Yakima County or anywhere within the marketplace. Fluid milk needs are being more than adequately met, and there appears to be no need to encourage production of milk in the Pacific Northwest market by increasing the level of returns to producers.

In conclusion, we find no compelling reason to reduce the location adjustment in Yakima County based on this record. Yakima County should remain in Zone 4 with a 15-cent-per-hundredweight location adjustment.

While no exception was taken to this conclusion, two cooperative associations did comment on it. Portland Independent Milk Producers Association (PIMPA) stated that the department was correct in denying the proposal, while Darigold Farms wrote that it was "puzzled" by the department's rationale in denying the proposal and would like to revisit the issue of location adjustments at a future hearing.

It was stated in the recommended decision that the record evidence indicated there was no need to move milk for fluid use from Yakima County to any of the population centers in this market: i.e., Seattle, Portland, Eugene or Spokane. However, PIMPA points out in their exception that a significant amount of their Yakima County milk does, in fact, move to a number of handlers in one or more of these population centers, and this point is supported by record evidence. Consequently, it cannot be concluded on the basis of this record that location adjustments are no longer necessary in this market.

Rulings on Proposed Findings and Conclusions

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

General Findings

The findings and determinations hereinafter set forth supplement those that were made when Orders 124 and 135 were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

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

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

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

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreements and Order Amending the Orders

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk, in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Referendum Order To Determine Producer Approval for the Southwestern Idaho-Eastern Oregon Order; Determination of Representative Period; and Designation of Referendum Agents

It is hereby directed that a referendum be conducted and completed on or before the 30th day after the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300-311), to determine whether the issuance of the order as amended and as hereby

proposed to be amended, regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is approved or favored by producers, as defined under the terms of each of the orders—as amended and as hereby proposed to be amended—who during the representative period were engaged in the production of milk for sale within the Southwestern Idaho-Eastern Oregon marketing area.

The representative period for the conduct of such referendum is hereby determined to be September 1993. The agent of the Secretary to conduct the referendum is James R. Daugherty, market administrator of the Southwestern Idaho-Eastern Oregon order.

Determination of Producer Approval and Representative for the Pacific Northwest Order

September 1993 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Pacific Northwest marketing area is approved or favored by producers as defined under the terms of the order (as amended and as hereby proposed to be amended) who during the representative period were engaged in the production of milk for sale within the Pacific Northwest marketing area.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

Dated: February 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing

agreements and to the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Acting Administrator, Agricultural Marketing Service, on October 7, 1993, and published in the *Federal Register* on October 15, 1993 [58 FR 53439], shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

For the reasons set forth in the preamble, title 7, parts 1124 and 1135, are amended to read as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. The authority citation for part 1124 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

§ 1124.7 [Amended]

2. In the introductory text of § 1124.7(b), the number "30" is changed to "20".

§ 1124.9 [Amended]

3. In § 1124.9(c), the words "and nonfat milk solids" are added following the word "butterfat".

4. In § 1124.10, paragraph (c)(2) is revised to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(c) * * *

(2) The producer-handler handles fluid milk products from sources other than the milk production facilities and resources specified in paragraph (b) of this section, except as specified as follows:

(i) A producer-handler, other than a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 100 pounds during the month; and

(ii) A State institution that otherwise qualifies as a producer-handler, but which processes or receives milk for consumption outside of a State institution, may receive fluid milk products from pool plants if such receipts do not exceed a daily average of 1,000 pounds per day during the month.

* * * * *

5. Section 1124.19 is revised to read as follows:

§ 1124.19 Product prices and butterfat differential.

The prices specified in this section, which are computed by the Director of the Dairy Division, Agricultural Marketing Service, shall be used, where specified, in calculating the basic formula prices pursuant to § 1124.51. The term *workday* as used in this section shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange, using the price reported each week as the price for the day of the report, and for each following workday until the next price is reported.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), using the price reported each week as the price for the day of the report and

for each following workday until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the first 15 days of the month computed as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat, and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder

(nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area. The average shall be computed using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported.

(e) The *butterfat differential* is the number that results from subtracting the computation in paragraph (e)(2) of this section from the computation in paragraph (e)(1) of this section and rounding to the nearest one-tenth cent:

(1) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price as reported and published by the Dairy Division;

(2) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

6. In § 1124.30, paragraphs (a)(1)(i), (ii), and (c)(1), (2) and (3) are revised to read as follows:

§ 1124.30 Reports of receipts and utilization.

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production) and the pounds of nonfat milk solids contained therein;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c) and

the pounds of nonfat milk solids contained therein;

* * * * *

(c) * * *

(1) The pounds of skim milk, butterfat, and nonfat milk solids received from producers;

(2) The utilization of skim milk, butterfat, and nonfat milk solids for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk, butterfat, and nonfat milk solids delivered to each pool plant pursuant to § 1124.9(c).

* * * * *

7. In § 1124.31, paragraphs (a)(1), (b) introductory text, and (b)(1) are revised to read as follows:

§ 1124.31 Payroll reports.

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat and nonfat milk solids contained in such milk, and the number of days on which milk was delivered by the producer during the month;

* * * * *

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1124.75(a) to be considered in the computation of its obligation pursuant to § 1124.75 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk received from each producer and the pounds of butterfat and nonfat milk solids contained in such milk;

* * * * *

8. Section 1124.32 is revised to read as follows:

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§ 1124.30 and 1124.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under the order.

9. Section 1124.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1124.41 Shrinkage.

* * * * *

(c) * * * If the operator of a plant or a commercial food processing establishment pursuant to § 1124.20 purchases such milk on the basis of weights determined from its measurement at the farm, and butterfat tests and nonfat milk solids determined from farm bulk tank samples, the

applicable percentage under this paragraph for the cooperative association shall be zero.

10. The center heading preceding § 1124.50 is revised to read "Class and Component Prices".

11. Section 1124.50 is revised to read as follows:

§ 1124.50 Class and component prices.

The class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The *Class I price*, subject to the provisions of § 1124.52, shall be the basic formula price defined in § 1124.51 for the second preceding month plus \$1.90.

(b) The *Class II price* shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month:

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.51(a) and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51(b).

(c) The *Class III price* shall be the basic formula price for the month.

(d) The *Class III-A price* for the month shall be the average Western States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

(e) The *skim milk price* per hundredweight shall be the basic formula price for the month pursuant to § 1124.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to § 1124.19(e) by 35.

(f) The *butterfat price* per pound shall be the total of:

(1) The skim price computed in paragraph (e) of this section divided by 100; and

(2) The butterfat differential computed pursuant to § 1124.19(e) multiplied by 10.

(g) The *nonfat milk solids price* per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the average percentage of nonfat milk solids in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

12. Section 1124.51 is revised to read as follows:

§ 1124.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent using the butterfat differential computed pursuant to § 1124.19(e).

(b) The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1124.51(a) for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section:

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk

shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3)(i) and (ii) of this section:

(i) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1124.51a [Removed]

13. Section 1124.51a is removed.

14. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price for the

following month and the Class III and Class III-A prices for the preceding month;

(b) On or before the 15th day of each month, the Class II price for the following month; and

(c) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the nonfat milk solids price.

15. The center heading preceding § 1124.60 is revised to read "Differential Pool and Handler Obligations".

16. Section 1124.60 is revised to read as follows:

§ 1124.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1124.9(a) with respect to each of the handler's pool plants, and for each handler described in § 1124.9 (b) and (c), an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the pounds of producer milk in Class I pursuant to § 1124.44 by the difference between the Class I price, adjusted pursuant to § 1124.52, and the Class III price;

(b) Multiply the pounds of producer milk in Class II pursuant to § 1124.44 by the difference between the Class II price and Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III-A by the amount that the Class III-A price is more or less, respectively, than the Class III price;

(d) Multiply the pounds of skim milk in Class I producer milk pursuant to § 1124.44 by the skim milk price for the month;

(e) Multiply the nonfat milk solids price for the month by the pounds of nonfat milk solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of nonfat milk solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1124.44(a)(15), (b), and paragraph (f)(6) of this section:

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the pounds of nonfat milk solids associated with the skim

milk pounds assigned to Class II and III by the nonfat milk solids price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Overage at a nonpool plant that is located on the same premises as a pool plant shall be prorated between the quantity of skim milk and butterfat received by transfer from the pool plant and other source milk received at the nonpool plant. The pool plant operator's obligation to the pool with respect to such overage will be computed by adding the prorated pounds of skim milk and butterfat to the amounts assigned pursuant to § 1124.44(a)(15) and (b);

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to § 1124.44(a)(10) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the pounds of nonfat milk solids associated with the skim milk pounds assigned to Class II and III by the nonfat milk solids price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price, adjusted for location, and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(h) Multiply the difference between the Class I price, adjusted for the location of the pool plant, and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1124.43(f) and subtracted from Class I pursuant to § 1124.44(a)(8) (i) through (iv), (vii), and § 1124.44(b), excluding:

(1) Receipts of bulk fluid cream products from an other order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1124.75 (b)(4) or (c);

(i) Multiply the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (v) and (vi) and § 1124.44(b) by the difference between the Class I price at the transferor plant and the Class III price;

(j) Multiply the difference between the Class I and Class III prices, applicable at the location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1124.43(f) and § 1124.44(a)(8)(v) and the combined pounds of skim milk and butterfat in receipts from an unregulated supply plant assigned pursuant to § 1124.44 (a)(12) and (b), excluding such skim milk or butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the combined pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1124.43(f);

(l) Add or subtract, as appropriate, the amount necessary to correct errors disclosed by the verification of the handler's receipts and utilization of skim milk and butterfat as reported for previous months; and

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

17. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of weighted average differential price.

A *weighted average differential price* for each month shall be computed by the market administrator as follows:

(a) Combine into one total the value computed pursuant to § 1124.60 (a) through (c) and (f) through (m) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1124.74;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer settlement fund;

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to § 1124.60(j); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the weighted average differential price.

18. Section 1124.62 is redesignated as § 1124.63 and revised to read as follows:

§ 1124.63 Announcement of the weighted average differential price, the producer nonfat milk solids price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month, the following prices for such month:

(a) The weighted average differential price;

(b) The producer nonfat milk solids price; and

(c) An *estimated uniform price* per hundredweight of milk which is computed by adding the weighted average differential price to the basic formula price.

19. A new § 1124.62 is added to read as follows:

§ 1124.62 Computation of producer nonfat milk solids price.

The *producer nonfat milk solids price* shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to § 1124.60 (d) and (e) for all handlers who filed reports pursuant to § 1124.30 and who made payments pursuant to § 1124.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(c) Round to the nearest whole cent.

20. Section 1124.70 is revised to read as follows:

§ 1124.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement" fund into which shall be deposited all payments made by handlers pursuant to §§ 1124.71 and 1124.75 and out of which shall be made all payments to handlers pursuant to § 1124.72. Payments due a handler from the fund shall be offset against payments due from such handler.

21. Section 1124.71 is revised to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, which results from subtracting the sum computed pursuant to paragraph (a) of this section from the sum computed pursuant to paragraph (b) of this section:

(a) The sum of:

(1) The total obligation of the handler for such month as determined pursuant to § 1124.60; and

(2) For a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d);

(b) The sum of:

(1) The value of milk received by the handler from producers at the applicable prices pursuant to § 1124.73(a)(2) (i), (ii), and (iii);

(2) The amount to be paid by the handler to cooperative associations pursuant to § 1124.73(d); and

(3) The value at the weighted average differential price adjusted for the location of the plant(s) at which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed for such handler pursuant to § 1124.60(j); and

(c) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1124.7(d) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk

assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in paragraph (c)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

22. Section 1124.72 is revised to read as follows:

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a), less any unpaid obligations of such handler to the market administrator pursuant to §§ 1124.71, 1124.75, 1124.85, and 1124.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

23. Section 1124.73 is revised to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payment pursuant to this paragraph or paragraph (b) of this section to each producer from whom milk is received during the month:

(1) On or before the last day of the month, to each producer who did not discontinue shipping milk to such handler before the 18th day of the month at not less than the Class III price for the preceding month per hundredweight of milk received from the producer during the first 15 days of the month, subject to adjustment for proper deductions authorized in writing by the producer;

(2) On or before the 19th day after the end of each month, an amount computed as follows:

(i) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;

(ii) Add the amount that results from multiplying the producer nonfat milk solids price for the month by the total pounds of nonfat milk solids in the milk received from the producer;

(iii) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the weighted average differential price for

the month as adjusted pursuant to § 1124.74(a);

(iv) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(v) Subtract proper deductions authorized in writing by the producer; and

(vi) Subtract any deduction required pursuant to statute; and

(3) If by the 19th day after the end of the month, a handler has not received full payment from the market administrator pursuant to § 1124.72, the payments to producers required pursuant to paragraph (a)(2) of this section may be reduced uniformly as a percentage of the amount due each producer by a total sum not in excess of the remainder due from the market administrator. The handler shall pay the balance due producers on or before the date for making payments pursuant to such paragraph next following receipt of the full payment from the market administrator.

(b) The payments required in paragraph (a) of this section shall, upon the request of a cooperative association qualified under § 1124.18, be made to the association or its duly authorized agent for milk received from each producer who has given such association authorization by contract or other written instrument to collect the proceeds from the sale of the producer's milk. All payments required pursuant to this paragraph shall be made on or before the second day prior to the dates specified for such payment in paragraph (a)(2) of this section.

(c) Each handler shall pay to each cooperative association which operates a pool plant, or the cooperative's duly authorized agent, for butterfat and nonfat milk solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat and nonfat milk solids received during the first 15 days of the month at not less than the butterfat and nonfat milk solids prices, respectively, for the preceding month; and

(2) On or before the 15th day after the end of the month, an amount of money determined in accordance with computations made on the same basis as those specified in paragraph (a)(2) (i) through (iii) of this section, minus any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler pursuant to § 1124.9(a) that received milk from a cooperative association that was a handler pursuant to § 1124.9(c) shall

pay the cooperative association for such milk as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for milk received during the month an amount of money determined in accordance with the computations specified in paragraphs (a)(2) (i) through (iii) of this section, minus any payment made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler shall provide each producer, on or before the 19th day of each month, with a supporting statement for milk received from the producer during the previous month in such form that it may be retained by the producer, which shall show:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer, the pounds of butterfat and nonfat milk solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

(3) The minimum rates at which payment to the producer is required under the provisions of this section;

(4) The rate and amount of any premiums or of payments made in excess of the minimums required under this order;

(5) The amount or rate of each deduction claimed by the handler, together with an explanation of each such deduction; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler shall, upon request, provide the cooperative association, with respect to each producer for whom such payment is made, any or all of the information specified in paragraph (f) of this section.

§ 1124.74 [Removed]

24. Section 1124.74 is removed.

§ 1124.75 [Redesignated as § 1124.74]

25. Section 1124.75 is redesignated as § 1124.74, and paragraph (c) is revised to read as follows:

§ 1124.74 Plant location adjustments for producers and on nonpool milk.

* * * * *

(c) For purposes of the computations pursuant to §§ 1124.71(a) and 1124.72, the weighted average differential price for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted weighted average differential price shall not be less than zero.

§ 1124.76 [Redesignated as § 1124.75 and Amended]

26. Section 1124.76 is redesignated as § 1124.75. In the newly designated § 1124.75(a)(1)(i), in the second sentence the words "or estimated uniform price" are inserted after the words "uniform price"; and in the last sentence the reference "\$ 1124.60(f)" is changed to read "\$ 1124.60(j)" and the reference "\$ 1124.71(a)(2)(iii)" is changed to read "\$ 1124.71(b)(3)". In § 1124.75(a)(2)(i), the reference "\$ 1124.74" is changed to read "\$ 1124.19(e)". In § 1124.75(b)(4), the word "estimated" is inserted before the words "uniform price".

§ 1124.77 [Redesignated as § 1124.76]

27. Section 1124.77 is redesignated as § 1124.76.

§ 1124.78 [Redesignated as § 1124.77 and Amended]

28. Section 1124.78 is redesignated as § 1124.77, and the reference in paragraph (a) introductory text to "\$ 1124.77" is changed to read "\$ 1124.75".

§ 1124.85 [Amended]

29. In § 1124.85(b), the reference "\$ 1124.60(f)" is changed to read "\$ 1124.60(h) and (j)" and in § 1124.85(c)(2), the reference "\$ 1124.76(b)(2)(ii)" is changed to read "\$ 1124.75(b)(2)(ii)".

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for part 1135 continues to read as follows:

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

§ 1135.9 [Amended]

1a. In § 1135.9(c), the words "and protein tests" are added following the word "butterfat".

2. Section 1135.19 is revised to read as follows:

§ 1135.19 Product prices and butterfat differential.

The prices specified in this section, which are computed by the Director of the Dairy Division, Agricultural Marketing Service, shall be used, where specified, in calculating the basic formula prices pursuant to § 1135.51. The term "workday" as used in this section shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange, using the price reported each week as the price for the day of the report, and for each following workday until the next price is reported.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the *National Cheese Exchange* (Green Bay, WI), using the price reported each week as the price for the day of the report and for each following workday until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the first 15 days of the month computed as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat, and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder

(nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area. The average shall be computed using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported.

(e) The *butterfat differential* is the number that results from subtracting the computation in paragraph (e)(2) of this section from the computation in

paragraph (e)(1) of this section and rounding to the nearest one-tenth cent:

(1) Multiply 0.138 times the monthly average Chicago Mercantile Exchange Grade A (92-score) butter price, as reported and published by the Dairy Division;

(2) Multiply 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

3. In § 1135.30, paragraphs (b) and (d) are redesignated as paragraphs (d) and (e), respectively, and the introductory text of the section and paragraphs (a) and (c) are revised and a new paragraph (b) is added to read as follows:

§ 1135.30 Reports of receipts and utilization.

On or before the 9th day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler qualified pursuant to § 1135.9(a) shall report for each pool plant operated by the handler the quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk received at such plants or diverted by the handler to other plants, and the protein content of such milk;

(2) Producer milk received at such plants from handlers qualified pursuant to § 1135.9(c) and (d), and the protein content of such milk; and

(3) Fluid milk products and bulk fluid cream products from other pool plants and other source milk received at such plants.

(b) Each handler qualified pursuant to § 1135.9(b), (c), or (d) shall report the quantities of producer milk received and the butterfat and protein contained therein.

(c) Each handler submitting reports pursuant to paragraphs (a) and (b) of this section shall report the utilization or disposition of all milk, filled milk, and milk products required to be reported, and inventories on hand at the beginning and end of each month in the form of fluid milk products and products specified in § 1135.40(b)(1).

4. In § 1135.31(a), the word "20th" is changed to "22nd", the semicolon at the end of paragraph (a) introductory text is changed to a colon, and paragraph (a)(4) is revised to read as follows:

§ 1135.31 Payroll reports.

(a) * * *

(4) The average butterfat and protein content of his/her milk;

5. In § 1135.41, the colon at the end of paragraph (b)(3) is changed to a semicolon and paragraph (c) is revised to read as follows:

§ 1135.41 Shrinkage.

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1135.9(b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1135.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or the proprietary bulk tank handler shall be zero.

6. The center heading preceding § 1135.50 is revised to read "Class and Component Prices".

7. In § 1135.50, in paragraph (b) introductory text the reference "§ 1135.51a" is revised to read "§ 1135.51(b)"; in paragraph (b)(1), the reference "§ 1135.51" is revised to read "§ 1135.51(a)"; in paragraph (b)(2), the reference "§ 1135.51a" is revised to read "§ 1135.51(b)"; the section heading and paragraph (a) are revised; and new paragraphs (e), (f), and (g) are added to read as follows:

§ 1135.50 Class and component prices.

(a) The *Class I* price shall be the basic formula price pursuant to § 1135.51(a) for the second preceding month plus \$1.50.

(e) The *skim milk price* per hundredweight shall be the basic formula price for the month pursuant to § 1135.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to § 1135.19(e) by 35.

(f) The *butterfat price* per pound shall be the total of:

(1) The skim price computed in paragraph (e) of this section divided by 100; and

(2) The butterfat differential computed pursuant to § 1135.19(e) multiplied by 10.

(g) The *milk protein price* per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the

result by the percentage of protein in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

8. Section 1135.51 is revised to read as follows:

§ 1135.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent using the butterfat differential computed pursuant to § 1135.19(e).

(b) The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1135.51(a) for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section:

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1135.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per

hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3) (i) and (ii) of this section:

(i) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1135.51a [Removed]

9. Section 1135.51a is removed.

10. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price for the following month and the Class III and Class III-A prices for the preceding month;

(b) On or before the 15th day of each month, the Class II price for the following month; and

(c) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the milk protein price.

11. A center heading preceding § 1135.60 is added to read "Differential Pool and Handler Obligations".

12. Section 1135.60 is revised to read as follows:

§ 1135.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler described in § 1135.9(a) with respect to each of the handler's pool plants and for each handler qualified pursuant to § 1135.9 (b), (c), or (d) an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the hundredweight of producer milk assigned to Class I milk pursuant to § 1135.44(c) by the difference between the Class I price and the Class III price;

(b) Multiply the hundredweight of producer milk assigned to Class II milk pursuant to § 1135.44(c) by the difference between the Class II price and the Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III-A by the amount that the Class III-A price is more or less, respectively, than the Class III price;

(d) Multiply the skim milk price by the hundredweight of producer skim milk assigned to Class I milk pursuant to § 1135.44(a);

(e) Multiply the milk protein price by the pounds of protein in producer skim milk assigned to Class II and Class III pursuant to § 1135.44(a). The pounds of protein shall be computed by multiplying the hundredweight of skim milk so assigned by the average percentage of protein in all producer skim milk received by the handler during the month;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1135.44(a)(14) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price; and

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price;

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to § 1135.44(a)(9) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's protein and butterfat prices;

(h) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1135.43(d) and subtracted from Class I pursuant to § 1135.44(a)(7)(i) through (iv) and (b), excluding:

(1) Receipts of bulk fluid cream products from an other order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1135.76(a)(5) or (c);

(i) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(v) and (vi) and § 1135.44(b);

(j) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1135.43(d) and § 1135.44(a)(7)(i) and by the pounds of skim and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and (b), excluding the skim milk and butterfat in receipts of bulk fluid milk products from unregulated supply plants to the extent an equivalent quantity of skim milk and butterfat disposed of to any such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price and the Class III price) by the combined

pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1135.43(d); and

(l) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

13. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of weighted average differential price.

A *weighted average differential price* for all milk received from producers shall be computed by the market administrator as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (a) through (c) and (f) through (l) for all handlers who filed reports pursuant to § 1135.30 for the month, and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which values were computed pursuant to § 1135.60(j); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk included under paragraph (c) of this section. The result shall be the weighted average differential price.

§ 1135.62 [Redesignated as § 1135.63]

14. Section 1135.62 is redesignated as § 1135.63 and revised to read as follows:

§ 1135.63 Announcement of the weighted average differential price, the producer protein price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month the following prices for such month:

(a) The weighted average differential price;

(b) The producer protein price; and

(c) An *estimated uniform price* per hundredweight of milk computed by

adding the weighted average differential price to the basic formula price.

15. A new § 1135.62 is added to read as follows:

§ 1135.62 Computation of producer protein price.

A *producer protein price* shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to § 1135.60(d) and (e) for all handlers who filed reports pursuant to § 1135.30 and who made payments pursuant to § 1135.71 for the preceding month;

(b) Divide the resulting amount by the total pounds or protein contained in producer milk; and

(c) Round to the nearest whole cent. The result shall be the producer protein price.

16. Section 1135.70 is revised to read as follows:

§ 1135.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1135.71, 1135.74, 1135.75, and 1135.76 and out of which he shall make all payments due handlers pursuant to §§ 1135.72, and 1135.75.

17. Section 1135.71 is revised to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount as specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total obligation of the handler for such month as determined pursuant to § 1135.60.

(b) The sum of:

(1) The value computed by multiplying the weighted average differential price by the hundredweight of producer milk received from handlers qualified pursuant to § 1135.9(c) and from producers during the month;

(2) The value computed for the protein contained in the producer milk included under paragraph (b)(1) of this section at the producer protein price; and

(3) The value at the weighted average differential price of the hundredweight of skim milk and butterfat for which a value is computed pursuant to § 1135.60(j).

18. Section 1135.72 is revised to read as follows:

§ 1135.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed for such handler pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If at such time the balance in the producer-settlement fund is insufficient to make all of the payments pursuant to this section, the market administrator shall reduce uniformly such payment and shall complete such payment as soon as the necessary funds become available.

19. In 1135.73, paragraphs (b), (d), and (e) (2) through (6) are revised to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(b) On or before the 19th day after the end of each month, each handler shall pay to each producer from whom milk was received during the month, a sum computed as follows:

(1) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;

(2) Multiply the producer protein price for the month by the total pounds of protein in such milk;

(3) Multiply the weighted average differential price for the month multiplied by the hundredweight of such milk;

(4) Subtract payments made to the producer pursuant to paragraph (a) of this section;

(5) Subtract deductions for marketing services pursuant to § 1135.86; and

(6) Subtract proper deductions authorized in writing by such producer.

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 19th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) * * *

(2) The total pounds of milk received from the producer and the pounds of butterfat and protein contained therein;

(3) The minimum rates at which payment is required pursuant to this section;

(4) The rates used in making payment, if such rates are other than the required applicable minimums;

(5) The amount (or rate per hundredweight) of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with an explanation of each deduction; and

(6) The net amount of the payment to the producer.

§ 1135.74 [Removed]

20. Section 1135.74 is removed.

§ 1135.75 [Removed]

21. Section 1135.75 is removed.

§ 1135.76 [Redesignated as § 1135.74 and Amended]

22. Section 1135.76 is redesignated as § 1135.74 and the following changes are made in that section:

a. In newly designated § 1135.74(a)(4), the word "estimated" is inserted before the words "uniform price";

b. In § 1135.74(b)(1)(ii), the words "or estimated uniform price" are added following the words "uniform price" everywhere it appears;

c. In § 1135.74(b)(1)(iii) introductory text, the reference "\$ 1135.60(f)" is changed to read "\$ 1135.60(j)", the reference "\$ 1135.71(a)(2)(ii)" is changed to read "\$ 1135.71(b)(2)";

d. In § 1135.74, paragraphs (b)(1)(iii) (a) through (c) are redesignated as (b)(1)(iii) (A) through (C); and

e. In § 1135.74(b)(2) (i) and (ii), the reference "\$ 1135.74" is changed to read "\$ 1135.19(e)".

§ 1135.77 [Redesignated as § 1135.75]

23. Section 1135.77 is redesignated as § 1135.75.

§ 1135.78 [Redesignated as § 1135.76 and Amended]

24. Section 1135.78 is redesignated as § 1135.76, and the references "1135.76, 1135.77, 1135.78" are changed to read "1135.74, 1135.75, 1135.76", respectively.

§ 1135.85 [Amended]

25. In § 1135.85(b), the reference "\$ 1135.60 (d) and (f)" is changed to read "\$ 1135.60 (h) and (j)"; and in § 1135.85(c), the reference "\$ 1135.76(a)(2)" is changed to read "\$ 1135.74(a)(2)".

Marketing Agreement Regulating the Handling of Milk in the Pacific Northwest for Southwestern Idaho-Eastern Oregon Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing

agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1124.1 to 1124.86 (or §§ 1135.1 to 1135.86, respectively), all inclusive, of the order regulating the handling of milk in the Pacific Northwest or Southwestern Idaho-Eastern Oregon marketing areas (7 CFR PARTS 1124 or 1135, as applicable), which is annexed hereto; and

II. The following provisions:
§ 1124.87 (or § 1135.87, as the case may be). Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he or she handled during the month of September 1993 _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1124.88 (or § 1135.88, as the case may be). Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature) _____

(Seal) _____

By (Name) _____

(Title) _____

(Address) _____

Attest _____

[FR Doc. 94-3502 Filed 2-22-94; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AWP-1]

Proposed Modification of Class D Airspace, El Toro Marine Corps Air Station [MCAS], El Toro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D airspace at El Toro MCAS, El Toro, CA, designated as an extension to a Class C surface area. The floor was inadvertently lowered from a

base of 2500 mean sea level (MSL) down to the surface. This proposed modification would raise the floor between the 10 and 15 mile radius of Class D airspace from the surface up to 2500 feet MSL.

DATES: Comments must be received on or before March 31, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 94-AWP-1, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 6007, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-AWP-1." 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, 15000 Aviation Boulevard, Lawndale, California, 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, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace as an extension to the Class C airspace at El Toro MCAS, El Toro, CA. During the Reclassification of Airspace effective September 16, 1993 a portion of the Class D extension was inadvertently published as being from the surface to 4400 feet MSL. This proposed amendment would return the airspace to a floor of 2500 feet MSL and a ceiling of 4400 feet. The coordinates for this airspace are based on North American Datum 83. Class D airspace designated as an extension to a Class C surface area is published in paragraph 5000b 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 D airspace listed in the 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 5000 Class D Airspace

* * * * *

AWP CA D El Toro MCAS, CA [Removed]

* * * * *

Paragraph 5000b Class D Airspace Areas Designated as an Extension to a Class C Surface Area

* * * * *

AWP CA D2 El Toro MCAS, CA [New]

El Toro MCAS, CA
(Lat. 33°40'34" N., long. 117°43'52" W.)

That airspace extending upward from the surface to but not including 2,500 feet MSL from the 5-mile radius of El Toro MCAS to a 10-mile radius of the El Toro MCAS between the 164°(T) and the 189°(T) bearings of the El Toro MCAS and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL from the 10-mile radius to 15-mile radius of the airport between the 164°(T) and the 189°(T) bearings of the El Toro MCAS. This Class D airspace area is effective concurrently with the specific dates and times of the MCAS El Toro Class C airspace.

* * * * *

Issued in Los Angeles, California, on January 20, 1994.

Richard R. Lien,
Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94-3999 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-ACE-01]

Proposed Establishment of Class E Airspace; Belle Plaine, 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 Belle Plaine, Iowa. The development of new standard instrument approach procedures (SIAPs) at Belle Plaine Municipal Airport, Belle Plaine, Iowa, utilizing the Cedar Rapids, Iowa, Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) and Belle Plaine, Iowa, non-directional beacon (NDB) located on the airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing these SIAPs at Belle Plaine, Iowa.

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

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE-530, Federal Aviation Administration, Docket No. 94-ACE-01, 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. 94-ACE-01." 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 Belle Plaine, Iowa, extending upward from 700 feet above the surface excluding that portion which overlies the Cedar Rapids, Iowa, Class E airspace. The development of new SIAPs at Belle Plaine Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB or VOR/DME-A SIAPs at Belle Plaine Municipal 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.

Section 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 Belle Plaine, IA [New]
Belle Plaine Municipal Airport, IA
(lat. 41°52'39.9" N, long. 92°17'07" W)
Belle Plaine, IA, NDB
(lat. 41°53'05.92" N, long. 92°17'03" W)
Cedar Rapids, IA, VORTAC
(lat. 41°53'15.12" N, long. 91°47'08.54" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Belle Plaine Municipal Airport,

Iowa, excluding that portion which overlies the Cedar Rapids, Iowa, Class E airspace.

* * * * *

Issued in Kansas City, Missouri, on January 21, 1994.

Herman J. Lyons,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 94-4000 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-ANM-47]

Proposed Modification of Class D Airspace; Moses Lake, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class D airspace for Grant County Airport by excluding the airspace overlying the Moses Lake Municipal Airport, Washington. This action would allow operations to and from the Moses Lake Municipal Airport without radio communication with the Grant County Airport Control Tower.

DATES: Comments must be received on or before March 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 93-ANM-47, 1601 Lind Avenue S.W., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 93-ANM-47, 1601 Lind Avenue S.W., Renton, Washington, 98055-4056; Telephone (206) 227-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the

airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANM-47." 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 at the Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington 98055-4056 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, 1601 Lind Avenue SW., Renton, Washington 98055-4056. 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 modify the Class D airspace for Grant County Airport, WA. The reclassification of airspace which became effective September 16, 1993, encompassed the Moses Lake Municipal Airport. The FAA endeavors to exclude satellite airports located within Class D Airspace where safety would not be substantially compromised. This action would avoid any adverse impact on the Moses Lake Municipal Airport and simplify ATC coordination responsibilities between the primary and the satellite airport. The coordinates for this airspace docket are based on North American Datum 83. Class D designations 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 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 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 5000 General

* * * * *

ANM WA D Moses Lake, WA [Revised]
Moses Lake, Grant County Airport, WA
(lat. 47°12'28" N, long. 119°19'13" W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 5.7-mile radius of the Grant County Airport, excluding that airspace within an area bounded by a line beginning at lat. 47°11'31" N, long. 119°10'59" W., to lat. 47°09'59" N., long. 119°14'55" W., to lat. 47°07'34" N., long. 119°14'55" W., thence counterclockwise via a 5.7 mile radius of the Grant County airport to beginning. 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 Seattle, Washington, on February 2, 1994.

Temple H. Johnson,
Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-4004 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-ANM-42]

Proposed Amendment of Class E Airspace; Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Portland, Oregon, Class E airspace. This action is necessary to accommodate a new instrument approach procedure at the Portland International Airport. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," replacing it with the designation "Class E airspace." The airspace would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 93-ANM-42, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 93-ANM-42, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANM-42." 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 at the address listed above 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, ANM-530, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on 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 amend the Class E airspace at Portland, Oregon, to accommodate a new instrument approach procedure at the Portland, Oregon International Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," replacing it with Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993).

Class E airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 6003 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 17 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations 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 Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM OR E5 Portland, OR [Revised]
Portland International Airport, OR
(lat. 45°35'19" N., long. 122°35'51" W.)
Newburg VORTAC, OR

(lat. 45°21'11" N., long. 122°58'41" W.)
Corvallis VOR/DME, OR
(lat. 44°29'58" N., long. 123°17'37" W.)
McMinnville Municipal Airport, OR
(lat. 45°11'40" N., long. 123°08'06" W.)

That airspace extending upward from 700 feet above the surface within a line beginning at lat. 45°59'59" N., long. 123°30'04" W; to lat. 45°59'59" N., long. 122°07'50" W; thence via a 6.25-mile radius centered at lat. 45°54'50" N., long. 122°02'50" W clock-wise to lat. 45°49'40" N., long. 121°58'00" W; thence via a line to lat. 45°46'30" N., long. 122°04'00" W; south along long. 122°04'00" W; bounded on the south by lat. 45°09'59" N., and on the west by long. 123°30'04" W, and within a 4.3-mile radius of the McMinnville Municipal Airport and within 2 miles each side of the Newburg VORTAC extending from lat. 45°09'59" N., to 19.8 miles southwest of the Newburg VORTAC; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 46°30'29" N., extending from 2.7 miles offshore to V-25, and on the east by V-25, on the south by V-536 to Corvallis VOR/DME, thence via lat. 44°29'59" N., to a point 2.7 miles offshore, and on the west by a line 2.7 miles offshore to the point of beginning.

* * * * *

Paragraph 6003 Class E Airspace Areas Designated as an Extension to a Class C Surface Area

* * * * *

ANM OR E3 Portland, OR [Revised]
Portland International Airport, OR
(lat. 45°35'19" N., long. 122°35'51" W.)
Battleground VORTAC, WA
(lat. 45°44'52" N., long. 122°35'26" W.)
Portland VOR/DME, OR
(lat. 45°35'37" N., long. 122°36'23" W.)
Laker NDB, OR
(lat. 45°32'29" N., long. 122°27'44" W.)
OM
(lat. 45°37'24" N., long. 122°41'48" W.)
Pearson Airpark, WA
(lat. 45°37'14" N., long. 122°39'30" W.)

That airspace extending upward from the surface within 1.8 miles each side of the Battleground VORTAC 180° radius extending from the 5-mile radius of Portland International Airport to 3.1 miles south of the VORTAC and within 2.2 miles each side of the Portland Runway 10R ILS localizer west course extending from the 5-mile radius of the airport to 0.9 miles west of the OM; and that airspace within 3.8 miles each side of the Portland VOR/DME 055° radial extending from the 5-mile radius of the airport to 19 miles northeast of the VOR/DME; and that airspace within 1.8 miles north and 2.7 miles south of the 299° bearing from the Laker NDB, excluding that airspace west of the east bank of the Willamette River; and excluding the airspace within the Portland-Troutdale, OR, Class D airspace area during the dates and times it is effective.

* * * * *

Issued in Seattle, Washington, on January 31, 1994.

Temple H. Johnson,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-4005 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 121

[Docket No. 27532; Notice No. 94-4]

RIN 2120-AF34

Extension of Compliance Date for Installation of Digital Flight Data Recorders on Stage 2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to change the final compliance date for installing improved (11-parameter digital) flight data recorders from May 26, 1994, to the next heavy maintenance check, but no later than May 26, 1995, in Stage 2 airplanes subject to the rules requiring a transition to an all Stage 3 fleet. This change would allow carriers more time to take actions necessary to retrofit Stage 2 airplanes, and would make the flight data recorder replacement rule more compatible with the noise transition requirements without having a significant impact on safety.

DATES: Comments must be received by March 25, 1994.

ADDRESSES: Comments on this notice should be mailed, in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 27532, 800 Independence Avenue, Washington, DC 20591. Comments delivered must be marked Docket No. 27532. Comments may be examined in room 915G weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8096.

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. Comments relating to

the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received 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 substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27532." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

On March 25, 1987, the FAA promulgated a final rule that requires operators, by May 26, 1994, to install improved (11-parameter digital) flight data recorders on all airplanes type certificated on or before September 30, 1969, and operated under part 121 of the Federal Aviation Regulations (52 FR 9622). The final rule, § 121.343(c), was issued in response to a recommendation from the National Transportation Safety Board that was based on accident/incident files for January 1983 to February 1986 that revealed a high

failure rate for metal foil flight recorders. The data revealed that 37 recorders (48 percent) had one or more malfunctioning parameters preceding the accident or incident, preventing the recording or readout of pertinent data.

Air Transport Association's Petition for Exemption

In August 1991, the Air Transport Association (ATA) petitioned the FAA for an exemption from § 121.343(c). The ATA stated that the compliance date for the digital flight data recorder (DFDR) retrofit was inappropriate when considering the schedule for either retrofitting airplanes with noise abatement equipment or retiring airplanes in order to comply with the Stage 3 transition mandated in September 1991 (56 FR 48628, September 25, 1991). The FAA denied the ATA exemption request, stating that the Stage 3 transition rule did not mandate the retirement of any Stage 2 airplanes. The FAA pointed out that noise abatement equipment was expected to be available for virtually the entire active fleet.

In June 1992, the ATA again requested that the FAA extend the May 26, 1994, DFDR compliance date for its members and similarly situated operators. In the alternative, the ATA requested that the FAA establish a delayed DFDR retrofit schedule that coincided with the Stage 3 transition interim compliance dates to avoid having to install new DFDR's on airplanes that were scheduled to be retired. The ATA asserted that the compliance deadline would require its members to install DFDR's on Stage 2 airplanes that would be retired within 5½ years of the May 1994 compliance date to remain in compliance with the part 91 noise operating rule. The ATA asserted that this DFDR retrofit requirement for Stage 2 airplanes would impose substantial costs on them with little perceived benefit.

The ATA cited several factors in support of its petition, including the estimated cost of DFDR retrofit, the cost and lead time in accomplishing the engineering work to support the retrofit, the impact of retiring Stage 2 airplanes that were DFDR retrofitted, the required review of agency rules to insure that benefits are maximized, and the argument that flight data recorders do not enhance aircraft safety. The ATA concluded that the DFDR retrofit would no longer be viewed as cost beneficial because of the noted events and circumstances that have occurred since the rule was promulgated in 1987.

A summary of the petition was published in the *Federal Register* on

August 12, 1992. Two comments were received, both of which opposed the petitioner's request.

A DFDR manufacturer opposed the exemption, citing the number of unsolved accidents, the extended life of commercial airplanes, and the possibility of further expenses associated with a delay in compliance with § 121.343(c) as its reasons for opposing the exemption.

The National Transportation Safety Board (NTSB) opposed the exemption because (1) it would delay the safety benefits to be gained by the DFDR retrofit; (2) the need for and safety benefits of having 11-parameter recorders were well established; and (3) linking the DFDR requirement to the operating noise rules of part 91 could result in non-complying aircraft being flown beyond the year 2000.

On January 29, 1993, after considering all the data presented by the ATA and the commenters, the FAA determined that a grant of exemption was justified and in the public interest. Exemption No. 5593 permits ATA members to operate certain Stage 2 airplanes equipped with DFDR's that have 6 rather than 11 operational parameters. Operation is allowed subject to certain conditions and limitations, including the requirement that air carriers submit a list of their Stage 2 aircraft that will be retired by December 31, 1998. The terms of the exemption allow non-ATA air carriers to apply for coverage under the exemption if they are similarly situated.

On June 30, 1993, the FAA amended Exemption No. 5593 to clarify certain conditions that were being misinterpreted.

Air Transport Association's Petition for Rulemaking

On November 17, 1993, the ATA submitted a petition for rulemaking to amend § 121.343. The ATA states that the previously granted exemption does not provide the scope of relief necessary for its members and similarly situated air carriers, and that a change to the rule is necessary.

The ATA requests that § 121.343(c) be amended to reflect the following:

1. Installation of 11-parameter DFDR's be required only for those airplanes that will be in the fleet beyond December 31, 1999.

2. Installation of 11-parameter DFDR's in those airplanes (those that will remain in the fleet beyond December 31, 1999, including Stage 3 airplanes) would be accomplished on a phased compliance schedule with the option of retiring or retrofitting a percentage of the operator's fleet as follows:

After December 31, 1994, at least 25 percent of the Operator's fleet on U.S. operations specifications that do not have the 11-parameter DFDR installed must be retired or have the 11-parameter DFDR installed;

After December 31, 1996, at least 50 percent must be retired or have the 11-parameter DFDR installed;

After December 31, 1998, at least 75 percent must be retired or have the 11-parameter DFDR installed;

After December 31, 1999, 100 percent must be retired or have the 11-parameter DFDR installed.

As justification for this proposed change, the ATA states in its petition that, if 10 of its operators were to comply with the retrofit requirements of § 121.343(c) by May 28, 1994, the cost would exceed \$29 million. The ATA petition does not specify how these costs were computed, or what portion applies to aircraft that would be retired. The ATA does state that if non-ATA-member carriers were considered, the cost estimate would be at least double.

The ATA also states that the change is justified by problems with the technical requirements of DFDR installation. The ATA notes that retrofit instructions and parts do not yet exist for all aircraft currently in the fleet. These engineering specifications and retrofit kits can cost up to \$250,000 per aircraft type to develop, require a 40-week lead time, and must undergo FAA approval. The petition does not give any detail as to the number or type of airplanes affected by these circumstances.

The ATA also restated the justifications presented in its original petition for exemption, including the variable fleet plans of carriers and the fact that the presence of an 11-parameter DFDR on an airplane does not make the operation of that airplane any safer.

In January 1994, to further support its petition, the ATA presented updated information indicating that conditions in the industry have changed further, and that meeting the May 26, 1994, compliance date would be impossible for a significant number of Stage 2 airplanes because of changes in fleet plans, and equipment availability and certification difficulties. A copy of the updated data presented by the ATA has been placed in the docket.

The FAA has reviewed the ATA proposal in detail and is unable to support it for several reasons.

The FAA acknowledges that an economic burden results from the inconsistent timing of the Stage 3 transition rule and DFDR rule requirements, that these burdens affect part 121 operators to varying extent, and

that relief is needed that is beyond the scope of the current exemption. However, the ATA petition seeks to include all aircraft currently in the fleet, whether Stage 2 or Stage 3. The noise transition rule does not affect Stage 3 airplanes currently in the fleet; their status has not changed since the time the DFDR rule was adopted in 1988, and the ATA has presented no justification why these aircraft should be included in any relief.

Further, the ATA has repeatedly argued that its member carriers revise their fleet plans on a weekly basis. However, in its petition, the ATA proposes that aircraft that would leave an operator's fleet by December 31, 1999, would not have to be DFDR retrofitted, and that those that will remain will be phased into DFDR compliance.

The FAA finds it difficult to reconcile these two positions. The ATA proposal would require every affected operator to engage in considerable fleet planning if it is to know in advance which aircraft need not be retrofitted because they will not be in the operator's fleet after 1999. The same would be true of any attempt to retrofit any percentage of a fleet by specific dates. Given the admitted constant shifts in fleet plans, the FAA has determined that to make full use of a rule such as that proposed by the ATA would require complete flexibility for the operator and thus would make compliance almost impossible to monitor or establish at any given time.

Further, the ATA petition is unclear in its starting point for individual operator's fleets. Given the changing fleet plans of operators, the FAA was unable to determine when there would be a "count" of airplanes from which to measure percentage compliance, or how that percentage would be affected by aircraft movements in and out of an individual fleet.

However, as stated previously, the FAA acknowledges that some relief is needed from the combined impact of the Stage 3 transition and DFDR retrofit rules and the current equipment availability problems, at least as far as Stage 2 airplanes are concerned. Accordingly, the FAA is proposing to amend § 121.343(c) to provide some relief to part 121 operators. This proposal seeks to limit the financial burden for DFDR installation while recognizing that there is a safety benefit from the installation of 11-parameter DFDR's. The substance of the exemption granted to the ATA and other petitioning part 121 carriers would not be affected by this proposed extension of the compliance date; a carrier may choose to maintain exemption coverage

for that portion of its Stage 2 fleet listed on the Aircraft Retirement Schedule required by the exemption. Based on the outcome of this rulemaking action, however, the FAA will reexamine the exemption to ensure its continued legal applicability and compatibility with any changes made to § 121.343 and determine whether the date for submission on an Aircraft Retirement Schedule should be amended.

The Proposed Rule

The FAA proposes to extend the compliance date in § 121.343(c) for all Stage 2 airplanes subject to the Stage 3 transition rule (§ 91.801(c)). The proposed rule would require that the DFDR installation be accomplished at the next heavy maintenance check, but in no case later than May 26, 1995. The proposed extension would allow more flexibility in retrofit planning for those carriers that have experienced difficulty in obtaining engineering approval for DFDR retrofit designs, or an inability to obtain parts and installation services before the May 26, 1994, compliance date. This change may also function to bring carriers past the first interim compliance date of the Stage 3 transition rule, possibly eliminating the necessity for any airplanes to be DFDR retrofitted before they are removed from the fleet for noise compliance purposes, depending on the individual circumstances of the carrier.

The proposed rule would also require that by May 26, 1994, each carrier submit to the FAA a list of its Stage 2 airplanes that will be covered under by this proposed rule change, and evidence (i.e., a binding contract) that the carrier has ordered sufficient flight data recorder equipment to meet the May 26, 1995 compliance date, either by aircraft retirement or planned retrofit. This provision is designed to ensure that carriers take full advantage of the time provided by the proposal extension.

The proposed relief would be of economic significance to the industry and is consistent with recent recommendations from the National Commission to Ensure a Strong Competitive Airline Industry (Commission), a Presidential task force formed in April 1993 to make policy recommendations about the financial health and future competitiveness of the U.S. airline and aerospace industries.

In light of the Commission recommendations and the information submitted, the FAA has determined that the ATA has presented a persuasive case concerning the changing conditions and difficulties that carriers have encountered in attempting to meet the May 26, 1994, DFDR compliance date.

The FAA does not anticipate any significant impact on safety if this proposal is adopted. Flight data recorders, regardless of the number of operational parameters they record, have no direct effect on the safe operation of an airplane. The importance of flight data recorders lies in their ability to reveal the status and operational parameters of an airplane after it is involved in an accident or other incident. Depending on what is revealed, such data can be used as the basis for altering the operation or physical characteristics of similar airplanes. Thus, for the proposed rule to have a negative impact, one of the airplanes covered by it would have to be involved in an accident in the additional 1 year, and information essential to the determination of cause must be a part of one of the five additional parameters recorded on the upgraded DFDR but not on the currently required six-parameter flight data recorders.

The FAA has concluded that the chance of these particular circumstances occurring is remote. Further, the FAA has sought to limit this possibility by extending the compliance date only for Stage 2 airplanes, some of which are expected to leave the fleet by December 31, 1994, under the noise transition regulations. By requiring all other airplanes to comply with the DFDR rule as promulgated in 1987, the FAA seeks to maximize the benefit of DFDR installation.

The FAA stresses that all airplanes covered under the proposed extension must still be equipped with one or more approved flight data recorders that record those parameters specified in part 121. It is only the upgrade to 11-parameter DFDR's that would be extended for a limited number of airplanes. The FAA also stresses that the proposed relief would have no effect on compliance with the Stage 3 transition. The proposed relief would not be available for Stage 2 airplanes not subject to the Stage 3 transition rule, i.e., Stage 2 airplanes that weigh less than 75,000 pounds.

The proposed rule provision that requires DFDR installation at the time of the next heavy maintenance check after May 26, 1994, is the FAA's admonition to carriers that the agency expects DFDR installation to be accomplished at the earliest feasible time. A "heavy maintenance check" is considered to be any occasion on which the airplane is taken out of service for 4 or more days for maintenance; the FAA recognizes that carriers may have different terminology to describe this concept, and the term "heavy maintenance

check" as used in this proposal is not meant to describe a specific recognized circumstance or event.

In petitioning for an exemption from § 121.343(c), the ATA based its argument of cost without benefit on the regulations requiring the transition to an all Stage 3 fleet. In granting the requested exemption, the FAA emphasized that the Stage 3 transition rule does not require the retirement of any Stage 2 airplanes. The exemption was thus limited to those aircraft that operators actually planned to retire rather than retrofit to meet Stage 3 noise levels. However, the operators indicated that the equipment usage and retirement plans mandated by the granted exemption were incompatible with both fleet planning capabilities and the less restrictive compliance requirements of the Stage 3 transition rule.

The FAA acknowledges that the relief proposed here is not as broad as that described in the ATA petition. The FAA seeks comment from affected operators on the extent to which this proposed extension will relieve recent problems experienced in DFDR retrofits of Stage 2 airplanes. The FAA specifically requests economic data that details the costs of compliance with the current May 1994 compliance date and any costs savings anticipated from the extension proposed here. Comments that contain information concerning any quantifiable impact on safety in delaying compliance are also requested.

The FAA stresses that carriers should not consider the extension as a period of deferred retrofit action. The FAA does not anticipate granting any further relief from the DFDR requirements for any airplanes beyond that proposed here. The DFDR rule was promulgated in 1987 and should have been incorporated into fleet planning by part 121 operators. The FAA acknowledges that circumstances such as the Stage 3 transition rules require some reconsideration of rule impacts, and in light of the reported difficulties in obtaining the necessary equipment and support to comply with the DFDR rule, this extension is an example of the kind of relief that the FAA considers to be justified. To date, no other substantial, quantifiable data has been presented to support further delay in compliance with the DFDR regulation.

Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under

OMB No.: New.

Title: Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft.

Proposed Use of Information: Compliance enforcement.

Frequency: One time per carrier.

Burden estimate: \$25 per air carrier.

Respondents: Approximately 50 part 121 air carriers with Stage 2 aircraft.

Form(s): Not applicable.

Average Burden hours per respondent: 1/2 hours.

For further information, contact: The Information Management Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4735. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for Federal Aviation Administration. It is requested that comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

Regulatory Evaluation Summary

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this proposed rule is not a "significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review). The results are summarized in this section.

The proposed rule, by extending the compliance date by up to 1 year, would allow for the installation of DFDR to coincide with the installation of noise suppression kits for those aircraft that are affected by the December 31, 1994, noise compliance date. The current exemption limits the relief from the current deadline for installing DFDR on Stage 2 airplanes that will be retired by the end of the decade, leaving aircraft intended for retrofitting with noise suppression equipment subject to the current deadline of May 1994. Any aircraft that are scheduled for retirement by the end of the decade for which an exemption has not been obtained would also be subject to this deadline.

The potential benefits of this rule change would be the cost savings realized by the operators of Stage 2 aircraft in part 121 service that plan to

retrofit these aircraft with noise suppression equipment or have not received an exemption for those Stage 2 aircraft they plan to retire by the end of the decade. The proposal would afford these operators up to an additional year in which to install the required DFDR equipment. Operators that were planning to retrofit their aircraft with noise suppression equipment before May 1995 would derive the greatest cost savings because DFDR retrofit could be accomplished at the same time that the aircraft was being retrofitted with noise suppression equipment. Therefore, no additional non-routine downtime would be required for the upgraded DFDR retrofit.

The amount of the potential cost savings accruing to operators planning to retrofit their aircraft prior to the proposed May 1995 deadline was estimated using industry data. Information provided to the FAA by ATA members indicates that the installation of upgraded DFDR's could require from 2 to 5 days of downtime per airplane, depending on the type of equipment. The major passenger carriers responding to the ATA survey estimated the costs of this downtime from \$14,000 to \$26,000 per day per airplane. The FAA forecasts that about 250 Stage 2 aircraft will be retrofitted with noise suppression equipment over the next 1 1/2 years. Operators of these aircraft could therefore expect cost savings of between \$10 million (based on 2 days of downtime per aircraft and an average cost of \$20,000 per day) and \$25 million (based on 5 days of downtime per aircraft and a cost of \$20,000 per unit) from this proposal. The FAA solicits comments from the industry regarding the cost savings expected from the avoidance of additional downtime solely for the purpose of retrofitting aircraft with upgraded DFDR's.

Operators planning to retrofit their Stage 2 airplanes with noise suppression equipment after May 1995 would not receive as great a benefit in terms of reduced downtime, however, because the additional 1 year afforded by this proposal may not be enough for them to avoid any non-routine downtime. Nevertheless, these operators would be able to benefit from the opportunity to delay incurring installation costs for the upgraded DFDR equipment by up to one year, the value of which is calculated in the following paragraph. Available FAA data indicates that about 490 Stage 2 aircraft would fall in this category. The FAA solicits data from the industry regarding the amount of non-routine downtime that could be avoided if the operators of these aircraft were afforded the proposed additional

year to comply with the upgraded DFDR requirements.

The FAA was able to estimate the opportunity cost of capital savings that operators could expect from being able to delay incurring the expense of installing upgraded DFDR equipment by up to 1 year. Responses from a survey of its members conducted by the ATA indicated that the installed cost of the equipment would range from \$20,000 to \$40,000. Given the expected rate of return on capital of 7 percent that is mandated by the Office of Management and Budget (OMB), the FAA estimates that the opportunity cost savings expected to result from the proposal would amount to about \$1.03 million, using the midpoint of the expected range of equipment installation costs (.07 x \$30,000 x 490 aircraft). The FAA solicits comments from part 121 air carriers regarding the expected impact of the proposed regulatory relief on their costs of compliance, including the number of airplanes to which this relief would apply. Information pertaining to the scheduling of these retrofits would also be useful in calculating the cost savings.

A number of operators that plan to retire their Stage 2 aircraft over the next 5 years have not taken advantage of the previously granted exemption from the upgraded DFDR requirement. Those operators of aircraft that plan to remove from service some airplanes by the December 31, 1994 noise transition compliance deadline and that are not using the exemption could also benefit from this proposal. Extension of the DFDR deadline would allow them to forego installing upgraded DFDR equipment on some aircraft that would otherwise be retired within 7 months of the installation.

The proposed rule change would impose only a minimal cost on society in the form of a reduction in safety because of the extremely low probability that one of the 740 airplanes potentially affected by this rule will have an accident (which would not be prevented by the new 11-parameter DFDR) during the additional 1 year. Moreover, if there were an accident involving these Stage 2 airplanes, the causes of such an accident would have to be determinable only with the additional data provided by an upgraded DFDR. For a safety benefit to be realized, this information would have to be used in rulemaking or some other agency action that would prevent a second future accident with a chain of causation closely resembling that of the first accident. The resulting probability of these two hypothetical accidents actually occurring, assuming the proposal goes into effect, is

considerably less than the already remote possibility that one of the 740 affected aircraft would have a serious accident over this time frame. The FAA calls for comments on the extent of the potential reduction in safety that could result from this proposal.

The proposal would also require that each air carrier submit to the FAA documentation listing those Stage 2 aircraft scheduled for retrofit as well as evidence that it has ordered a sufficient number of flight data recorders to meet the May 26, 1995, compliance date for all aircraft on the list. The FAA has estimated that this paperwork information requirement would cost each affected air carrier about \$25. The total cost of this provision would therefore not appreciably alter the overall balance between the costs and benefits of the proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The proposed rule is of a cost relieving nature and would therefore afford cost savings to individual part 121 operators.

Under FAA Order 2100.14A, the criterion for a "substantial impact" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. For operators of aircraft for hire, a small operator is one that owns, but does not necessarily operate, nine or fewer aircraft. This proposal would mainly affect part 121 scheduled operators, although some unscheduled operators could be affected as well. The FAA's criterion for a "significant impact" is \$116,300 or more per year for a scheduled operator whose entire fleet has a seating capacity of 60 seats or more, \$65,000 for a scheduled operator with a fleet including smaller aircraft, and \$4,600 or more for an unscheduled operator.

The extent of the annualized cost savings per aircraft resulting from the opportunity cost of capital that would be saved (i.e., what could be earned on alternative investments) would be \$2,100 per aircraft, based on the assumptions used in calculating the potential total cost savings resulting from this factor in the previous section (.07x\$30,000). A scheduled carrier with a fleet of smaller aircraft would therefore need to convert well over nine aircraft to exceed its threshold value of \$65,000, in which case it would not be

regarded as a small entity. A scheduled carrier with a fleet of larger aircraft would have to convert even more aircraft to exceed its threshold of \$116,300. The threshold value for an unscheduled operator is only \$4,600, however, as noted above. A carrier would therefore, only have to convert three airplanes to exceed this threshold, using the estimate of cost savings derived above. To make a determination of a "significant economic impact," the FAA needs information pertaining to the number of Stage 2 aircraft that small unscheduled operators are planning to retrofit with noise suppression equipment. The FAA therefore requests that affected part 121 operators provide information pertaining to the number of aircraft involved and the potential reduction in compliance costs per aircraft.

International Trade Impact Assessment

OMB directs agencies to assess the effects of regulatory changes on international trade. The proposed rule will affect only U.S. air carriers because foreign carriers are not subject to part 121. The economic analysis of the final rule mandating that aircraft receiving an original type certificate before September 30, 1969, install DFDR's capable of recording the required number of parameters by May 1994 concluded that there would not be any trade impact. Therefore, the provision of relief from the original rule in the form of a deadline extension is not expected to have any impact on international trade.

Federalism Implications

The proposed rule 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 12866, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization to the maximum extent practicable. The FAA is not aware of any differences that this proposal would present if adopted. Any differences that

may be presented in comments to this proposal, however, will be taken into consideration.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, 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. This proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Aviation safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 121 of the Federal Aviation Regulations as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. Section 121.343 is amended by revising the first sentence of paragraph (c) and adding a new paragraph (l) to read as follows:

§ 121.343 Flight recorders.

* * * * *

(c) Except as provided in paragraph (l) of this section, no person may operate an airplane specified in paragraph (b) of this section unless it is equipped, before May 26, 1994, with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium.

* * * * *

(l) No person may operate an airplane specified in paragraph (b) of this section that meets the Stage 2 noise levels of part 36 of this chapter and is subject to § 91.801(c) of this chapter unless it is equipped with one or more approved

flight data recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The information specified in paragraphs (c)(1) through (c)(11) of this section must be able to be determined within the ranges, accuracies and recording intervals specified in appendix B of this part. In addition—

(1) This flight data recorder must be installed at the next heavy maintenance check after May 26, 1994, but no later than May 26, 1995.

(2) By May 26, 1994, each carrier must submit to the FAA documentation listing those airplanes covered under this paragraph and evidence that it has ordered a sufficient number of flight data recorders to meet the May 26, 1995 compliance data for all aircraft on that list.

(3) After May 26, 1994, any aircraft that is modified to meet Stage 3 noise levels must have the flight data recorder described in paragraph (c) of this section installed before operating under this part.

Issued in Washington, DC, on February 17, 1994.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 94-4014 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-M

POSTAL SERVICE

39 CFR Part 111

Classification of Computer-Readable Periodical Publications

AGENCY: Postal Service.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Postal Service seeks comments from interested parties concerning the possible admissibility of periodicals produced on electronic media into second-class mail. This request for comments is prompted by the increasing usage of these electronic media, and may lead to a change in the requirement that second-class mail be formed of printed sheets.

DATES: Comments must be received by April 11, 1994.

ADDRESSES: Address all comments to the Manager, Publications, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260-2409.

FOR FURTHER INFORMATION CONTACT: Lyn E. Seidler, (202) 268-2261.

SUPPLEMENTARY INFORMATION: The Postal Service has noted that a number of publications which currently have

second-class mailing privileges are also available to subscribers in alternate media, such as floppy diskettes and CD-ROMs. These alternate media, even if containing exactly the same information that is available in the paper version of the second-class publication, are not currently eligible for second-class mailing privileges because the Postal Service has interpreted the requirement that "second-class must be formed of printed sheets" to exclude this material. (See section 200.0103 of the Domestic Mail Classification Schedule, reprinted in 39 CFR part 3001, subpart C, appendix A.) While current usage of these alternate media appears to be limited, it is expected that future usage will increase. It is also expected that new types of information not available in traditional second-class publications (e.g., videos or musical accompaniment) will become available in these alternate media, and that new ways of presenting and using this information may make simple analogies to traditional second-class publications more difficult.

The Postal Service believes it might be useful at this time to review the printed sheet requirement pertaining to the mailing of second-class publications and other aspects of the classification of non-print media. Commenters should keep in mind that the other requirements for second-class matter have not been identified for reconsideration at this time. These requirements include that the matter must be originated and published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry; that it must be issued at stated intervals no less than four times per year; that there be limited advertising in issues; and that there be a list of subscribers/requesters, as applicable.

Options available for the classification of non-print media include, but are not limited to:

1. Allowing publications in non-printed sheet formats to be mailed at second-class rates, if they meet all other current requirements of second class.

2. Requiring matter not on printed sheets to be mailed at non-second class rates, such as first-, third-, or fourth-class mail.

3. Allowing only some material, in highly specific formats (such as 100% non-advertising content), to be eligible for second-class rates.

4. Establishing an entirely new classification (class, subclass or rate category) to meet the service and pricing needs of mailers of non-printed sheet publications.

Therefore, in view of the foregoing, the Postal Service requests from interested parties, comments and proposals on the following subjects:

1. How are publications on diskette or CD-ROM currently mailed or distributed (e.g., via first-class mail, third-class mail, alternate delivery services, etc.)?

2. Should publications in non-printed sheet formats be eligible for second-class?

a. Would allowing formats other than printed paper sheets maintain the integrity of second-class?

b. Should computer diskettes and CD-ROMs be considered "printed sheets?"

c. If formats other than printed sheets are to be allowed, should these formats be limited to computer diskettes and CD-ROMs, or should other formats be eligible? What would these other formats be?

d. If additional formats are to be eligible, would the material have to meet the other existing criteria for second-class eligibility, such as periodicity?

e. Should second-class eligibility be limited to media that contain information nearly identical to the paper-based issues already eligible for second class? For example, should publications containing audio or video segments be excluded? If they are not to be excluded, how are they to be measured for postage computation purposes? How much or what kind of variance between the paper and non-paper formats would be appropriate?

f. If additional formats are allowed, there may be an impact, either positive or negative, on postal handling and administrative costs, and subsequently, rates. Therefore, should there be additional machinability and/or preparation requirements for the new formats?

g. How should the Postal Service handle the determination and verification of advertising percentage, postage, weight, and other factors that are physically measurable with printed sheets? Given industry trends, is it likely that publications in additional formats will evolve in such a way as to make both editorial and advertising content increasingly difficult to measure?

h. Should mixed formats be allowed in a mailing (e.g., paper and CD-ROM)?

3. If any commenter believes that the Postal Service should request a recommended decision from the Postal Rate Commission to establish a new classification (class, subclass or rate category) that would include materials in electronic formats that may or may not meet the current requirements for

second-class publications, such as periodicity or a subscriber/requester list, the commenter is asked to also comment on the following:

a. If a new rate category were to be established, what are the current and anticipated future rate and service requirements for materials in additional formats? For example, within how many days of issue do they need to be delivered locally, nationally, etc.?

b. What should be eligible for this new classification? Should eligibility be limited to publications, or should other items in electronic format be included?

c. Should this classification be a new class, subclass or rate category?

The Postal Service will evaluate the comments and proposals received in response to this notice and issue a notice of proposed rulemaking if it determines that such action is appropriate.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94-3920 Filed 2-22-94; 8:45 am]

BILLING CODE 7710-12-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM91-1]

RIN 3209-AA04, 3209-AA15 and 3211-AA00

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking; public comment period.

SUMMARY: This serves as notice of, and a request for, comments on proposed changes to the Commission's rules of practice and procedure that the Commission is considering for adoption. The proposed rules evolved out of the Commission's Docket RM91-1 proceeding. Participants to that proceeding developed specific proposals for improvements to the Commission's rules of practice. Adoption of these proposed rules is expected to enhance the efficiency of Commission proceedings and ease the burdens on participants in Commission proceedings.

DATES: Written comments responding to this document must be submitted on or before April 4, 1994.

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

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Legal Advisor,

Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: The Commission's Office of the Consumer Advocate (OCA) has filed a motion requesting that the Commission consider a Stipulation and Agreement on proposed changes to the Commission's rules of practice and procedure. All documents relating to the RM91-1 proceeding are available for public inspection at the Commission's H Street offices.

The proposed rule changes resolve some, but not all, of the outstanding issues in this proceeding. Fifteen participants support proposed changes to the Commission's Rules of Practice and Procedure, 39 CFR 3001, which would alter the service requirements applicable to requests for written discovery and the answers thereto; restrict transcript corrections to material, substantive errors; require limited participants to respond to discovery requests specifically directed to testimony they sponsor; alter production specifications relating to margins, line spacing and choice of typeface; and allow a ten-day grace period for filing signature pages to interrogatory responses under specified conditions. Additionally, nine participants support adding a new rule 10(d), 39 CFR 3001.10(d), which would require that certain documents be filed in electronic form (on diskettes) within five working days of their being formally filed in hard copy. Adoption of these proposed rules is expected to enhance the efficiency of Commission proceedings and ease the burdens on participants in Commission proceedings.

Punctuation within the attachment to the Stipulation and Agreement might be interpreted to propose elimination of certain provisions not discussed in the motion. It is the understanding of the Commission that there was no intent to propose changes other than those explained in the proposed Stipulation and Agreement. To avoid any possible misunderstandings, the full text of affected subsections, as they would appear if the changes proposed herein were adopted, are set forth below. Additionally, to improve clarity, an article has been added to the next to last sentence in Rule 26(c), 39 CFR 3001.26(c).

One of the signatories to the Stipulation and Agreement, McGraw-Hill, Inc., also filed a comment noting that the language describing the service requirements of discovery questions and objections differed from the language in

the rules applicable to service requirements for discovery answers and compelled answers. Compare for example proposed rule 25 (a)(c), with rule 25(b)(d). The comment indicates that parties to the Stipulation intended that the rules for service of discovery requests, answers, objections, and compelled answers be identical. Conforming adjustments have not been proposed at this time to allow interested persons to comment on the specific language submitted in the Stipulation. Absent comments in opposition submitted in response to this notice, conforming changes would be made in the final rule to reflect that, for documents described in rules 25, 26, and 27, special requests for service will be honored; and the final sentence in proposed rule 12(b), 39 CFR 3001.12(b) would be changed to read as follows:

Special requests for service are used for obtaining service of discovery requests and answers, and any objections and compelled answers related thereto. Participants may serve special requests for service on any other participant requesting service of discovery requests directed to specified witnesses or participants; or answers provided by specified witnesses or that participant.

Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. 605(b) that these rules will not have a significant impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. 501 *et seq.* It has also been determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. These rules do not contain any information collection requirements as defined in the Paperwork Reduction Act, 44 U.S.C. 3502(4), and consequently the review provisions of 44 U.S.C. 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 3001 is proposed to be amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 84 Stat. 759-762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

Subpart A—Rules of General Applicability

2. Section 3001.10 would be amended by revising paragraph (a) and by adding paragraph (d) to read as follows:

§ 3001.10 Form and number of copies of documents.

(a) *Production.* If not printed, documents filed with the Commission shall be produced on paper of letter size, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than 0.75 inches, except tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. The impression shall be on only one side of the paper unless there are more than ten pages. The text shall be not less than one and one-half spaced except that footnotes and quotations may be single spaced. Any typeface not smaller than 12 pt may be used. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service may be reproduced by any duplicating process that produces clear and legible copies.

(d) *Electronic filings.* (1) All testimony, exhibits, workpapers, library references, briefs and reply briefs which have been prepared on a computer or word processor shall be filed as diskettes (or otherwise electronically transmitted to the Commission) within five business days of the initial filing of the hard copy.

(2) Diskettes filed pursuant to paragraph (d)(1) of this section may be provided in any widely-used format. The preferred formats are IBM-PC compatible diskettes in Word Perfect, Microsoft Word, ASCII text, Lotus (DOS 3.0 or later version), or DIF format. If these formats are not used to produce the initial hard copy, diskettes will be accepted in any format actually used. Documents which have been generated on a mainframe or minicomputer, for example, shall be converted to diskettes, if possible. In such cases as these, where a file translation program must be used to produce a PC-compatible diskette, reasonable conversion programs will satisfy the requirements of this section. If a party has generated hard copy of documents subject to this section on a computer other than a personal computer and lacks the capability of producing a PC-compatible diskette, the party must arrange for other means of conveying the information electronically. Recommended

alternatives to the filing of diskettes are transmission by modem or providing the information on magnetic tape.

(3) If documents are not prepared using electronic media, diskettes need not be created and filed. A party that generates documents subject to this section using non-electronic means is to file an affidavit or declaration so stating within five business days of the initial filing of the hard copy. The declaration or affidavit may be the statement of a witness, counsel or an official representative of the participant. Such an affidavit or declaration need be filed only once during the course of a proceeding, within five business days of the filing of the first document subject to this section.

(4) The Commission intends to file within five business days of their initial issuance in hard copy form diskettes of all documents issued by the Commission or the Presiding Officer. This includes Presiding Officer's rulings, Commission orders, notices of inquiry and other notices and Commission opinions and recommended decisions.

(5) Any changes or revisions to electronically-filed documents shall be filed on updated diskettes. The updated diskettes are to be filed within five business days of the initial filing of the hard copy of the revisions.

3. Section 3001.12 would be amended by revising paragraph (b) to read as follows:

§ 3001.12 Service of documents.

(b) *Service by the parties.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests as governed by §§ 3001.25 to 3001.27. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

4. Section 3001.20a would be amended by revising paragraph (c) to read as follows:

§ 3001.20a Limited participation by persons not parties.

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participants may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on

the same terms applicable to that of formal participants. Limited participants may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participants having substantially like interests and positions to join together for any or all of the above purposes. Limited participants are not required to respond to discovery requests under § 3001.25 through § 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participants provided in the proceeding; however, limited participants, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

4. Section 3001.25 would be amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 3001.25 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall serve a copy upon the Postal Service. Special requests for service by other participants shall be honored.

(b) *Answers.* Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The party responding to the interrogatories shall serve the answers on the party who served the interrogatories within 20

days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. The answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within ten days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. The party objecting to interrogatories shall serve the objections on the party who served the interrogatories within 10 days of the service of the interrogatories. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory and the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

6. Section 3001.26 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 3001.26 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her

behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to a request shall serve the objection on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request for production. Special requests for service by other participants shall be honored.

* * * * *

7. Section 3001.27 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 3001.27 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special

requests for service by other participants shall be honored.

* * * * *

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests for admissions shall serve the objections on the party requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request. Special requests for service by other participants shall be honored.

* * * * *

8. Section 3001.30 would be amended by adding paragraph (i) to read as follows:

§ 3001.30 Hearings.

* * * * *

(i) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription of oral statements made at the hearing.

Issued by the Commission on February 15, 1994.

Charles L. Clapp,
Secretary.

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BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN13-1-5623; FRL-4840-8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a revision to the Minnesota State Implementation Plan (SIP) for new source review in nonattainment areas, submitted to meet longstanding requirements as well as new requirements imposed by the Clean Air Act Amendments of 1990. This revision consists of the State Rules 7005.3010 through 7005.3060, which incorporate

by reference the new source review requirements specified in appendix S to title 40 Code of Federal Regulations part 51 (40 CFR part 51), "Emission Offset Interpretive Ruling," except for the deletion of unacceptable exemptions included in appendix S. Final approval of this revision would lift the current ban on permitting major sources and major modifications in Minnesota nonattainment areas.

DATES: Comments on this proposed action must be received in writing by March 25, 1994.

ADDRESSES: Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section (AE-17), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886-6067, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

Part D of title I of the Clean Air Act sets forth SIP requirements for nonattainment areas. Section 173 and the various subparts of title I contain the program requirements for the review and issuance of permits for the construction of major new sources and major modifications in a nonattainment area. Currently, Minnesota has no approved nonattainment area permitting program. On August 5, 1992, and August 26, 1993, Minnesota submitted revised new source review regulations for the purpose of meeting these requirements.

The statutory requirements that apply to State regulations for new source review in nonattainment areas are set forth at part D of title I of the Clean Air Act, particularly in sections 172(c)(5) and 173. Federal regulations developed prior to enactment of the Clean Air Act Amendments of 1990 for nonattainment area new source review programs are set forth at title 40 Code of Federal Regulations part 51 (40 CFR part 51), particularly 40 CFR 51.165. The Clean Air Act Amendments of 1990 also establish assorted new requirements, for which preliminary guidance was

published April 16, 1992 (57 FR 13498), and April 28, 1992 (57 FR 18070). For example, section 189(a)(1)(A) requires that sections 172(c)(5) and 173 be met for fine particulate matter nonattainment areas.

The Minnesota Pollution Control Agency (MPCA) has submitted general permitting regulations to USEPA on various occasions, including January 28, 1972; May 28, 1972; January 23, 1981; and January 7, 1985. USEPA approved the 1972 submittals on May 31, 1972; the 1981 submittal on May 6, 1982; and the 1985 submittal on May 13, 1988. However, these rules did not address the specific requirements for permitting new and modified major sources in nonattainment areas. Consequently, Minnesota has no approved nonattainment area permitting program, and the State continues to be subject to a prohibition against permitting major new sources and major modifications in the State's nonattainment areas, as promulgated by USEPA on July 2, 1979 (44 FR 38583). More recent MPCA submittals, which are the subjects of this proposed rulemaking, were intended to address the requirements for nonattainment area new source permitting and allow USEPA to lift the permitting prohibition.

MPCA has submitted SIP revisions for meeting the permitting requirements of part D on two previous occasions. MPCA's first submittal was on December 22, 1981. USEPA proposed conditional approval of this rule in the July 29, 1982, *Federal Register* (47 FR 32742). Minnesota used the plant-wide definition of source in its rule. Before final rulemaking could be published, the D.C. Circuit Court ruled against the plant-wide definition of source. This decision was later overturned (*Chevron, U.S.A., Inc. v. NRDC*, 104 S.Ct. 2778 (1984)), but USEPA never approved this SIP revision because of other concerns. This submittal was ultimately withdrawn, in an August 21, 1990, letter from the Commissioner of MPCA, and USEPA's proposed action on this submittal was withdrawn in the *Federal Register* of November 7, 1990 (55 FR 46829).

MPCA submitted its second revision for meeting the permitting requirements on March 13, 1989. In February 1990, USEPA provided MPCA with comments, stating that the rule would not be approved. In a February 24, 1992, letter, Charles W. Williams, Commissioner, MPCA, withdrew the March 13, 1989, submittal.

The current revisions being addressed in this rulemaking include State submittals of August 5, 1992, and August 26, 1993. These submittals

include State Rules 7005.3010 through 7005.3060 ("Offset Rule"). These rules incorporate appendix S to 40 CFR part 51 into these State rules, modified in response to recommendations by USEPA.

Section 173 of the Act identifies four essential requirements that State new source permit regulations must impose in nonattainment areas: (1) New source emissions must be offset by equivalent or greater emission reductions in the area, (2) the new source must have lowest achievable emission rates (LAER), (3) other sources owned by the owner or operator of the new source must be in compliance or on a schedule to achieve compliance with applicable regulations, and (4) the area must not be subject to a finding of failure to implement the SIP.

Incorporation of Appendix S

In general, adoption of appendix S of 40 CFR part 51 into the State's regulations serves to impose the requirements identified in section 173. Part IV. A. of appendix S provides multiple conditions for granting a permit, including a requirement for lowest achievable emission rates (requirement 2 above), a requirement for compliance of commonly owned sources (requirement 3 above), and a requirement for offsets (requirement 1 above). Although appendix S contains no provision prohibiting permits in "failure to implement" areas, USEPA has adequate authority under section 113(a)(5) to take any necessary action to address permits that violate this prohibition.

Nevertheless, the adoption of appendix S by reference as a State rule fails to satisfy permitting requirements under subpart I of 40 CFR part 51. In particular, appendix S exempts certain source types and is insufficiently clear on some issues. A letter from USEPA dated May 17, 1991, recommended the following modifications:

1. The requirement for LAER must apply to all new sources or modifications meeting the applicability requirements of 40 CFR 51.165.

Footnotes 4 and 5 must be deleted.

2. Requirements for offsets must be clarified to ensure that offsets are based on actual emissions as defined in 40 CFR 51.165(a)(3). This clarification must also be made in Part IV, section C. Footnote number 7 must be deleted.

3. Footnote 8, which provided an exemption from the requirement for net air quality benefit, must be deleted.

4. Section B of Part IV, which exempts certain source types, must be deleted.

5. Section C, paragraph 5, which allows "banking" of emissions offset

credits, must either be deleted or supplemented with approvable banking regulations.

Minnesota has made each of these modifications to its rules. Most of these modifications were included in the rule revisions submitted August 5, 1992. In addition, pursuant to communications from USEPA subsequent to the May 1991 letter, the State made further modifications, including deletion of the general provisions for banking.

Relationship to Subsequent Rule Revisions

At present, the rules in the Minnesota SIP governing permit processing are the Consolidated Permit Rules adopted by the State on July 24, 1984, and approved by USEPA on May 13, 1988 (53 FR 17033). The subject of today's rulemaking is a supplemental rule known as the "Offset Rule," which establishes the substantive requirements for new sources in nonattainment areas. Minnesota then adopted significant revisions to its regulations on permit processing on August 24, 1993, which it submitted for SIP rulemaking on November 23, 1993. The primary purposes of these regulations were to satisfy requirements in Title V of the Clean Air Act for a State operating permit program and to amend the new source permitting regulations to provide an integrated set of permitting regulations. In developing these regulations, the State incorporated language intended to address various concerns USEPA had identified with respect to the prior permitting rules.

Today's rulemaking does not address the approvability of the submittal of November 23, 1993. Nevertheless, this latter submittal is germane to this rulemaking, insofar as these more recent revisions assure that certain potential problems which could have arisen under the prior general permitting rules will not arise. It should be noted that the November 1993 submittal does not amend the rules under consideration in this action, i.e. the "Offset Rule" submitted by the State in August 1992 and amended in August 1993, but instead revises the general provisions in the Consolidated Permit Rules concerning permit processing. The following paragraphs identify the issues that were of concern and how the November 1993 submittal affects these issues.

The first issue was provision in the prior general permitting regulations for expiration of permits, and a concern that expiration of a permit could cause the construction permit conditions to expire. The State's general permitting regulations now define "Title I

conditions" to include conditions established to satisfy new source review requirements, and state that "[a]ny Title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit." Therefore, USEPA believes that requirements imposed on sources during new source review clearly do not expire as a result of permit expiration.

The second issue of concern was the authority granted in State law for the State agency to grant variances, including variances from Federal requirements. However, the revised general permitting regulations state that: (1) The State agency "shall not issue variances from any Federal requirement to obtain an air quality permit, unless explicitly authorized to do so in writing by [USEPA]," and (2) the State agency "shall issue a permit * * * only if [various conditions have been met including that] the permit does not reflect a variance from any federally enforceable applicable requirement * * *." For purposes of this action, these provisions render the second issue moot, insofar as the State agency no longer has the ability to grant variances from Federal requirements. Nevertheless, it is appropriate to state that USEPA believes that the statutory provision for variances is not being approved and that issuance of a variance from Federal requirements would be contrary to both State and Federal regulations and would have no bearing on enforcement of the applicable requirement.

The third issue of concern was that public notice for new source review permits was provided for only in a Memorandum of Understanding (MOU) containing several outdated references. The revised general permitting regulations provide public notification procedures and a 30 day public comment period. Minnesota has clearly committed itself both in the MOU and its regulations to continuing to provide for proper opportunity for public input into permitting decisions in accordance with USEPA requirements.

For all three of these issues, Minnesota has made clear through its revised general permitting regulations that the SIP as revised by the rule under consideration in this action would satisfy Federal requirements. Therefore, USEPA believes that the three issues discussed above are no longer impediments to today's proposed conclusion that Minnesota has satisfied nonattainment area permitting requirements.

The fourth issue of concern was whether Minnesota had satisfied the

requirement of 40 CFR 51.160(a) to assure that new sources do not interfere with attainment or maintenance of the air quality standards. The general permitting regulations in Minnesota's SIP require permits for facilities with emissions above 25 tons per year of any criteria pollutant except lead, or with more than 1/2 ton of lead emissions per year. (At such a facility, any modification would require a permit.) The recently submitted permitting rules raise some of these size cutoffs. In support of the raised cutoffs, the State's recent submittal includes a modeling analysis to show that the revised size cutoffs do not interfere with attainment or maintenance. A preliminary review indicates that this analysis adequately supports the size cutoffs in the current SIP. Consequently, USEPA believes that the general permitting rules in the SIP as supplemented by the Offset Rule satisfy 40 CFR 51.160(a). Nevertheless, USEPA is reserving judgment on the acceptability of the recently raised size cutoffs, which will be addressed in the context of rulemaking on the more recent submittal.

The fifth issue of concern pertained to a provision in the State's Rule 7001.0150 authorizing the State not to enforce "local laws, rules and plans." Although this provision clearly applies to local laws and not Federal laws, this provision is arguably ambiguous as to whether the State is authorized not to enforce Federal as well as local rules and plans. The recent rule revisions did not modify this provision. Nevertheless, the State's intent is presumably that the regulations only authorize nonenforcement of relevant local laws, local rules, and local plans. USEPA is expressly not proposing approval of any provision for State nonenforcement of Federal rules or Federal plans. USEPA solicits public comment on this element of the proposed approval.

USEPA has reviewed whether the new requirements in the Clean Air Act Amendments of 1990 have been satisfied. These new requirements include an analysis of alternatives, and a requirement for submitting information to the RACT/BACT/LAER Clearinghouse. The Amendments also introduce numerous new requirements that are not currently relevant to Minnesota, in part because the State has no ozone nonattainment areas. The TSD provides a more detailed discussion of the new requirements and how these requirements are addressed in Minnesota. The conclusion of this review is that Minnesota has satisfactorily addressed these requirements as they currently apply in the State.

USEPA is currently developing a rule to implement the changes under the Clean Air Act Amendments of 1990 in the new source review provisions in Parts C and D of Title I of the Act. The Agency anticipates that the proposed rule will be published for public comment in the spring or summer of 1994. If USEPA has not taken final action on Minnesota's new source review submittal by that time, USEPA may generally refer to the proposed rule as guidance regarding the approvability of the submittal. USEPA expects to take final action to promulgate a rule to implement the Parts C and D changes sometime during 1994 or 1995. Upon promulgation of those regulations, USEPA will review new source review SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rule.

Section 189(e) states that "control requirements applicable * * * for major stationary sources of PM₁₀ shall also apply to major stationary sources of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." On June 25, 1993 (at 58 FR 34397), USEPA proposed such a determination of the insignificance of particulate matter precursors in Minnesota. If that proposed action is finalized, section 189(e) would no longer require new source review of major particulate matter precursor sources.

II. Proposed Rulemaking Action

USEPA believes that the regulations submitted by Minnesota on August 5, 1992, and August 26, 1993, satisfy the requirements under Part D for a new source permitting program in nonattainment areas. Therefore, USEPA proposes to approve this SIP revision.

Under the rules in the SIP, permits for nonattainment area sources that satisfy the substantive requirements of the Offset Rule (Rules 7005.3010 through 7005.3060) would be processed in accordance with permit processing provisions in the Consolidated Permit Rules (Rules 7001.0010 through 7001.0210 and Rules 7001.1200 through 7001.1220). Rulemaking of May 13, 1988 (53 FR 17033) approved the Consolidated Permit Rule as satisfying attainment area permitting requirements but noted that nonattainment area permitting requirements were not met. Today's action proposes to lift the current ban on construction of major new sources and major modifications in Minnesota nonattainment areas, and would impose Minnesota's Consolidated Permit Rule and Offset

Rule as Federally enforceable requirements for such new sources and modifications. Subsequent rulemaking will address the approvability of more recent revisions to State permitting regulations.

The rules submitted by Minnesota were intended to address nonattainment area new source review requirements and did not address visibility-related permitting requirements specified in 40 CFR 51.307. Therefore, USEPA is retaining the provisions of 40 CFR 52.1236, which note the absence of approvable State regulations for visibility protection and impose the Federally promulgated regulations of 40 CFR 52.26 and 52.28.

Public comment is solicited on all elements of USEPA's proposed rulemaking action. Written comments received by [insert date 30 days from date of publication] will be considered in the development of USEPA's final rulemaking action.

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 impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the 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 any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7671q.

Dated: January 19, 1994.

David Kee,

Acting Regional Administrator.

[FR Doc. 94-4053 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 180

[OPP-300320; FRL-4754-6]

RIN 2070-AC18

d-Limonene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of d-limonene (CAS Registry No. 5989-27-5) when used as an inert ingredient (solvent, fragrance) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest. This proposed regulation was requested by Orange Sol, Inc.

DATES: Written comments, identified by the document control number [OPP-300320], must be received on or before March 25, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Environmental Protection

Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Orange Sol, Inc., 955 N. Fiesta Blvd., Ste. #1, Gilbert, AZ 85234, submitted pesticide petition (PP) number 3E4172, requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of d-limonene (CAS Registry No. 5989-27-5) when used as an inert ingredient (solvent, fragrance) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the *Federal Register* of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Where it can be determined that the inert ingredient will present minimal or no risk, the Agency generally does not need some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that any data, in addition to that described below, for d-limonene will not need to be submitted. The rationale for this decision is described below:

1. d-Limonene is a naturally occurring chemical found in high concentrations in citrus fruits and spices.

2. d-Limonene is widely used as a fragrance in products such as perfumes and soaps.

3. The probable lethal dose of 3-limonene is estimated at 1 pint.

4. d-Limonene has been administered orally to successfully dissolve gall stones with no toxic effects observed after ingesting 1 fluid ounce.

5. A battery of mutagenicity tests conducted on d-limonene resulted in no positive effects.

6. A teratogenicity study in which pregnant rats were fed d-limonene (20 grams per kilogram) during gestation days 6 to 15 yielded results "not considered teratogenic."

7. In a 2-year feeding study conducted by the National Toxicology Program, no carcinogenic activity was noted in female rats and mice and in male mice. Clear evidence of kidney-associated carcinogenic activity was noted in male rats. However, the NTP has concluded that the male rat kidney carcinogenicity is not predictive of mammalian carcinogenicity. Also, the Agency's position regarding compounds producing renal tubule tumors in male rats attributable solely to chemically induced alpha-2u-globulin accumulation is that these tumors will not be used for human cancer hazard identification and that the associated nephropathy is not an appropriate endpoint for determining noncancer risks in humans.

8. d-, l-, and dl-Limonene are generally regarded as safe by the Food and Drug Administration when used as direct food additives (synthetic flavoring substance, adjuvant) under 21 CFR 182.60. The results of the NTP Bioassay did not change its GRAS status.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below. Because of the low toxicity of this chemical, the Agency will consider expanding this exemption to include additional uses.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains this

chemical may request, within 30 days after publication of this document in the *Federal Register*, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300320]. All written comments filed in response to this document will be available for public inspection in the Public Response and Program Resources Branch, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: February 2, 1994.

Stephen L. Johnson,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *
(c) * * *

Inert ingredients	Limits	Uses
d-Limonene (CAS Reg. No. 5989-27-5)		Solvent, fragrance

[FR Doc. 94-3760 Filed 2-22-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 266

[SW-FRL-4841-3]

Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today proposing to amend § 266.20, which contains provisions for conditionally exempting hazardous waste-derived products used in a manner constituting disposal (*i.e.*, applied to or placed on land) from the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations. Specifically, the Agency is proposing to amend § 266.20 so that non-encapsulated uses of slag residues produced from high temperature metal recovery (HTMR) treatment of electric arc furnace dust (EPA Hazardous Waste No. K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) are not exempt from RCRA Subtitle C regulations. This action is being taken to partially implement a settlement agreement entered into by the Agency on August 13, 1993 with the Natural Resources Defense Council (NRDC) and Hazardous Waste Treatment Council (HWTC). If today's proposed rule is finalized, non-encapsulated uses of HTMR slags derived from K061, K062, and F006, as waste-derived products placed on the land, will be prohibited unless there is compliance with all Subtitle C standards applicable to land disposal. This rule would not prohibit encapsulated uses of wastes that meet § 266.20 requirements. The rule also would not prevent the disposal of HTMR slags in a Subtitle D unit if the residuals can meet the risk-based exclusion levels specified in § 261.3(c)(2). The Agency is currently assessing and also seeks comments on whether the necessary data are available

to establish risk-based generic exclusion levels for HTMR slags used in non-encapsulated manner.

DATES: EPA is requesting public comments on today's proposed rule and criteria used for defining non-encapsulated uses. Comments must be submitted by March 25, 1994. Since the Agency has entered into a settlement agreement to promulgate this rule by August 12, 1994, no extension to the comment period will be granted.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F-94-SSHP-FFFF, room 2616 (Mail Code 5305), 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. A maximum of 100 pages may be copied at no cost. Additional copies cost \$0.15 per page.

FOR FURTHER INFORMATION, CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For specific questions concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4787.

SUPPLEMENTARY INFORMATION:

I. Background

A. Existing Regulations for Hazardous Wastes Used in a Manner Constituting Disposal

Currently, hazardous wastes that are used in a manner constituting disposal (applied to or placed on land), as well as waste-derived products that are produced in whole or in part from hazardous wastes and used in a manner constituting disposal, are not subject to hazardous waste disposal regulations provided the products produced meet two conditions. First, the hazardous wastes must undergo a chemical reaction in the course of becoming products so as to be inseparable by physical means (see § 266.20(b)). A second condition for exemption is that the waste-derived products must meet best demonstrated available technology (BDAT) treatment standards under the

land disposal restrictions program for every prohibited hazardous waste that they contain before they are placed on land (see § 266.20(b)). Note that hazardous waste-derived fertilizers that utilize hazardous waste K061 as a source of zinc are exempt from regulation without complying with either of these two conditions (see also § 266.20(b)).

The exemption in § 266.20 is used for residuals ("slag") generated from the treatment of hazardous waste K061 (and, to a limited extent, F006) using high temperature metal recovery (HTMR) processes. Section 266.20 is applicable because the majority of this slag is used in highway construction materials (*e.g.*, as road-base), and a limited amount is also used by directly applying it to road surfaces (*i.e.*, as an anti-skid or deicing agent). (See 56 FR 15020, April 12, 1991.)

On August 18, 1992 (see 57 FR 37194), the Agency finalized a generic exclusion for nonwastewater slag residues generated from the HTMR treatment of several metal-bearing hazardous wastes (K061, K062, and F006). This rule expanded a generic exclusion EPA originally published that applied only to HTMR slag from K061 (see 56 FR 41164, August 19, 1991) to include slags from F006 and K062. These HTMR slag residues (*i.e.*, from K061, K062, and F006) are currently excluded from the hazardous waste regulations provided they meet designated concentration levels for 13 metals, are disposed of in subtitle D units, and exhibit no characteristics of hazardous waste (see § 261.3(c)(2)).

The generic exclusion levels for the metals were based on the use of the EPA Composite Model for Landfills (EPACML), which predicts the potential for groundwater contamination from wastes that are placed in a landfill. The Agency limited the generic exclusion to residues disposed of in a Subtitle D unit because it could not properly evaluate concerns over potential releases to other media resulting from uses of the HTMR slag as product, especially as an anti-skid material on road surfaces. In the original rule proposing the generic exclusion for K061 HTMR slag (see 56 FR 15020, April 12, 1991), the Agency solicited comment to identify other significant routes of exposure for product uses of the slag. The rule

specifically sought suggestions for methods to evaluate exposures from the use of the slag as anti-skid material. Although EPA received comments concerning possible risks from road uses, no useful data, methods, or models were submitted to assist the Agency in evaluating exposures from releases to media other than groundwater.

As the Agency noted in the final rule for the initial generic exclusion for K061 residues (see 56 FR 41164, August 19, 1991), the use of HTMR residues as anti-skid material was not prohibited, provided the residue meets the exemption conditions given in § 266.20. The Agency also noted in the same notice that it would further evaluate the uses of K061 HTMR residues that constitute disposal, and would consider amendments to § 266.20 for HTMR slags that might require further controls on such uses.

B. Summary of Petition and Settlement Agreement

The Natural Resources Defense Council (NRDC) and the Hazardous Waste Treatment Council (HWTC), collectively "NRDC Petitioners", filed a petition for review challenging EPA's decision not to apply "generic exclusion levels"—levels at which K061 slags are deemed nonhazardous—to K061 slags used as waste-derived "products" and applied to or placed on land. The generic exclusion levels established for some metals in the K061 HTMR slags are lower than the BDAT standards that apply to K061. Therefore, while the generic exclusion requires that the nonhazardous K061 slag that meets exclusion levels be disposed of in a Subtitle D unit, K061 HTMR slag that may exhibit metal levels above the exclusion levels (but below BDAT) may be used as a product in a manner constituting disposal under the exemption in § 266.20(b). The petitioners pointed out the anomaly of the slag used in an uncontrolled manner being effectively subject to lesser standards than slag disposed in a controlled landfill.

On August 13, 1993, EPA entered into a settlement agreement with NRDC Petitioners which would address their concerns through two separate notice-and-comment rulemakings. EPA agreed to propose the first rule within 6 months of the settlement date (and issue a final rule within 12 months) to either establish generic exclusion levels for "non-encapsulated" uses of K061 slags, or effectively prohibit such uses of K061 slags on the land. EPA also agreed to propose a second rule within 16 months of the settlement date (and issue a final rule within 28 months), to establish

generic exclusion levels for encapsulated uses of K061 slags on the land. The agreement specified that the generic exclusion levels for K061 slags will be based on an evaluation of the potential risks to human health and the environment from the use of K061 slags as waste-derived products, taking into account all relevant pathways of exposure.

II. Proposed Decision

This rule proposes to prohibit non-encapsulated uses of products derived from hazardous HTMR slags (K061, K062, and F006), if these products are used in a manner constituting disposal. The term "non-encapsulated" use is being defined in this rule as a use in which: the material is not contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment. The uses of HTMR residues on roads as anti-skid or deicing materials are considered to be non-encapsulated product uses.

Accordingly, the Agency is proposing to amend the existing regulations under § 266.20 that conditionally exempt hazardous waste-derived products used in a manner constituting disposal from RCRA Subtitle C regulations to reflect this change. The language of § 266.20 would be revised to prohibit non-encapsulated uses of products derived from hazardous HTMR slags, unless they comply with all of the applicable Subtitle C standards (*i.e.*, permitting, minimum technology standards for land disposal units, financial responsibility, etc.). Since these requirements cannot realistically be met by entities that would use the HTMR slag in a non-encapsulated fashion (*i.e.*, entities are unlikely to seek land disposal permits for the placement of deicing materials on roads), the Agency is effectively proposing to prohibit non-encapsulated uses of the slags.

The Agency is proposing this action for the following reasons. First, non-encapsulated uses of HTMR slags may pose potential risk to human health and the environment, and this risk may be greater for non-encapsulated uses than for any other disposition of the slags. This is because the slags contain significant total concentrations of toxic metals of concern. For example, the concentrations of lead in the slags are typically in the range of 1000–2000 parts per million (ppm) and concentrations of chromium can approach 1000 ppm. (See data from the BDAT Background Document for K061 slag in the RCRA public docket for today's rule.) These slags may also potentially leach metals at levels that

would require regulation under subtitle C (*i.e.*, at levels greater than the generic exclusion levels in § 261.3(c)(2)).

Second, non-encapsulated uses of the slags may be viewed as uncontrolled disposition of the material. Thus, this may lead to many potential exposure pathways for the waste, not just those the Agency previously evaluated in assessing this wastes' hazardousness. The major non-encapsulated use of K061 slag is as an anti-skid material on road surfaces. This involves spreading the material on road surfaces during icy or snowy conditions to provide traction for vehicles (see comments from Horsehead Resource Development Company on April 12, 1991 proposal). Although the K061-derived slag as applied to the road surface is initially relatively coarse, the wear caused by vehicular traffic will break down the slag into finer particles. These particles may then be dispersed through particulate releases to the air, or to surface and ground water by run-off during precipitation or melting ice/snow. Some commenters were concerned about potential exposure to metals in the K061 slag through inhalation of air releases and ingestion of nearby contaminated soils, concerns the Agency shares. Without a more detailed assessment of the risks posed by such non-encapsulated uses, the Agency believes it is appropriate to prohibit these uses at this time.

Third, these potential risks are ones that are very difficult for the Agency to evaluate with certainty with available methodology, particularly given the current lack of data the Agency has on non-encapsulated uses of the slags and the tight timeframe for this rule. Because of this, some of the potential exposure pathways, such as ingestion, inhalation or surface water runoff pathways, cannot be readily evaluated. Additionally, commenters to the August 19, 1991 rulemaking did not provide any reliable means for assessing the risks posed by non-encapsulated uses of these slags. (See 56 FR 41172.)

The Agency is again soliciting information that may be used to estimate potential risks for non-encapsulated uses of HTMR slag and the likely exposure pathways of greatest concern. When used as an anti-skid agent, HTMR materials could accumulate on the road surface and travel to nearby receptors. Particulates could be inhaled by people downwind or transported in the air and deposited on land or water bodies. Storms can also wash HTMR materials to the roadside. At the edge of the road, constituents in the slags could either travel overland to water bodies or percolate into the

ground and reach the groundwater. Ingestion of contaminated soil could occur either from the deposition of HTMR slag particulates or from highway run-off. The Agency requests comment on other potentially significant exposure pathways.

Although there are techniques that may be used to estimate pollutant loadings from roads, these techniques would have to be tailored to the characteristics of non-encapsulated uses of HTMR slags. The following paragraphs describe potential approaches to estimate the risks from these pathways and the data or assumptions necessary to construct estimates of potential risks.

Airborne Particulates

With the appropriate data, the Agency believes it is possible to estimate the rate at which particulates become airborne from road surfaces. Critical parameters include the traffic volume, the mean vehicle speed, the type of road surface (e.g., unpaved or paved), particle density, and particulate size. The Agency believes that HTMR slags are most likely to be applied as an anti-skid agent on paved roads. Many State transportation departments have traffic volume estimates for most significant roads in their jurisdiction which could be used to estimate particulate generation rates. The Agency does not have adequate data regarding the distribution of particle size in HTMR anti-skid material or how that distribution could change after weathering and vehicular traffic.

Another critical parameter is the frequency at which HTMR slags would be applied to roads as a de-icing agent. The Agency does not have direct measurements of application rates of HTMR materials as de-icing agents. In 1981, the Federal Highway Administration (FHWA) reported that application rates of de-icing salt ranged from 400 to 1200 pounds per mile of two-lane road. The Agency requests comment on whether HTMR materials would be applied at rates comparable to that of de-icing salt or other compounds.

Run-off

Modeling pollutants in run-off from road surfaces requires estimating rainfall and run-off rates, accumulation rates of pollutants on the road surface, pollutant wash-off during run-off, and constituent loading at potential receptors. While the Agency often relies on standard techniques to predict rainfall and run-off (e.g., see docket for approach used to estimate soil run-off in USDA Handbook, No. 282, 1978), accumulation of HTMR slags will

depend on the application rates. The FHWA has also developed an approach that relates pollutant accumulation with traffic volume. Combining the FHWA techniques and the loading rates discussed above would yield an estimate of total accumulation of a constituent on a road surface. The FHWA also has estimated pollutant wash-off rates for various types of road surfaces, including rural roads with flush, unpaved shoulders. The Agency requests comment on this approach to estimate run-off rates and pollutant loadings.

Once run-off reaches the side of a road, it can either flow along natural contours or be channeled by engineering controls. Many roads are constructed with catch basins, swales, or other structures designed to control water and sediment flow. (See docket for examples from Chapter 11 in Highway Engineering, by Oglesby and Hicks, 1982.) Engineered barriers may significantly retard or block the flow of constituents of concern from reaching receptors adjacent to the road or from nearby water bodies. The Agency requests comment on the prevalence and effectiveness of these controls.

Groundwater

If HTMR Materials accumulate on a road surface, the paving will likely block any leaching of constituents from the materials into the subsurface. However, if run-off transports the material off the road, constituents could leach into the subsurface. The Agency requests comments on how to estimate the flux rate of metals from the HTMR slag into the subsurface.

The Agency would need adequate estimates of the above key parameters (particulate generation, run-off, and leaching rate), in order to apply fate and transport models to estimate potential concentrations at receptors. EPA also has limited information as to where HTMR residuals are applied as an anti-skid agent, and what potential receptors could be exposed. Further, were the Agency to develop generic exclusion levels for non-encapsulated uses, EPA would need to ensure that these levels would be protective in a wide range of potential settings. Therefore, the Agency requests data on likely receptor points (e.g., water bodies, residences) that would be affected by non-encapsulated uses of HTMR slag, and what, if any, exposure assumptions the Agency could use to ensure an appropriate level of protection.

The Agency's present evaluation is that non-encapsulated uses of the slags may pose potential risks to human health and the environment that may

warrant control, and that the Agency lacks the necessary information and time for assuring that these non-encapsulated uses are safe. If the Agency were to receive sufficient data that would allow EPA to carry out a more complete evaluation of non-encapsulated uses, EPA will reconsider its present decision to effectively prohibit non-encapsulated uses of HTMR slag. However, EPA does not anticipate being able to complete the evaluation of any new data and assess the risks posed by non-encapsulated uses until the second rulemaking that EPA agreed to conduct as part of the settlement with the NRDC petitioners (i.e., the rule to establish generic exclusion levels for encapsulated uses of HTMR slags).

The Agency also considered another important factor in making the determination to effectively prohibit non-encapsulated uses of HTMR slags. Information available to EPA indicates that most HTMR slags are in fact used in an encapsulated manner, for example as road-base material with some form of cover or "cap". Encapsulation may prevent dispersal of the slag through the exposure pathways noted above. Indeed, as the Agency noted in the August 19, 1991 rulemaking, use of these slags as road-base may be analogous to a capped disposal unit. (See 56 FR 41172.) In meetings with EPA, industry representatives indicated that non-encapsulated uses account for a relatively small fraction (less than 15%) of the HTMR slag used in a manner constituting disposal. (See memorandum of a March 30, 1993 meeting with Horsehead Resource Development Co., Inc. in the RCRA public docket for today's rule.) Therefore, the Agency believes that there should be adequate capacity for all of the slag to be used in an encapsulated manner. An important part of the basis for today's proposal is the expectation that a prohibition on non-encapsulated uses would result in a more environmentally acceptable means of reuse of the material without significant dislocations.

This proposal would thus effectively prohibit non-encapsulated uses of HTMR slag, whether or not the slag meets the existing exclusion levels in § 261.3(c)(2). As noted earlier in this proposal, the methodology EPA used to set the generic exclusion levels was based on potential risks posed by releases to ground-water from HTMR slag in a landfill setting. The existing exclusion levels do not consider other possible exposures (e.g., through air releases) arising from non-encapsulated uses.

EPA is consequently proposing to amend § 266.20 such that non-encapsulated uses of HTMR slag are no longer exempt from the Subtitle C standards applicable to land disposal. The Agency expects that this will have the effect of essentially prohibiting non-encapsulated uses of HTMR slags derived from K061, K062, and F006. With this proposal, the Agency solicits comment on possible means of demonstrating when these non-encapsulated uses do not pose significant potential risks to human health and the environment. In order to support such a demonstration, the Agency solicits comments on possible generic exclusion levels for HTMR slags used in non-encapsulated manners, and on the basis for setting these exclusion levels. The Agency will consider such comments in the context of the later rulemaking (which EPA also agreed to conduct as part of the settlement with the NRDC petitioners) to establish generic exclusion levels for encapsulated uses of HTMR slags.

III. Request for Information

EPA is also taking the opportunity in this proposal to solicit all available information on product uses of HTMR slag materials derived from K061, K062, and F006, including information that provides responses to the following questions:

- What are the various product uses of HTMR slags that result in placement on the land, and the relative annual volumes of these slags going to each use?
- What, if any, historical data are available with regard to the environmental impact from product uses of HTMR slags?
- How are HTMR slags processed and distributed prior to use?
- What are the similarities or differences in the physical/chemical properties of HTMR slags and materials that may be used as substitutes (e.g., blast furnace slags)?
- What, if any, toxicity tests have been conducted with the HTMR slag material itself (e.g., aquatic toxicity tests), and are data from these tests available for review?
- What requirements, if any, are needed to ensure that the slag is not used for prohibited uses?

IV. Limited Effect of Proposed Rule

The proposed amendment to § 266.20 would effectively prohibit non-encapsulated uses of HTMR slags derived from K061, K062, and F006. Although BDAT standards provide some measure of safety, it is the Agency's intent to further evaluate these uses

based on risks posed to human health and the environment and to determine if additional generic exclusion levels should be proposed in the near future. As discussed above, information provided by representatives of the major generator of HTMR slag indicates that the portion of HTMR slags that are currently being processed for non-encapsulated product uses is relatively small (less than 15% of the HTMR slags that are used as waste-derived products). Following the prohibition, this portion of HTMR slags may be used to produce other waste-derived products that are still exempt under § 266.20(b). These other uses (e.g., use as road-base material) are encapsulated uses that appear to present much lower risk to human health and the environment. There also exists a generic exclusion under § 261.3(c)(2) that allows for the disposal of HTMR slags in subtitle D units. Finally, if it is not possible to meet the conditions of the exemption or the generic exclusion, the HTMR slags would be subject to full regulation as hazardous wastes.

The Agency is not changing the notification, record-keeping and reporting requirements contained in existing regulations for hazardous waste being used to produce products used in a manner constituting disposal.

V. Effective Date

The Agency is proposing that this rule be effective six months after the date of publication of the final rule. (See RCRA section 3010(a)). The Agency believes that this would provide sufficient time for affected parties to comply with the proposed change.

VI. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit.

When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorization

EPA views today's proposed rule as a HSWA regulation. The proposed rule can be viewed as part of the process of establishing land disposal prohibitions and treatment standards for K061, K062, and F006 hazardous wastes. (See 56 FR 41175). The ultimate goal of the land disposal prohibition provisions is to establish standards, "if any", which minimize short-term and long-term threats to human health and the environment posed by hazardous waste land disposal. (See RCRA section 3004(m)(1)). In this case, the Agency is uncertain what level of treatment would assure that these threats are minimized when HTMR slag is used in a non-encapsulated manner, and consequently is effectively proposing a prohibition on this type of use. (See 57 FR at 37237, August 18, 1992, interpreting "if any" clause in section 3004(m)(1)). Thus, as noted above, EPA will implement today's rule, if finalized, in authorized States until their programs are modified to adopt the new prohibition and the modification is approved by EPA.

Today's proposed rule will result in more stringent Federal standards. Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the

State program modifications are approved. Of course, States with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

VII. Regulatory Impact

A. Executive Order 12866

Under Executive Order 12866 (see 58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel policy issues in terms of defining when products used in a manner constituting disposal should be regulated. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an Agency is required to issue a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility

analysis is required, however, if the head of the Agency certifies that the rule will not have any impact on any small entities.

This amendment will not have any impact on any small entities, since the regulated community will continue to have other readily available options for using and managing HTMR slags. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this proposed rule. Such provisions, were they included, would be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: February 15, 1994.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, 40 CFR part 266 is proposed to be amended as follows:

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

2. Section 266.20 is amended by adding a new paragraph (c) to read as follows:

§ 266.20 Applicability.

* * * * *

(c) Non-encapsulated uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in paragraph (b) of this section and remain subject to regulation. Non-encapsulated uses are those uses in

which the HTMR slag is not contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment (*e.g.*, uses as anti-skid or deicing materials).

[FR Doc. 94-4052 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

RIN 3090-AF09

Removing Federal Supply Service Schedule Ordering Instructions

AGENCY: Federal Supply Service, GSA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on a proposed amendment to the Federal Property Management Regulations (FPMR) that removes Federal Supply Service (FSS) schedule ordering instructions. FSS schedule ordering instructions will be restated in the form of non-regulatory principles. GSA's Federal Supply Service will issue and maintain these non-regulatory principles in the Federal Supply Service Program Guide. This document is issued simultaneously with another notice that similarly affects multiple award schedule ordering instructions contained in the Federal Information Resources Management Regulations (FIRMR).

When combined, these actions will result in uniform set of principles that empower Federal agencies to make "best value" buying decisions in a demopolized environment. These proposed changes are consistent with the Report of the National Performance Review (NPR), and are part of GSA's larger plans to create a Government that works better and costs less.

DATES: Comments are due in writing on or before April 25, 1994.

ADDRESSES: Comments should be addressed to Nicholas Economou, FSS Acquisition Management Center (FCO), Crystal Mall Building #4, room 716, Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Nicholas Economou, FSS Acquisition Management Center (703-305-6936).

SUPPLEMENTARY INFORMATION:

A. Background

FPMR subpart 101-26.4 primarily contains FSS schedule ordering instructions. Over time, these instructions have become obsolete.

Hence, it is no longer necessary to retain these instructions in the FPMR. Removing these instructions from FPMR subpart 101-26.4 will carry out the principles of the NPR Report by unburdening all Federal agencies from unnecessary regulations.

A small amount of the information previously contained in subpart 101-26.4 will be retained and relocated in the FPMR: Text permitting the procurement of printing of Standard Form 149 by GSA; text permitting certain fixed-price contractors and lower tier subcontractors to purchase security equipment from GSA sources; and text explaining why GSA supply distribution facilities make multiple award schedule purchases.

B. Executive Order 12866

This rule was submitted to and approved by the Office of Management and Budget (OMB) in accordance with Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it only eliminates FSS schedule ordering instructions that are obsolete and no longer necessary, and introduces no new procurement policies or procedures.

D. Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501).

List of Subjects in 41 CFR Part 101-26

Government property management.

Accordingly, 41 CFR part 101-26 is proposed to be amended as set forth below:

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

1. The authority citation for Part 101-26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-26.4—Purchase of Items From Federal Supply Schedule Contracts

2. The heading of subpart 101-26.4, consisting of sections 101-26.401 through 101-26.408-5, is revised to read "Federal Supply Schedules", and the subpart is reserved.

Subpart 101-26.5—GSA Procurement Programs

3. Section 101-26.406-7 is redesignated as § 101-26.502 and revised to read as follows:

§ 101-26.502 U.S. Government National Credit Card.

A waiver has been issued by the Government Printing Office to GSA for the procurement of the printing of Standard Form 149, U.S. Government National Credit Card.

4. Paragraph (c) of § 101-26.408-4 is redesignated as § 101-26.503 and revised to read as follows:

§ 101-26.503 Multiple award schedule purchases made by GSA supply distribution facilities.

GSA supply distribution facilities are responsible for quickly and economically providing Government customers with frequently needed common-use items. Stocking a variety of commercial, high-demand items purchased from FSS multiple award schedules is an important way in which GSA supply distribution facilities meet this responsibility.

5. Section 101-26.507 is revised to read as follows:

§ 101-26.507 Security equipment.

Federal agencies and other activities authorized to purchase security equipment through GSA sources shall do so in accordance with provisions of this § 101-26.507. Under section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481), the Administrator of GSA has determined that fixed-price contractors and lower tier subcontractors who are required to protect and maintain custody of security classified records and information may purchase security equipment from GSA sources. Delivery orders for security equipment submitted by such contractors and lower tier subcontractors shall contain a statement that the security equipment is needed for housing Government security classified information and that the purchase of such equipment is required to comply with the security provision of a Government contract. In the event of any inconsistency between the terms and conditions of the delivery order and those of the Federal Supply Schedule contract, the latter shall govern. Security equipment shall be used as prescribed by the cognizant security office.

6. Section 101-26.507-3 is revised to read as follows:

§ 101-26.507-3 Purchase of security equipment from Federal Supply Schedules.

To ensure that a readily available source exists to meet the unforeseen demands for security equipment, Federal Supply Schedule contracts have been established to satisfy requirements that are not appropriate for consolidated procurement and do not exceed the maximum order limitations.

Dated: December 15, 1993.

Nicholas M. Economou,
Director, FSS Acquisition Management Center
(FCO).

[FR Doc. 94-3709 Filed 2-22-94; 8:45 am]

BILLING CODE 6820-61-M

41 CFR Part 201-39

RIN 3090-AF17

Amendment of FIRM To Remove Provisions for Using GSA Nonmandatory Schedule Contracts for FIP Resources

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed rule to remove provisions for using GSA nonmandatory multiple award schedule (MAS) contracts from the Federal Information Resources Management Regulation (FIRM). These instructions will be issued in the form of non-regulatory principles. Other notices will similarly affect MAS ordering instructions contained in the Federal Acquisition Regulation (FAR) and Federal Property Management Regulations (FPMR). The non-regulatory principles will be issued and maintained by GSA's Federal Supply Service (FSS) and Information Resources Management Service (IRMS) in the Federal Supply Service Program Guide, and the FIRM Bulletin series respectively, or by other similar Service issuance.

When combined, the proposed regulatory changes will result in a uniform set of principles that empower Federal agencies to make "best value" buying decisions in a demonopolized environment. The regulatory changes described are consistent with the Report of the National Performance Review and are one part of GSA's larger plan to create a Government that works better and costs less.

DATES: Comments will be considered in the final rule, but must be received on or before April 25, 1994.

ADDRESSES: Comments may be mailed to GSA, Regulations Analysis Division (KMR), 18th & F Streets, NW., room

3224, Washington, DC 20405, Attn: Judy Steele, or delivered to that address between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Judy Steele, FTS/Commercial (202) 501-3194 (v) or (202) 501-0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) GSA initiated a MAS Improvement Project in October 1990. In addition to addressing recurring issues of concern to GSA customer agencies and MAS contractors, one major objective consistent with those concerns was to streamline and unify the procedures for ordering products and services provided under the MAS program. GSA's internal perspectives, the rapid emergence of electronic commerce, the recommendations of the General Accounting Office, and the recommendations of the National Performance Review were all considered. The choices for restructuring GSA procedures offer stark contrast: the imposition of a rigid, decision making regimen or the adoption of a more flexible set of principles which empower purchasing agents and line managers to make "best value" decision in a de-monopolized environment. GSA's own views, since the inception of the project, have been aligned with the adoption of a more customer-oriented, unregulated, less paperbound approach, that also enables ordering officials to take advantage of effective competition within the scope of the MAS contracting system as well as developing electronic ordering capabilities. Unlike open market purchases, GSA schedule prices are the product of a competitive environment where GSA negotiates or otherwise obtains prices determined to be fair and reasonable. Further, the nature of the MAS system is to recognize the variation of functions, quality, and performance inherent in a wide variety of commercial products. In recognition of the foregoing, and in an attempt to recognize the good judgment of our customers, GSA should provide its customers with flexible ordering mechanisms which emulate commercial purchasing practices. Existing ordering rules should be streamlined and stated in the form of principles.

(2) Explanation of the changes being made by this issuance are shown below:

(a) Subpart 201-39.5 is removed to delete the synthesizing requirements related to the FIP MAS contracts.

(b) Subsection 201-39.601-2 is removed to delete the exception to justifying specific make and model specifications for FIP MAS contracts.

(c) Section 201-39.801 is removed to delete procedures for ordering FIP

resources from the Federal Supply Service MAS contracts.

(d) Section 201-39.803 is removed to delete the procedures for use of the nonmandatory FIP MAS contracts.

(3) This rule was submitted to, and approved by, the Office of Management and Budget in accordance with Executive Order 12866, Regulatory Planning and Review.

(4) The Paperwork Reduction Act does not apply because the FIRM changes do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 41 CFR Part 201-39

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, and Telecommunications. For the reasons set forth in the preamble, GSA is proposing to amend 41 CFR part 201 as follows:

PART 201-39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

1. The authority citation for part 201-39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

Subpart 201-39.5—[Removed]

2. Subpart 201-39.5, consisting of sections 201-39.500 through 201-39.501-3, is removed.

§ 201-39.601-2 [Removed]

3. Section 201-39.601-2 is removed and reserved.

§ 201-39.801 [Removed]

4. Section 201-39.801 is removed and reserved.

§§ 201-39.801-1 through 201-39.801-2 [Removed]

5. Sections 201-39.801-1 through 201-39.801-2 are removed.

§ 201-39.803 [Removed]

6. Section 201-39.803 is removed and reserved.

§ 201-39.803-1 through 201-39.803-3 [Removed]

7. Sections 201-39.803-1 through 201-39.803-3 are removed.

8. The following reference in the FIRM Index is revised as follows:

FIRM Index

* * * * *

GSA nonmandatory
Schedule contract 201.24.001
201-39.802-3

Dated: December 14, 1993.

Francis A. McDonough,
Assistant Commissioner for Federal
Information Resources Management.
[FR Doc. 94-3708 Filed 2-22-94; 8:45 am]
BILLING CODE 6820-25-M

48 CFR Chapter 5

Reinventing Multiple Award Schedule Ordering Procedures

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Request for comments.

SUMMARY: The General Services Administration (GSA) plans to deregulate, streamline and unify its multiple award schedule (MAS) ordering procedures. GSA establishes MAS contracts to provide Federal agencies a cost-effective mechanism for ordering common use commercial items. Two GSA organizations award and manage MAS contracts, the Federal Supply Service (FSS) and the Information Resources Management Service (IRMS). Three different regulations contain MAS ordering procedures; i.e., the Federal Property Management Regulation (FPMR), the Federal Information Resources Management Regulation (FIRM), and the Federal Acquisition Regulation (FAR).

This document invites public comment on proposals to eliminate MAS ordering instructions to customer agencies from the FPMR and FIRM. Applicable regulations, however, will retain pertinent solicitation provisions, contract clauses, and those policies and procedures that govern the Government-contractor relationship. GSA has initiated a case to make similar changes to the Federal Acquisition Regulation. In lieu of the current regulatory scheme, GSA proposes to adopt a uniform set of non-regulatory principles for MAS ordering. FSS and IRMS will issue and maintain the principles in the FSS Program Guide and FIRM Bulletin series, respectively.

This document also invites public comment on a proposal to revise the Price Reduction Clause currently used in MAS contracts and include it in the General Services Administration Acquisition Regulation (GSAR). Additionally, GSA announces its decision to eliminate regulatorily prescribed mandatory use provisions from the MAS Program.

When combined, the proposed changes described in this document will result in a uniform set of principles that empower ordering activities to make "best value" buying decisions in a demopolized environment. The proposed changes are consistent with the Report on the National Performance Review (NPR) and are one part of GSA's larger plan to help create a Government that works better and costs less.

DATES: Comments are due in writing on or before April 25, 1994.

ADDRESSES: Comments should be addressed to Carolyn Harris, Office of Multiple Award Schedule Program Management, 18th and F Streets, NW., room 4040, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Carolyn Harris, Office of Multiple Award Schedule Program Management, (202-501-1043).

SUPPLEMENTARY INFORMATION: GSA, the General Accounting Office (GAO) and the NPR have all recently examined MAS ordering procedures and recommended improvements. Among other things, GAO found that Federal agencies do not consistently comply with existing regulations and recommended that GSA clarify its requirements. The NPR generally recommended that GSA simplify its regulations and eliminate complex administrative requirements. After reviewing the various recommendations, GSA decided to eliminate regulatorily prescribed mandatory use provisions imposed on other agencies. Solicitations that have a closing date after January 13, 1994, will reflect GSA's new position on non-mandatory use. Existing contractual obligations will not be affected by the change. GSA also proposes to "deregulate" MAS ordering procedures and provide agencies with non-regulatory guidance that is simpler, more customer-oriented, and less paperbound than current requirements. These principles will enable ordering officials to take advantage of competition within the scope of the MAS contracting system.

Description of Changes

GSA proposes the following changes:

1. Most of the existing regulatory instructions regarding the use of MAS and single award Federal Supply Schedules will be deleted from the FPMR and FIRM.
2. GSA regulations will not require agencies to place orders against future MAS contracts.
3. The current requirement that an ordering activity publicize in the Commerce Business Daily its intent to

place an order against a MAS contract for federal information processing (FIP) resources valued in excess of \$50,000 will be eliminated. This requirement is the product of regulation, (i.e., order synopsis not required by statute) for MAS contracting, and is inconsistent with GSA's efforts to empower its customers, and streamline and maximize the efficiency of the program.

4. GSA will not dictate an across-the-board Maximum Order Limitation (MOL) for MAS schedules. Instead, contracting officers will establish MOL's on a schedule-by-schedule basis. Contracting officers will set MOL's at levels appropriate for negotiation of volume purchasing prices.

5. GSA will generally award MAS contracts as indefinite-delivery, indefinite-quantity type contracts. Indefinite-delivery, indefinite-quantity type MAS contracts will normally obligate the Government to purchase a minimum amount during the contract term. Contractors must deliver up to the MOL for each delivery order they receive.

6. The clause entitled "Price Reductions" will be modified to delete paragraph (c), "Price Reductions to Federal Agencies". The modified clause will be incorporated into the GSAR. Other MAS provisions and clauses will be amended as necessary to reflect revised ordering procedures.

7. GSA will streamline existing ordering procedures and state them in the form of guiding principles. The resulting non-regulatory guidance will read as follows:

a. GSA awards Multiple Award Schedule (MAS) contracts for a variety of commercial products and services at prices determined to be fair and reasonable. The administrative cost of placing a MAS order can be significantly lower than purchasing by other means. Accordingly, for orders of minimal dollar value (e.g., \$10,000 or below) ordering activities are given wide latitude to order items at those prices that represent the best value for the money.

b. To reasonably ensure that a selection meets the agency's needs at the lowest overall cost before placing an MAS order of significant dollar value (e.g., greater than \$10,000) an ordering activity should:

(1) Consider reasonably available information about products offered under MAS contracts; this standard is met if the ordering activity does the following:

• Consider products and prices contained in any GSA MAS automated information system; (e.g., Information Resources Management—On-line

Schedule System, Federal Supply Service—Automated Product Listing Service); or

• If automated information is not available, review at least 3 price lists.

(2) Make reasonable efforts to compare differing functions, performance characteristics and prices of MAS items. The nature and degree of such comparisons should be commensurate with the value of the order. The agency's administrative costs should be considered in making a best value determination.

(3) Give preference to the items of small business and/or labor surplus area concerns by following the order of priority in FAR 14.407-6 when two or more items at the same delivered price will meet an ordering activity's needs.

c. MAS contractors will not be required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order. There may be circumstances where an ordering activity finds it advantageous to request a price reduction, such as where the ordering activity finds that a schedule product is available elsewhere at a lower price, or where the quantity of an individual order clearly indicates the potential for obtaining a reduced price.

d. Ordering activities should document MAS ordering files in accordance with internal agency practices. Agencies should keep documentation to a minimum.

Dated: December 28, 1993.

Richard H. Hopf, III,
Associate Administrator for Acquisition Policy.

[FR Doc. 94-3706 Filed 2-22-94; 8:45 am]

BILLING CODE 6820-61-M

48 CFR Parts 538 and 552

[GSAR Notice 5-388]

RIN 3090-AF15

General Services Administration Acquisition Regulation; Multiple Award Schedule Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the General Services Administration Acquisition Regulation (GSAR) to prescribe a Price Reductions clause for use in multiple award schedule (MAS) solicitations and contracts. The clause is a modification of that currently in use. The modifications clarify the clause's applicability, reduce contractor

reporting requirements and eliminate MAS price reductions based on a low price to an individual Federal agency.

DATES: Comments are due in writing on or before April 25, 1994.

ADDRESSES: Comments should be addressed to the GSA Desk Officer, room 3235, NEOB, Washington, DC 20503 and Marjorie Ashby, Office of GSA Acquisition Policy, 18th and F Streets, NW., room 4006, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Background

On June 14, 1993, GSA solicited comments (58 FR 32890) on proposed changes to the current MAS Price Reductions clause. The proposed clause would have eliminated certain reporting requirements and increased the time given contractors to notify the Government of price reductions. Public comments received generally supported the changes, but felt that further changes should be made to reduce the burden on MAS contractors. To address these comments GSA proposes to further revise the clause to require that the Government be extended price reductions under the same terms and with the same effective dates which the contractor extends to commercial customers.

The National Performance Review recommended that line managers be given greater flexibility to buy the same or comparable MAS products for less. In order to remove any disincentive to MAS contractors offering agencies a lower price on individual orders, GSA proposes to eliminate paragraph (c) of the current clause entitled "Price Reductions to Federal Agencies."

B. Executive Order 12866

This rule was submitted to and approved by the Office of Management and Budget (OMB) in accordance with Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

An initial regulatory flexibility analysis has been prepared and submitted to the Acting Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available from the office identified above. The initial regulatory flexibility analysis indicates that the proposed rule will affect contractors, including small businesses, that are awarded contracts under GSA's MAS program.

Historically, approximately seventy percent of MAS contractors have been small businesses. Based on the number of MAS contracts currently in effect, it is estimated that 4,288 small businesses will be impacted by the new rule.

D. Paperwork Reduction Act

The Price Reductions clause is an information collection subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been submitted to OMB for approval under the Act.

Comments on the information collection requirements may be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the information collection is "GSAR 552.238-75 Price Reductions."

The Price Reductions clause is intended to ensure that the Government maintains its price/discount (and/or term and condition) advantage in relation to the contractor's commercial customer(s) upon which the MAS contract is predicated. The customer or category of customer upon which the award is predicated is identified at the conclusion negotiations and reflected in the MAS contract.

The Price Reductions clause requires MAS contractors to notify the contracting officer of price reductions at the same time that commercial customers are notified.

The Price Reductions clause is needed to assure that the Government maintains the relative discount position, negotiated at the time of contract award, throughout the term of the contract.

The estimated annual burden for the Price Reductions clauses is 24,508 hours. This is based upon an estimated average burden per response of 2 hours, a frequency of 2 responses per respondent, and an estimated number of likely respondents of 6,127.

List of Subjects in CFR Parts 538 and 552

Government procurement.

Accordingly, it is proposed that 48 CFR parts 538 and 552 be amended as follows:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 538.203-71 is amended by revising the heading and adding paragraph (e) to read as follows:

538.203-71 Solicitation provisions and contract clauses.

* * * * *

(e) Contracting officers shall insert the clause at 552.238-75, Price Reductions, in all MAS solicitations and contracts.

3. Section 538.272 is added to read as follows:

538.272 MAS price reductions.

(a) Prior to the award of an MAS contract, the contracting officer and the offeror shall reach an agreement as to the customer (or category of customer), price lists, and discounts which will serve as the basis of contract award. The award document shall expressly state the price/discount relationship between the Government and the identified commercial customer which is the basis of contract award. The Price Reductions clause is intended to maintain this price/discount relationship (and/or term and condition) between the Government and the offeror's customer or category of customer upon which the MAS contract was predicated, for the contract term.

(b) During the term of the contract any changes in discount/pricing practices by the contractor which result or will result in a less advantageous relationship between the Government and the customer or category of customer upon which the MAS contract discount/price was predicated, shall result in a price reduction to the Government to the extent necessary to reflect the original relationship.

4. Section 552.238-76 is added to read as follows:

552.238-76 Price reductions.

As prescribed in 538.203-71(e), insert the following clause:

Price Reductions (XXX 1994)

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer or category of customers. This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing arrangement applicable to the identified customer or category of customers, which disturbs this relationship, will constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the Contractor's identified customer or category of customers upon which the contract award was predicated. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor:

- (1) Reduces prices (or grants any more favorable discounts, or terms and conditions) contained in the commercial catalog, pricelist, schedule or other documents upon which contract award by the Government was predicated; or

- (2) Grants special discounts to the identified customer or category of customers, upon which the contract award by the

Government was predicated, so as to disturb the discount/price relationship of the Government to the identified customer or category of customers.

(3) The price reduction shall be offered to the Government with the same effective date, and for the same time period as extended to the commercial customer or category of customers.

(d) The Contractor shall extend to the Government, any general price reductions (including temporary reductions) offered to all customers (or category of customers). The price reduction shall be offered to the Government with the same effective date, under the same terms and conditions, and for the same time period as extended to commercial customers.

(e) The Contractor may offer the contracting officer a voluntary Government wide price reduction at any time during the contract period.

(f) The Contractor will notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(h) This clause does not apply to price reductions based upon: (1) firm fixed price definite quantity contracts with specified delivery in excess of the maximum order limitation specified in this contract, or (2) any sale caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(End of Clause)

Dated: December 28, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 94-3707 Filed 2-22-94; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 940241-4041; I.D. 013194A]

RIN 0648-AG00

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This amendment would allow vessels with moratorium permits to carry on board

nets other than the minimum mesh size once the seasonal thresholds for summer flounder are retained, modify the schedule for establishing the annual management measures, provide for an experimental fishery to gather data, prohibit the use of twisted mesh, prohibit interference with any observers, and modify the dimensions of the fish box or tote. The intended effect of this rule is to relieve the industry of a regulatory restriction, use the best available data to assess the fishery, establish conformity with other regulations in the same fishing area, and protect observers.

DATES: Comments on the proposed rule must be received on or before April 11, 1994.

ADDRESSES: Comments on the proposed rule, Amendment 6, or supporting documents should be sent to the Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Summer Flounder Plan."

Copies of Amendment 6, the environmental assessment, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION:

Background

Amendment 6 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission and the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed amendment was published in the *Federal Register* on February 4, 1994 (59 FR 5384). Copies of the amendment are available from the Council upon request [see **ADDRESSES**]. The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

The management unit continues to be summer flounder in U.S. waters in the western Atlantic Ocean from North Carolina northward. The objectives of the FMP as it would be amended continue to be: (1) Reduce fishing mortality in the summer flounder fishery to assure that overfishing does

not occur; (2) reduce fishing mortality on immature summer flounder to increase spawning stock biomass; (3) improve the yield from the fishery; (4) promote compatible management regulations between state and Federal jurisdictions; (5) promote uniform and effective enforcement of regulations; and (6) minimize regulations to achieve the management objectives stated above.

Amendment 1 to the FMP added a definition of overfishing. Amendment 2, which contained the large majority of the management measures implemented by the current regulations, is discussed below. Amendment 3 revised the boundary of the exemption area in the Northeast and increased the minimum mesh threshold to 200 pounds during the winter fishery from November 1 to April 30. Amendment 4 modified the state-specific percentage shares that allocate the coastwide annual commercial quota to the States. Amendment 5 empowered States to combine and transfer commercial quota with the approval of the Director, Northeast Region, NMFS (Regional Director).

Amendment 2 to the FMP instituted a broad spectrum of measures to stop overfishing and to allow the stock to rebuild. These measures are to be revised, if necessary, each year to meet a mortality reduction schedule. One of these measures is a minimum mesh requirement in the cod end of an otter trawl net when certain amounts of summer flounder are retained (i.e., 100 pounds or more from May through October and 200 pounds or more from November through April). Since the regulations allow only nets that meet the minimum mesh size to be on board once the threshold amounts of summer flounder are retained, vessel operators are faced with several choices. The vessel may sail with only nets that meet the minimum mesh requirement and gamble on catching species of a certain size, including summer flounder, that are subject to capture with the minimum mesh size. Vessel operators may put nets with different size mesh on board and fish for several species of fish, including those subject to capture with small mesh, on the same trip. To conduct this mixed trawl fishery, vessel operators have to discard any amount of summer flounder that would result in the retention of the threshold amounts triggering the minimum mesh requirement. If a vessel operator pursuing a mixed trawl fishery wants to continue fishing for summer flounder in excess of the threshold amounts, he/she has to return the vessel to port to offload all nets that do not meet the minimum

mesh requirement and return to the fishing grounds to resume fishing.

Certain industry members (industry) approached the Council and claimed that the one-mesh-on-board provision is creating a hardship for those in the mixed trawl fishery without the concomitant benefits to those enforcing the minimum mesh requirement. Industry made a convincing case that the minimum mesh requirement could easily be frustrated by lining a legal size cod end with another legal size cod end, which could be located anywhere on deck, or by cinching off the net above the portion of the net with regulated mesh. As an alternative, the industry proposed that the one-mesh-on-board provision be replaced with the net stowage provisions in the regulations governing the Northeast Multispecies fishery, in which a number of summer flounder fishermen participate.

The Council, after hearing industry testimony, reviewing public hearing comments, and engaging in discussion, decided at its December meeting to adopt Amendment 6 and replace the one-mesh-on-board provision with the mesh stowage provision of the Northeast Multispecies regulations. Amendment 6, if approved, would allow vessel operators to carry several nets with different size mesh on board their vessels and exceed the minimum mesh seasonal thresholds, as long as all nets that do not meet the minimum mesh requirement are appropriately stowed once the minimum mesh threshold amounts of summer flounder are retained. Once stowed, these nets cannot be used for the remainder of the fishing trip.

A regulation that would allow the Regional Director to authorize an experimental fishery to collect management information in certain circumstances was recommended by the Council for inclusion in this proposed rule to give effect to section 9.4.2 of the FMP regarding information and data needs. The Council is particularly interested in having additional mesh studies conducted to augment the results of the mesh studies done in New York and New Jersey. However, the Council was firm in its intent that no experimental fishery should result in a quota being exceeded. This restriction would maintain the integrity of the mortality reduction schedule, the central feature of Amendment 2.

The Council also adopted for inclusion in this proposed rule a prohibition on the use of twisted mesh. Nets constructed of twisted mesh, when towed, do not conform to the minimum mesh requirement and violate the prohibition found at 625.8(a)(6). The

addition of this prohibition would conform the summer flounder regulations with the Multispecies regulations. Such conformity is desirable since multispecies and summer flounder can be caught on the same fishing trip. The Council adopted another provision to modify the dimensions of the fish box or tote referred to in § 625.25(d), to conform to those used in the Northeast Multispecies regulations.

The prohibition found at § 625.8(c)(9) would be revised to prohibit interference with a sea sampler or observer on board a vessel for any purpose, and not just for the activities under § 625.26 and § 625.27, as currently expressed in this prohibition. Observers placed on board a vessel engaged in an experimental fishery should have the same protection afforded to other observers and sea samplers.

The annual fishing measures schedule found at § 625.20(c) would be modified by this proposed rule. The date on which a certain measure is published in the *Federal Register* would be changed to a later time to allow for more current data to be included in the assessment and monitoring process. The total allowable removals from the stock, translated into a coastwide commercial quota and a recreational harvest limit, as well as additional measures for the commercial fishery must be published on or before October 15 of each year. This is the latest date that these measures can be set and allow states an opportunity to implement them on January 1 of each year. Unlike the commercial fishery, which operates year round, the recreational fishery ceases from October until May. Marine recreational survey data, which allow the recreational harvest limit to be converted into a possession limit and a recreational fishing season, are not available until well after the October 15 date. Sometimes, these data are not available until the beginning of the following year. Thus, the date on which additional measures for the recreational fishery must be published would be changed to February 15 of each year.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of the receipt of the amendment and proposed regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and

other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities for the reasons set forth in the regulatory impact review prepared by the Council, a copy of which may be obtained from the Council at the address listed above. As a result, a regulatory flexibility analysis was not prepared. The replacement of the one-mesh-on-board restriction with the mesh stowage provision alleviates a regulatory burden on the industry, enabling the industry to operate with greater economic efficiency. The amendment's conformance to the Northeast Multispecies regulations will also standardize certain regulatory requirements imposed on the industry and can be reviewed as relieving a restriction. Revising the schedule for publication of management measures will enable the Council and ASMFC to use the best available data as the basis of their deliberations. This should aid in rebuilding the stock for the benefit of industry. The experimental fishing provision should also aid in assessing the validity of certain measures which, in turn, should assist in rebuilding the stock.

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: February 16, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 625 is proposed to be amended to read as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. Section 625.8, paragraphs (a)(6), (a)(7), and (c)(9) are revised and a new paragraph (e) is added to read as follows:

§ 625.8 Prohibitions.

(a) * * *

(6) fish with or possess nets or netting that do not meet the minimum mesh

requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 625.24, unless the nets or netting are stowed in accordance with § 625.24(f);

(7) fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 625.24, unless the nets or netting are stowed in accordance with § 625.24(f);

* * * * *

(c) * * *

(9) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance of an observer or sea sampler conducting his or her duties aboard a vessel; or

* * * * *

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 625.28 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

3. Section 625.20, paragraph (c) is revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the applicable fishing mortality rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director with respect to the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. Included in the recommendation will be supporting documents as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish in the *Federal Register* a proposed rule on or before October 15 to implement a coastwide commercial quota and recreational harvest limit and

additional management measures for the commercial fishery, and will publish in the *Federal Register* a proposed rule on or before February 15 to implement additional management measures for the recreational fishery, if he determines that these measures are necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. After considering public comment on a proposed rule, the Regional Director will publish a final rule in the *Federal Register* to implement the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded.

* * * * *

4. Section 625.24, is amended by removing paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and by adding new paragraphs (e) and (f) to read as follows:

§ 625.24 Gear restrictions.

* * * * *

(e) *Mesh obstruction or constriction.*

(1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (d) of this section, if it obstructs the meshes of the net in any manner.

(2) No vessel may use a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(f) *Stowage of nets.* Otter trawl vessels retaining 100 pounds or more of summer flounder between May 1 and October 31 or 200 pounds or more of summer flounder between November 1 and April 30 and subject to the minimum mesh requirement may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered not to be "available for immediate use":

(1) A net stowed below deck, provided:

(i) It is located below the main working deck from which the net is deployed and retrieved;

(ii) The towing wires, including the "leg" wires, are detached from the net;

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

(i) It is fan-folded (flaked) and bound around its circumference.

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) A net that is on a reel and is covered and secured, provided:

(i) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the *Federal Register*.

* * * * *

5. Section 625.25, paragraph (d) is revised to read as follows:

§ 625.25 Possession limit.

* * * * *

(d) Owners or operators of otter trawlers issued a permit (including a moratorium permit) under § 625.4, and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements and that are not stowed in accordance with § 625.24(f), may not retain 100 pounds (45.3 kg) or more of summer flounder between May 1 and October 31, or 200 pounds (90.8 kg) or more of summer flounder between November 1 and April 30. Summer flounder on board these vessels shall be stored in a standard 100-pound (45.3 kg) tote that has a liquid capacity of 18.2 gallons (70 liters), or a volume of not more than 4,320 cubic inches (2.5 cubic feet or 70.79 cubic cm), and that is readily available for inspection.

6. Section 625.28 is added to read as follows:

§ 625.28 Experimental fishery.

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the summer flounder resource or fishery.

(b) The Regional Director may not grant such exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the summer flounder resource and fishery; or

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

[FR Doc. 94-3962 Filed 2-17-94; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 671

[I.D. 021494A]

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

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab

Fisheries of the Bering Sea/Aleutian Islands (BSAI) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see ADDRESSES).

DATES: Comments on the FMP amendment should be submitted on or before April 25, 1994.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 (Attn: Lori Gravel), or delivered to the Federal Building, 709 West 9th Street, Juneau, Alaska.

Copies of Amendment 2 and the environmental assessment (EA) and economic analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907-271-2809).

FOR FURTHER INFORMATION CONTACT: Kim J. Spittler, Fisheries Management Division, Alaska Region, NMFS, at 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act

also requires that the Secretary, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Amendment 2 would establish the Norton Sound Section of the Northern District of the king crab fishery as a superexclusive registration area. The operator of any vessel registered and participating in this fishery would not be able to register that vessel and participate in other BSAI king crab fisheries. A proposed rule has been submitted that would remove existing regulations, which supersede State of Alaska regulations that established Norton Sound as a superexclusive registration area in the exclusive economic zone of the BSAI.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

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

Dated: February 15, 1994.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-3932 Filed 2-16-94; 5:12 pm]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 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.

Agency for International Development

Loan Guarantees to Israel; Notice of Investment Opportunity

The Government of Israel (the "GOI") wishes to select managing underwriters for the structuring and sale of U.S. Agency for International Development ("USAID")-guaranteed loans. The USAID-guaranteed loans have been authorized by Public Law 102-391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by USAID of up to \$10 billion principal amount of loans over the next five years, with a maximum of \$2 billion in loans, offered in one or more tranches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of managing underwriters for an offering of up to \$1.563 billion contemplated to be made under the authorization for the current fiscal year.

The GOI would like to receive proposals from interested underwriters on an expedited basis. A Request for Proposals ("RFP") will be available from the GOI on or about February 21, 1994. Proposals must be submitted, in accordance with RFP, by 4:00 p.m. on March 1, 1994. For information regarding the submission of proposals, please contact Mr. Eliahu Ziv-Zitouk, Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 350 Fifth Avenue, New York, NY 10118 (fax: 212/736-2759).

To accomplish the GOI's objectives, the GOI's lead manager must at a minimum:

1. Perform and discuss with the GOI and its financial advisor a complete quantitative analysis of the cash flows generated by the proposed structures and proposed pricing of securities;

2. Complete the underwriting of all securities offered for sale;

3. Establish and maintain a post-sale trading market for the securities; and

4. Coordinate all activities relating to the proposed financing plan with the GOI and its financial advisor.

Selection of underwriters and the terms of the loans are initially subject to the individual discretion of the GOI and thereafter subject to approval by USAID. In order to be eligible for selection as a managing underwriter, an institution must be a member of the National Association of Securities Dealers, and otherwise meet legal requirements for serving in such role.

The full repayment of the loans will be guaranteed by USAID. To be eligible for an USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 226 of the Foreign Assistance Act of 1961, as amended. Disbursements under the loans will be subject to certain conditions required of the GOI by USAID as set forth in agreements between USAID and the GOI.

Additional information regarding USAID's responsibilities in this guaranty program can be obtained from the undersigned: Room 3328, New State, Washington, DC 20523-0030, Telephone: 202/647-6504.

Dated: February 17, 1994.

Michael G. Kitay,

Assistant General Counsel, Agency for International Development.

[FR Doc. 94-4135 Filed 2-22-94; 8:45 am]

BILLING CODE 6115-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Duke, Highball, Noman, Ryeleven, Turlock, Sandpiper, Umpire, East Fork, Fisher, Lakeview, Roughneck, Southwind Salvage, Alien ET, Highway 20 Hazard Tree, Madrone, South Monty, Buggy, Mtn.-Var., and Rusky Timber Sales in Oregon; Jack, Slide Cr. Heli, and Rusby Two Timber Sales in California, Deer Gulch and Typhoon Dixie in Washington

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of decisions.

SUMMARY: On February 3, 1994, James R. Lyons, Assistant Secretary for Natural Resources and the Environment, decided to offer for sale, pending modification of the injunction in *SAS v. Lyons*, No. C92-179 (W.D. Washington), 30.861 million board feet of timber from 24 timber sales in Oregon, Washington and California. These decisions resulted from an agreement between Secretaries Espy and Babbitt and the plaintiffs to review for possible release from the Court's injunction certain Forest Service timber sales in Pacific Southwest (Region 5) and Pacific Northwest (Region 6) Regions. All 24 sales have been modified to meet the stipulations of the agreement. The plaintiffs agreed not to oppose a motion to release 54 timber sales identified in the agreement. These 24 sales represent a portion of the 54 identified timber sales.

EFFECTIVE DATE: The United States Department of Agriculture will be requesting modification of the injunction against auction and award of timber sales in *SAS v. Lyons*. These 24 timber sales will be implemented as soon as practicable upon such modification by the Court.

FOR FURTHER INFORMATION CONTACT: For further information, contact John E. Lowe, Regional Forester, Region 6, P.O. Box 3623, Portland, Oregon 97208-3623, (503) 326-3625 (for timber sales in Oregon and Washington) or, Ronald E. Stewart, Regional Forester, Region 5, 630 Sansome Street, San Francisco, California 94111, (415) 705-2874 (for timber sales in California).

SUPPLEMENTARY INFORMATION: A final environmental impact statement (FEIS) on Management for the Northern Spotted Owl in the National Forests was filed with the Environmental Protection Agency (EPA) on January 31, 1992 and the Record of Decision (ROD) for this FEIS was signed on March 3, 1992. A lawsuit was filed by Seattle Audubon Society on March 25, 1992, (*Seattle Audubon Society, et al. v. James R. Moseley, et al.*) which challenged the legality of the FEIS and ROD alleging violations of both National Environmental Policy Act (NEPA) and National Forest Management Act. On May 28, 1992 Judge Dwyer found that the Forest Service had not fully complied with NEPA and that it must take further action under that statute.

On May 29, 1992, Judge Dwyer enjoined the Forest Service from auctioning and awarding additional timber sales in suitable spotted owl habitat. On October 6, 1993 an agreement was reached between plaintiffs and Secretaries Espy and Babbitt to review for possible release from the Court's injunction certain

Forest Service timber sales in Forest Service Regions 5 and 6. All or portions of 54 timber sales were identified in the agreement. The plaintiffs agreed not to oppose a motion to release the 54 timber sales. Environmental analysis and consultation with U.S. Fish and Wildlife Service have been completed for 24 of

the 54 sales. In addition, each of the 24 sales has been adjusted to meet the stipulations found in the October 6 agreement with the plaintiffs.

Following is a list of the 24 timber sales, national forests, states, and their approximate volumes:

Timber sale	National forest	State	Volume (millions of board feet)
Duke	Mt Hood	Oregon	.050
Highball	Rogue River	Oregon	2.600
Noman	Rogue River	Oregon	1.000
Ryeleven	Rogue River	Oregon	.380
Sandpiper	Rogue River	Oregon	.500
Umpire	Rogue River	Oregon	1.700
Turlock	Rogue River	Oregon	2.660
East Fork	Umpqua	Oregon	2.100
Fisher	Umpqua	Oregon	.037
Roughneck	Umpqua	Oregon	5.100
Lakeview	Umpqua	Oregon	1.000
Southwind Salvage	Umpqua	Oregon	.250
Alien ET	Willamette	Oregon	1.000
Highway 20 Hazard Tree	Willamette	Oregon	.182
Madrone	Willamette	Oregon	1.340
South Mornty	Willamette	Oregon	1.080
Bugsy	Winema	Oregon	0.850
Mtn.-Var	Winema	Oregon	.150
Russky	Winema	Oregon	3.200
Deer Gulch	Wenatchee	Washington	.355
Typhoon Dixie	Wenatchee	Washington	.997
Jack	Klamath	California	.100
Rusby Two	Klamath	California	2.200
Slide Cr. Heli	Klamath	California	2.030
Total			30.861

These decisions are final agency actions and are not subject to administrative appeal.

Dated: February 3, 1994.

James R. Lyons,
Assistant Secretary for Natural Resources and
the Environment.

[FR Doc. 94-4012 Filed 2-22-94; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will be held from 10:30 a.m. to 1 p.m. on Saturday, March 26, 1994, at the Laramie Inn, 421 Boswell, Laramie, Wyoming 82070. The purpose of the meeting is to brief Advisory Committee members on Commission and regional activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact

Committee Chairperson Oralia G. Mercado or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303-866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94-3950 Filed 2-22-94; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Estimates of the Voting Age Population for 1993

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, section 441a(e), I hereby give

notice that the estimates of the voting age population for July 1, 1993, for each state and the District of Columbia are as shown in the following table.

I have certified these counts to the Federal Election Commission.

Dated: February 16, 1994.

Ronald H. Brown,
Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 1993

[in thousands]

Area	Population 18 and over
United States	190,776
Alabama	3,111
Alaska	410
Arizona	2,866
Arkansas	1,790
California	22,618
Colorado	2,628
Connecticut	2,503
Delaware	525
District of Columbia	463
Florida	10,510
Georgia	5,076

ESTIMATES OF THE POPULATION OF
VOTING AGE FOR EACH STATE AND
THE DISTRICT OF COLUMBIA: JULY 1,
1993—Continued

[In thousands]

Area	Population 18 and over
Hawaii	873
Idaho	767
Illinois	8,630
Indiana	4,244
Iowa	2,080
Kansas	1,847
Kentucky	2,817
Louisiana	3,052
Maine	933
Maryland	3,724
Massachusetts	4,619
Michigan	6,971
Minnesota	3,290
Mississippi	1,885
Missouri	3,871
Montana	607
Nebraska	1,168
Nevada	1,037
New Hampshire	841
New Jersey	5,983
New Mexico	1,136
New York	13,730
North Carolina	5,241
North Dakota	463
Ohio	8,232
Oklahoma	2,362
Oregon	2,251
Pennsylvania	9,177
Rhode Island	765
South Carolina	2,691
South Dakota	507
Tennessee	3,831
Texas	12,848
Utah	1,195
Vermont	432
Virginia	4,903
Washington	3,862
West Virginia	1,386
Wisconsin	3,696
Wyoming	332

Note: These estimates are consistent with the population as enumerated in the 1990 census, and have not been adjusted for census coverage errors.

Source: Population Estimates Branch, Bureau of the Census, Washington, DC.

For a description of methodology see Current Population Reports, P-25 Nos. 1010 and 1106.

[FR Doc. 94-4028 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-351-820]

Notice of Amended Final
Determination of Sales at Less Than
Fair Value: Ferrosilicon From Brazil

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT:
Kimberly Hardin, Office of
Antidumping Investigations, Import
Administration, U.S. Department of
Commerce, 14th Street and Constitution
Avenue, NW., Washington, DC 20230;
telephone (202) 482-0371.

Amendment of Final Determination

In accordance with 19 CFR
353.28(c)(1993), we are amending the
final determination of the antidumping
duty investigation of ferrosilicon from
Brazil (59 FR 732, January 6, 1994) to
announce the Department's correction
of ministerial errors in the calculations.

Case History

Since publication of the notice of final
determination on January 6, 1994 (59 FR
732), the following events have
occurred.

On January 21, 1994, petitioners and
one of the respondents, Companhia
Ferroligas Minas Gerais (Minasligas),
alleged that the Department made
several ministerial errors in its final
determination. On January 24, 1994,
respondent Companhia Brasileira
Carbureto de Calcio (CBCC) also alleged
that the Department made ministerial
errors in its final determination. On
January 31, 1994, petitioners submitted
comments on the ministerial error
allegations submitted by CBCC. Also on
January 31, 1994, Minasligas submitted
comments on the ministerial error
allegations submitted by petitioners. All
allegations and comments were timely.

Scope of Investigation

The merchandise subject to this
investigation is ferrosilicon (FeSi), a
ferroalloy generally containing, by
weight, not less than four percent iron,
more than eight percent but not more
than 96 percent silicon, not more than
10 percent chromium, not more than 30
percent manganese, not more than three
percent phosphorous, less than 2.75
percent magnesium, and not more than
10 percent calcium of any other
element. For a complete description of
the merchandise covered by this
investigation, see Final Determination of
Sales at Less Than Fair Value:
Ferrosilicon from Brazil (59 FR 732,
January 6, 1994).

Ministerial Error Allegations

On January 21, 1994, petitioners
alleged that the Department made
several ministerial errors in its final
determination. First, petitioners state
that the Department improperly
included home market "credit
expenses" reported by two respondents,
Minasligas and CBCC, in the price that
was compared to the monthly cost of

production (COP) for purposes of the
COP test.

We agree with petitioners that this
constitutes a ministerial error and have
recalculated accordingly. In this
investigation, we intended to make
contemporaneous comparisons by
comparing the price at the time of
shipment to the replacement cost in the
month of shipment. However, our
comparisons were not contemporaneous
because the COP in one month was
compared to a price charged in the same
month which included an adjustment
for anticipated inflation. We thus
determine that this constitutes an
unintentional ministerial error as
defined at 19 CFR 353.28(d). As a result
of our recalculation, U.S. sales for both
companies are now being compared to
constructed value (CV). For the one U.S.
sale made by Minasligas for which
Minasligas did not report CV
information, we indexed period of
investigation (POI) average costs to
February 1993 using International
Monetary Fund's Brazilian wholesale
price index. For two U.S. sales made by
CBCC shipped outside the POI, CBCC
incorrectly reported direct selling
expenses. We calculated the direct
selling expenses for these sales as a
percentage of cost of manufacture based
on CBCC's actual experience for each
month of the POI.

Second, petitioners claim the
Department erroneously imputed
negative U.S. credit expenses for
Minasligas by treating the first date on
which Minasligas borrowed from U.S.
advance exchange contracts as the date
of payment by the purchaser (Minasligas
received the first draw from the advance
exchange contract prior to the date of
shipment). In addition, petitioners claim
we incorrectly used a cruzeiro-
denominated interest rate to calculate
Minasligas' negative U.S. credit figures.

We disagree with petitioners. We note
that we accounted for actual expenses
associated with the advance exchange
contracts by making a circumstance of
sale adjustment to foreign market value
(FMV). Regarding the use of the first
versus the second advance exchange
contract payment date as well as the use
of the monthly cruzeiro-denominated
interest rate for calculating U.S. credit,
these decisions are discussed in the
final determination concurrence
memorandum. Accordingly, we do not
consider these issues to constitute
ministerial errors, as defined in 19 CFR
353.28.

Third, petitioners claim the
Department inaccurately imputed home
market credit expenses by assuming
Minasligas had reported 30 day interest
rates for each transaction. We agree with

petitioners that this is a ministerial error. We recalculated home market imputed credit expenses to accurately reflect the actual interest rate for each transaction.

Finally, petitioners claim we wrongly allowed a monetary correction offset of loans in our calculation of interest expenses for COP. We disagree with petitioners. We followed our normal practice of adjusting financial expenses to compensate for the effects of hyperinflation so that only the actual interest expenses are reflected. Therefore, petitioners' claim does not constitute a ministerial error as defined by 19 CFR 353.28.

On January 21, 1994, respondent Minasligas alleged that the Department made a ministerial error in its final determination. Minasligas claims that, because we used incorrect figures in two instances, we erroneously calculated Minasligas' general and administrative (G&A) expenses. We agree with Minasligas that this is a ministerial error and have recalculated Minasligas' G&A expenses accordingly.

On January 24, 1994, respondent CBCC alleged that the Department made several ministerial errors in its final determination. First, CBCC claims that we failed to use the correct interest expense ratio for CV purposes. We agree with CBCC that the incorrect interest expense ratio was used for CV purposes, and have changed our calculation accordingly.

Second, CBCC claims that we double-counted inventory holding gain/loss in our calculation of the CV related to a December U.S. sale. We disagree with CBCC. Inventory holding gain/loss was appropriately accounted for in the calculation of CV. However, we have removed inventory carrying costs from our analysis as it is not our policy to include this element in purchase price calculations.

Third, CBCC argues that we used an incorrect monthly "Unidade Fiscal de Referencia" figure in our depreciation calculation. CBCC claims we did not consider the "special depreciation" which was mandated by the Brazilian Government to compensate for the period in which Brazilian companies were prohibited from recognizing depreciation. CBCC claims the result is that we used an incorrect multiplier, thus overstating depreciation expense. We disagree with CBCC that we used an incorrect multiplier and that our depreciation expense calculation was overstated. Thus, we find that the calculation does not contain a ministerial error.

Finally, CBCC alleges that we failed to make proper adjustments to a U.S. price

(USP) converted to cruzeiros because USP is compared to costs which are expressed in cruzeiros at a later date. CBCC claims the CV should be adjusted for the lag between the cost calculation and the conversion of the sales price into cruzeiros. We note that we did not convert USP into cruzeiros. Moreover, we followed our normal methodology for hyperinflationary economies of using the CV in the month of shipment of the U.S. sale. Accordingly, we find that this is not a ministerial error.

Therefore, pursuant to section 735(e) of the Act, we are correcting the above ministerial errors made in our final determination of sales at less than fair value.

See memorandum to Barbara R. Stafford from David L. Binder, February 8, 1994, for a detailed explanation of the decisions noted above.

Inclusion of Minasligas

In the final determination, the Department found that Minasligas had a zero dumping margin. In consequence, the Department excluded Minasligas from the results of the investigation, and instructed the Customs Service to terminate suspension of liquidation for all entries of FeSi from Minasligas and to release any bond or other security and to refund any cash deposits with respect to these entries in accordance with section 735(c)(2) of the statute.

However, as noted above, the Department has determined that ministerial errors exist with respect to the calculation of Minasligas' dumping margin. The recalculation of Minasligas' margin results in the finding of sales at less than fair value. Accordingly, we are directing the Customs Service to reinstitute suspension of liquidation of all remaining entries of FeSi from Minasligas, entered or withdrawn from warehouse, for consumption on or after August 16, 1993, which is the date of the publication of our affirmative preliminary determination in the *Federal Register* (58 FR 43323) and before January 6, 1994, which is the date of publication of our final determination in the *Federal Register*. For all unliquidated entries made during the period from August 16, 1993, to January 6, 1994, the Customs Service shall retain the cash deposits collected, or bonds posted, as a result of the preliminary determination.

In addition, as a result of the amended final determination, we are directing the Customs Service to suspend liquidation of all entries of FeSi from Minasligas, entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the *Federal Register*. The Customs Service

shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown in the "Suspension of Liquidation" section below.

Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service to continue to retroactively suspend liquidation of all entries of FeSi from Italmagnesio S.A. Industria e Comercio. Retroactive suspension applies to entries of FeSi, that are entered, or withdrawn from warehouse, for consumption on or after May 18, 1993, which is the date 90 days prior to the date of the publication of our preliminary determination in the *Federal Register*. For CBCC and "All Other Exporters," we are directing the Customs Service to continue to suspend liquidation of all entries of FeSi from Brazil, that are entered, or withdrawn from warehouse, for consumption on or after August 16, 1993.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown below.

Manufacturer/producer/exporter	Margin percent	Critical circumstances
Italmagnesio S.A. Industria e Comercio.	88.86	Yes.
Companhia Brasileira Carbureto de Calcio.	15.53	No.
Companhia Ferroligas Minas Gerais.	3.46	No.
All Others	35.95	No.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This amended final determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.28(c).

Dated: February 15, 1994.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

[FR Doc. 94-4059 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-447-801 (FORMERLY A-461-601)]

Solid Urea From Estonia; Joint Notice of Initiation of Antidumping Duty Administrative Review and Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Joint notice of initiation of antidumping duty administrative review and preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) received a request from the Government of Estonia to conduct an administrative review of the antidumping duty order on solid urea from Estonia. In response to this request, and in accordance with the Commerce Regulations, the Department is initiating this administrative review and is concurrently issuing these preliminary results. The review covers the period July 1, 1991, through June 30, 1992. There were no known shipments of this merchandise to the United States from Estonia by any party during the period and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT:

Thomas O. Barlow or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-5256 and 482-0367, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On July 14, 1987, the Department published in the *Federal Register* (52 FR 26367) an antidumping duty order on solid urea from the Union of Soviet Socialist Republics (USSR) (52 FR 19557 (May 26, 1987)). On June 29, 1992, following dissolution of the USSR, the Department transferred the order to the Commonwealth of Independent States and the Baltic States, including Estonia. The substance of each new order remained the same and the estimated cash deposit rate of 68.26 percent was applied to exports from each independent state (57 FR 28828 (June 29, 1992)). This was the highest rate established in the LTFV investigation.

On July 31, 1992, in accordance with 19 CFR 353.22(a), the Department received a timely request from the government of Estonia for an administrative review of the order for

the time period July 1, 1991, through June 30, 1992. On August 10, 1992, the Department requested the U.S. Customs Service (Customs) to determine whether there was any record of entries of subject merchandise from the former USSR or any of the 15 independent republics during the review period. On August 13, 1992, Customs advised the Department that there was no record of any entries of the subject merchandise under HTS item 3102.10.00 during the period July 1, 1991 to June 30, 1992, from the former USSR or any of the 15 independent republics.

Initiation of Review

In accordance with § 353.22(c) of the Department's regulations, we are initiating an administrative review of the antidumping duty order on solid urea from Estonia (case number A-447-801) and are concurrently issuing these preliminary results. This review covers all manufacturers and exporters, of solid urea from Estonia for the period July 1, 1991 through June 30, 1992, and its results will be applied to all manufacturers and exporters of solid urea from Estonia.

Interested parties must submit requests for disclosure under administrative protective order in accordance with § 353.34(b) of the Department's regulations.

Scope of Review

Imports covered by this review are all shipments of solid urea from Estonia. During the original investigation such merchandise was provided for under item number 480.30 of the Tariff Schedules of the United States (TSUS). This merchandise is currently classifiable under item number 3102.10.00 of the Harmonized Tariff Schedule (HTS) of the United States. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The period of review is July 1, 1991 through June 30, 1992.

Preliminary Results of Review

As stated in the background section of this notice, Customs has advised the Department that there were no entries of the subject merchandise into the United States during the period of review. Therefore, the cash deposit rate for all firms will be maintained at the present rate of 68.26 percent. This rate is the applicable rate transferred to the Republic of Estonia on June 29, 1992. This rate was the highest calculated rate from the original LTFV investigation.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: the cash deposit rate for all firms shall be 68.26 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This initiation, this review, and this notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1993).

Dated: February 14, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-4060 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-08-P

National Institute of Standards and Technology**Visiting Committee on Advanced Technology; Meeting**

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on

Tuesday, March 8, 1994, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. Presentations will be given on the Manufacturing Extension Partnership, the Board of Assessment's report on NIST programs, the Advanced Technology Program: a progress report and industrial input and program definition, laboratory tours, and a discussion on the Institute's budget.

The discussion on NIST Budget, scheduled to begin at 3:50 p.m. and end at 5 p.m. on March 8, 1994, will be closed.

DATES: The meeting will convene March 8, 1994, at 8:30 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 14, 1994, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: February 16, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94-4037 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Incidental Take of Marine Mammals

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

ACTION: Notice of issuance of Letters of Authorization.

Notice is given that on February 8, 1994, NMFS issued a Letter of Authorization for a take of ringed seals incidental to on-ice seismic activities in the Beaufort Sea. This letter was issued under the authority of the Marine Mammal Protection Act (MMPA) and 50 CFR part 228, subparts A and B.

A letter was issued to Western Geophysical, 351 E. International Airport Road, Anchorage, Alaska 99518. The letter is valid only for activities conducted in 1994, and is subject to the provisions of the MMPA, regulations governing small takes of marine mammals incidental to specified activities, and regulations governing the taking of ringed seals incidental to on-ice seismic activities in the Beaufort Sea (50 CFR part 228, subparts A and B and 58 FR 4091, January 13, 1993).

Issuances of letters are based on findings that the total takings will have a negligible impact on the ringed seal species or stock and will not have an unmitigable adverse impact on the availability of the species for subsistence uses.

ADDRESSES: These letters are available for review in the following offices: Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910 and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, Alaska 99513.

Dated: February 8, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 94-4026 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

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

ACTION: Issuance of extensions to four permits.

On April 13, 1993, as authorized by the provisions of the Endangered Species Act, NMFS issued incidental take Permit 829 (P507F) to the Washington Department of Fisheries (WDF), Permit 830 (P250E) to the Washington Department of Wildlife (WDW), Permit 831 (P211G) to the Oregon Department of Fish and Wildlife (ODFW), and Permit 832 (P503D) to the

Idaho Department of Fish and Game (IDFG) to incidentally take listed Snake River sockeye salmon (*Oncorhynchus nerka*) and Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) during the operation of artificial propagation hatcheries, subject to certain conditions set forth therein, to be valid through February 15, 1994.

The above permit holders have submitted applications (P507G, P250F, P211H, and P503L, respectively) in due form for new permits to authorize the continued operation of their hatchery programs. NMFS is currently analyzing the activities proposed in those applications in accordance with the Endangered Species Act and the National Environmental Policy Act; however, this process is not yet complete.

Notice is hereby given that on February 14, 1994, NMFS issued extensions to the above permits, authorizing the permit holders to continue the activities therein until July 1, 1994, or until the authorization is superseded by a new permit. All other conditions associated with the permit remain in full force and effect. No release of hatchery fish are authorized at this time.

Issuance of these extensions, as required by the ESA, was based on a finding that: (1) The taking would be incidental; (2) the applicant would, to the maximum extent practicable, monitor, minimize and mitigate the impacts of such taking; (3) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (4) there were adequate assurances that the conservation plan would be funded and implemented, including any measures required by the Assistant Administrator. These permits were also issued in accordance with and are subject to Parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (301-713-2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, Oregon 97232 (503-230-5400).

Dated: February 14, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 94-3955 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-22-M

[I.D. 020894A]

Marine Mammals

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

ACTION: Receipt of application for a permit to take marine mammals for the purposes of scientific research and to enhance the survival of a species (P772#65).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038-0271, has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research and to enhance the survival of the species.

DATES: Written comments must be received on or before March 25, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980-4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955-8831).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, 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 request would be appropriate.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and

the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant proposes to conduct several research/enhancement activities on Hawaiian monk seals (*Monachus schauinslandi*). The various activities requested are primarily those which have been authorized in the past under the applicant's previous permits (e.g., Permit Nos. 657, 729, and 778). These activities include the following: (1) Possible inadvertent harassment (multiple times annually) of up to the entire population of Hawaiian monk seals (approximately 1500) incurred during census activities; (2) mass mortality response activities, including (a) sacrifice of up to 10 moribund pups, (b) collection of samples from up to 20 diseased seals, (c) collection of samples from up to 10 apparently healthy seals (and possible biopsy of up to 5 of these 10), (d) sacrifice of up to 6 apparently normal males, (e) experimental treatment and/or removal from the affected island of up to 10 diseased seals, and (f) treatment and/or removal of up to 100 additional seals; (3) collection for rehabilitation and release to the wild of up to 70 immature seals; (4) tagging and marking of up to 1000 pups and juveniles; (5) instrumentation (satellite/VHF transmitters, and time-depth recorders (TDRs)) of up to 25 seals; (6) bleach marking of up to 1500 seals; and (7) stomach lavage of up to 40 seals. Additionally, the applicant is requesting authorization for the accidental mortality of some of these animals.

Dated: February 14, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-3966 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 020994B]

Marine Mammals

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

ACTION: Receipt of application for a scientific research permit (P771#69).

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Fisheries Service, Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way NE., Seattle, Washington 98115, has applied in due form for a permit to take beluga whales (*Delphinapterus leucas*) for purposes of scientific research.

DATES: Written comments must be received on or before March 25, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668 (907/588-7221); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526-6150).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, 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 request would be appropriate.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to tag up to 30 beluga whales (*Delphinapterus leucas*) in Alaska annually, over a 2-year period. Up to 500 additional whales may be harassed incidentally to the tagging operations annually.

Dated: February 15, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-3967 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Consultations with the Government of the People's Republic of China

February 16, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

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 recent consultations between the Governments of the United States and the People's Republic of China, agreement was reached to establish a separate bilateral agreement on silk apparel products, produced or manufactured in China and exported to the United States. Further consultations are scheduled to be held on February 24 and 25, 1994 in Washington, DC, to settle the specifics of this Agreement. A notice will be published in the *Federal Register* following these meetings that will provide the specifics of the new Silk Agreement with the People's Republic of China.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-4056 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability, Preparation of a Final Supplement to the 1989 Environmental Impact Statement for Proposed Actions at U.S. Army Kwajalein Atoll (USAKA)

AGENCY: Department of the Army, DOD.
ACTION: Notice of availability.

SUMMARY: This notice of availability is for a Final Supplemental Environmental Impact Statement (FSEIS) to the Environmental Impact Statement prepared for the United States Army Kwajalein Atoll (USAKA) (United States Army Strategic Defense Command, 1989). The FSEIS has assessed potential environmental impacts for two proposed actions: To increase the level of missile defense test and evaluation activities to support the development for deployment of missile defense systems; and to adopt new environmental standards for USAKA.

Lead Agency: U.S. Army Space and Strategic Defense Command (USASSDC).

Cooperating Agency: Ballistic Missile Defense Organization (BMDO).

Proposed Action: The first Proposed Action involves a substantial increase in USAKA activities required to support the development in missile defense systems. These activities would consist

of a substantial increase in flight test activities with a corresponding increase in the USAKA infrastructure and support capabilities. USAKA is a national range at which the performance of component, sub-system, and integrated system testing has occurred. The second Proposed Action involves the adoption of new environmental standards for USAKA, which are derived from existing United States and Republic of the Marshall Islands regulations and statutes, and are tailored to protect the specific environmental conditions of the Kwajalein Atoll. The development of these new standards is provided for in the Compact of Free Association between the United States and the Government of the Republic of the Marshall Islands.

ADDRESSES: Request for information may be forwarded to the Commander, U.S. Army Space and Strategic Defense Command, Attn: Kenneth R. Sims, CSSD-EN-V, P.O. Box 1500, Huntsville, AL 35807-3801.

FOR FURTHER INFORMATION CONTACT:

Verbal comments and questions regarding the FSEIS may be directed to Mr. Ed Vaughn at (205) 955-3887.

Dated: February 14, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 94-3976 Filed 2-22-94; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)

Date of Meeting: 7 March 1994

Time of Meeting: 0830-1100 (classified)

Place: McLean, VA

Agenda: The Threat team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be

contacted for further information at (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94-4075 Filed 2-22-94; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Privacy Act of 1974; Delete Record Systems

AGENCY: Department of the Navy, DOD.
ACTION: Delete record systems.

SUMMARY: The Department of the Navy is deleting three systems of records from its inventory of Privacy Act systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The reason for their deletion is provided below.

DATES: The deletions are effective February 23, 1994.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614-2004 or DSN 224-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the *Federal Register* and are available from the address above.

The deleted systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 16, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01746-1

SYSTEM NAME:

Nonappropriated Fund Activity Information Support System (February 22, 1993, 58 FR 10722).

Reason: The system of records was established but never implemented within the Department of the Navy.

N05340-2

SYSTEM NAME:

Personal Commercial Affairs Solicitation Privilege File System (February 22, 1993, 58 FR 10755).

Reason: Records in the system are retrieved by company name, not a personal identifier.

N07600-1

SYSTEM NAME:

NIF Standard Automated Financial System (STAFS) (February 22, 1993, 58 FR 10810).

Reason: System tested, but never implemented. Sponsoring activity disestablished May 1990.

[FR Doc. 94-3985 Filed 02-22-94; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of dates for submission of State revenue and expenditure reports for fiscal year 1993 and of revisions to those reports.

SUMMARY: The Secretary of Education announces a date for the submission by State educational agencies (SEAs) of preliminary expenditure and revenue data and average daily attendance statistics for fiscal year (FY) 1993 and establishes a deadline for any revisions to that information. The Secretary sets these dates to ensure that data are available for timely distribution of Federal funds. The data will be published by the Department's National Center for Education Statistics (NCES) and will be used by the Secretary in the calculation of allocations for FY 1995 appropriated funds.

DATES: The suggested date for submission of preliminary data is March 15, 1994. The mandatory deadline for submission of final data is, including revisions to preliminary data, September 6, 1994.

ADDRESSES: SEAs are urged to mail or hand deliver ED Form 2447 (The National Public Education Financial Survey—Fiscal Year 1993) by the first date specified in this notice. SEAs must mail or hand deliver final data and any revisions to preliminary data on or before the mandatory deadline date to—U.S. Department of Education, Office of Educational Research and Improvement, National Center for Education Statistics, Attention: GSAB—Fiscal Survey, 555 New Jersey Avenue, NW., Washington, DC 20208-5851.

An SEA may hand deliver any revisions to room 410 of the address above by 4 p.m. (Washington, DC time) on or before the mandatory deadline date.

If an SEA's submission is received by NCES after the mandatory deadline date, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Fowler, Jr., at the address specified above or by telephone: (202) 219-1921. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under the authority of section 406(g) of the General Education Provisions Act, as amended (20 U.S.C. 1221e-1(g)), which authorizes NCES to gather data from States on the financing of elementary and secondary education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education.

In addition to using SPPE data as useful statistics on the financing of elementary and secondary education, the Secretary uses them directly in calculating allocations for certain formula grant programs, including chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (chapter 1), Impact Aid, and Indian Education. Other programs such as title VII of the Stewart B. McKinney Homeless Assistance Act, the Eisenhower Mathematics and Science Education program, and the Drug-Free Schools and Community Act make use of SPPE data indirectly because their formulas are based, in whole or in part, on State chapter 1 allocations.

In December 1993, NCES mailed to SEAs ED Form 2447 with instructions and requested that SEAs submit initial data to the Department by March 15, 1994. If an SEA does not submit initial FY 1993 data on ED Form 2447 on or about March 15, 1994, it should inform NCES, in writing, of the delay and the date by which it will submit FY 1993 data. Submissions by SEAs to NCES are edited by NCES and returned to each SEA for verification. NCES acknowledges that data submitted prior to September 6, 1994, may be preliminary and are subject to revision by an SEA not later than September 6, 1994.

To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, a final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Authority: 20 U.S.C. 1221e-1(g).

Dated: February 17, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94-4009 Filed 2-22-94; 8:45 am]

BILLING CODE 4000-01-P-M

DEPARTMENT OF ENERGY

Grant Award to the Nature Conservancy

AGENCY: U.S. Department of Energy, Richland Operations Office.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, Richland Operations Office, announces that pursuant to Paragraph B of 10 CFR 600.7(b)(2)(i), it intends to issue a noncompetitive grant award to The Nature Conservancy. The award is planned for a three (3) year project cycle, consisting of three (3) separately funded one (1) year budget periods. The initial budget is estimated at \$250,000.

FOR FURTHER INFORMATION CONTACT: Melanie P. Fletcher, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, Washington 99352, Telephone: (509) 376-4828.

SUPPLEMENTARY INFORMATION: Grant Award Number: DE-FG06-94RL12858. Scope of Project: The proposed financial assistance award is a grant to The Nature Conservancy to fund a Biodiversity Inventory and Analysis Program on the Hanford Site. The activities will include inventorying plants, animals, and ecologically significant areas. In addition, the inventory work will assist DOE in identifying the location of threatened and endangered species on the Hanford Site and thereby afford the proper protection and/or mitigation required per the Threatened and Endangered Species Act.

The Nature Conservancy is currently performing activities related to those proposed at the Hanford Site utilizing their own resources. The public benefit derived from these activities could be greatly enhanced with Department of Energy financial support. It has been determined that a grant instrument is appropriate since the Department of Energy anticipates limited direct involvement with the program.

Dated: February 3, 1994.

Robert D. Larson,
Director, Procurement Division, Richland Operations Office.

[FR Doc. 94-4020 Filed 2-22-94; 8:45 am]

BILLING CODE 6450-01-M

Grant Award to Prairie View A&M University

AGENCY: Department of Energy.
ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to the Texas Engineering Experiment Station at Prairie View A&M University (PVAM), for the implementation of a collaborative program with the Energy Analysis and Diagnostic Center (EADC) at Texas A&M University to provide the necessary training and support for development of an EADC at PVAM.

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to the Texas Engineering Experiment Station at PVAM, would be based on the acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). There are currently no Historically Black Colleges and Universities (HBCU) participating in the

EADC program. Texas A&M University (TAMU) is one of only six EADC program participants that have IAC qualifications to conduct the combined industrial assessment activities of energy efficiency improvement, waste reduction/pollution prevention and productivity improvement. Of the six IACs, TAMU is the only institution in close proximity to an Accreditation Board for Engineering and Technology (ABET) accredited HBCU. The proposed project is deemed meritorious based on the general evaluation in accordance with DOE 600.14(d) and represents a unique approach that would not be eligible for financial assistance under a recent, current, or planned solicitation.

The project period for the grant award is 12 months. DOE plans to provide funding in the amount of \$62,000.00.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois, on February 4, 1994.

Timothy S. Crawford,
Assistant Manager for Human Resources and Administration.

[FR Doc. 94-4021 Filed 2-22-94; 8:45 am]

BILLING CODE 6450-01-M

Floodplain Statement of Findings for Proposed Sampling at Solid Waste Management Units 94 and 95 at the Paducah Gaseous Diffusion Plant, Paducah, KY

AGENCY: Department of Energy (DOE).
ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings for the proposed sampling at solid waste management units (SWMUs) 94 and 95. DOE proposes to conduct a Resource Conservation and Recovery Act Facility Investigation (RFI) at SWMUs 94 and 95 at the Paducah Gaseous Diffusion Plant (PGDP) that would involve the collection of surface water, ground water, sediment, and soil samples at these SWMUs. Some sampling is proposed to occur in the floodplains of two creeks near PGDP in McCracken County, Kentucky. DOE prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplains. DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Information on the proposed action (including maps of potentially disturbed floodplain areas) is available from:

Mr. Robert C. Sleeman, Director, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831-8541, (615) 576-0715, (615) 576-6074 (Fax).

Further information on general DOE floodplain/wetlands environmental review requirements is available from:

Ms. 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 (800) 472-2755.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the proposed RFI sampling at SWMUs 94 and 95 prepared in accordance with 10 CFR part 1022. A Notice of Floodplain/Wetland Involvement for Environmental Restoration and Waste Management Activities at PGDP was published in the *Federal Register* on October 5, 1993, at 58 FR 51812, and a floodplain assessment has been prepared; no wetland will be involved in the proposed action. DOE is proposing to collect surface water, ground water, sediment, and soil samples to define the nature and extent of contamination in these media at two SWMUs on the site of the former Kentucky Ordnance Works near PGDP in McCracken County, Kentucky.

Ground-water wells and deep soil borings would be placed within the 100-year floodplain of an unnamed tributary to Big Bayou Creek at SWMU 94 and within the 100-year floodplain of Big Bayou Creek at SWMU 95 to determine if the floodplains have been contaminated from past releases from the two SWMUs. Sampling would allow DOE to define the nature and extent of potential contamination in floodplain media. Two alternatives were considered—the no action alternative and an alternative that included performing the activities outside of the floodplain. Neither of these alternatives would provide the necessary characterization information and, therefore, are unacceptable alternatives. The proposed action does conform to applicable State floodplain protection standards.

Minor temporary impacts would occur from construction of temporary access roads and drilling pads for heavy equipment used to install deep soil borings and wells. Some trees would have to be cut at SWMU 95 to clear new access routes. Existing roadways and clearings would be used to the greatest

extent possible to minimize new road construction. New temporary roadways and drilling pads would require small amounts of gravel and rock fill for drilling equipment.

All drilling pads and most access roadways would be reclaimed and revegetated at the conclusion of the project. Some roadways would be left in place for continued access to monitoring wells. The number of trees to be cut would be kept to the minimum needed to clear access routes. Standard engineering practices would control potential soil erosion from the sites. Access road and drilling pad construction and clearing vegetation for site access would not reduce the flood storage capacity of the floodplain, interfere with stream flow, or produce hazardous flood velocities. DOE will endeavor to allow 15 days of public review after publication of the statement of findings prior to implementing the proposed action.

James J. Fiore,

*Director, Office of Eastern Area Programs,
Office of Environmental Restoration.*

[FR Doc. 94-4024 Filed 2-22-94; 8:45 am]

BILLING CODE 6450-01-P

Office of Energy Efficiency and Renewable Energy

[Case No. F-067]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Goodman Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Goodman Manufacturing Company (Goodman) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GMN series central furnaces.

Today's notice also publishes a "Petition for Waiver" from Goodman. Goodman's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Goodman seeks to test using a blower delay time of 40 seconds for its GMN series central furnaces instead of the specified 1.5-minute delay between on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than March 25, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F-067, Mail Stop EE-43, room 5E-066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasser, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive,

temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On November 29, 1993, Goodman filed an Application for Interim Waiver regarding blower time delay. Goodman's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Goodman requests the allowance to test using a 40-second blower time delay when testing its GMN series central furnaces. Goodman states that the 40-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of 0.6 to 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Goodman asks that the Interim Waiver be granted.

The Department has published a notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March

24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Goodman an Interim Waiver for its GMN series central furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Goodman was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, February 10, 1994.

Christine A. Ervin,
Assistant Secretary, Energy Efficiency and
Renewable Energy.
February 14, 1994.

Mr. Peter H. Alexander,
Vice President of Engineering, Goodman
Manufacturing Company, 1501 Seamist,
Houston, Texas 77008.

Dear Mr. Alexander: This is in response to your November 29, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Goodman Manufacturing Company (Goodman) GMN series central furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Goodman's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Goodman will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Goodman shall be permitted to test its GMN series central furnaces on the basis of the test procedures specified in 10 CFR Part

430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103-82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,
Assistant Secretary, Energy Efficiency and
Renewable Energy.
November 29, 1993.

Assistant Secretary, Conservation and
Renewable Energy,
United States Department of Energy,
1000 Independence Ave., SW.,
Washington, DC 20585.

Re: Petition for Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for interim Waiver submitted pursuant to Title 10 CFR 430.27. Waiver is requested from the test procedure for measuring Furnace Energy Consumption as found in Appendix H to Subpart B of part 430.

The current test procedure requires a 1.5 minute delay between burner ignition and

the start of the circulating air blower. Goodman Manufacturing Co., L.P. is requesting waiver and authorization to use a 40 second delay instead of the specified 1.5 minutes for the blower to start after main burner ignition. Goodman Manufacturing intends to use a fixed timing control on our GMN series central furnaces to gain additional energy savings that are achieved with the use of shorter blower on times.

Test data for these furnaces with a 40 second delay indicated an increase in AFUE of 0.6 to 1.0 percentage points. The use of a 40 second delay reduces the appliance flue losses and therefore increases the furnace efficiency. Copies of confidential test data confirming this energy savings will be provided to you at your request.

The current test procedure does not give Goodman Manufacturing credit for energy savings that can be obtained using fixed blower timings. The proposed ASRAE 103-1988 that is under consideration by DOE address the use of timed blower operation.

Goodman Manufacturing is confident that this Waiver will be granted, and therefore we request an Interim Waiver be granted until a final ruling is made. Goodman, as well as other manufacturers of domestic furnaces, have been granted similar waivers.

Manufacturers that domestically market similar products have been sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Goodman Manufacturing Co., L.P.,

Peter H. Alexander,

Vice President of Engineering.

[FR Doc. 94-4022 Filed 2-22-94; 8:45 am]

BILLING CODE 6450-01-P-M

[Case No. F-066]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Goodman Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Goodman Manufacturing Company (Goodman) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GMPV series central furnaces.

Today's notice also publishes a "Petition for Waiver" from Goodman. Goodman's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Goodman seeks to test using a blower delay time of 30 seconds for its GMPV series central furnaces instead of the specified 1.5-minute delay between

burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than March 25, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F-066, Mail Stop EE-43, room 5E-066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasser, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On November 29, 1993, Goodman filed an Application for Interim Waiver regarding blower time delay. Goodman's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Goodman requests the allowance to test using a 30-second blower time delay when testing its GMPV series central furnaces. Goodman states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Goodman asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560,

August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporations, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 6, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc. 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992, Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Goodman an Interim Waiver for its GMPV series central furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Goodman was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, February 10, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

February 14, 1994.

Mr. Peter H. Alexander,

Vice President of Engineering, Goodman Manufacturing Company, 1501 Seamist, Houston, TX 77008.

Dear Mr. Alexander: This is in response to your November 29, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Goodman Manufacturing Company (Goodman) GMPV series central furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Goodman's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Goodman will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Goodman's Application for an Interim Waiver from the DOE test procedure

for its GMPV series central furnaces regarding blower time delay is granted.

Goodman shall be permitted to test its GMPV series central furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedures. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103-82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

November 29, 1993.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Re: Petition for Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27.

Waiver is requested from the test procedure for measuring Furnace Energy Consumption as found in Appendix H to Subpart B of part 430.

The current test procedure requires a 1.5 minute delay between burner ignition and the start of the circulating air blower. Goodman Manufacturing Co., L.P. is requesting waiver and authorization to use a 30 second delay instead of the specified 1.5 minutes for the blower to start after main burner ignition. Goodman Manufacturing intends to use a fixed timing control on our GMPV series central furnaces to gain additional energy savings that are achieved with the use of shorter blower on times.

Test data for these furnaces with a 30 second delay indicated an increase in AFUE of 1.0 percentage point. The use of a 30 second delay reduces the appliance flue losses and therefore increases the furnace efficiency. Copies of confidential test data confirming this energy savings will be provided to you at your request.

The current test procedure does not give Goodman Manufacturing credit for energy savings that can be obtained using fixed blower timings. The proposed ASRAE 103-1988 that is under consideration by DOE address the use of timed blower operation.

Goodman Manufacturing is confident that this Waiver will be granted, and therefore we request an Interim Waiver be granted until a final ruling is made. Goodman, as well as other manufacturers of domestic furnaces, have been granted similar waivers.

Manufacturers that domestically market similar products have been sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Goodman Manufacturing Co., L.P.,

Peter H. Alexander,

Vice President of Engineering.

[FR Doc. 94-4023 Filed 2-22-94; 8:45 am]

BILLING CODE 6450-01-P-M

Federal Energy Regulatory Commission

[Docket No. EC94-10-000, et al.]

Commonwealth Edison Co., et al.; Electric Rate and Corporate Regulation Filings

February 15, 1994.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. EC94-10-000]

Take notice that on February 4, 1994, Commonwealth Edison Company (Edison), 10 South Dearborn Street, Post Office Box 767, Chicago, Illinois 60690, submitted an application pursuant to Section 203 of the Federal Power Act for authority to carry out a "disposition of facilities" that would assertedly be deemed to occur as a result of a proposed corporate restructuring, all as

more fully set forth in the Application, which is on file with the Commission and open to public inspection.

The Application states that the proposed restructuring would be accomplished through transactions in which Edison would become a subsidiary of CECO Holding Company (Holding Company) through the conversion of Edison's common stock into common stock of Holding Company. It is stated that the proposed restructuring will permit Edison affiliates to engage in non-utility businesses and will not affect Edison's jurisdictional facilities, rates, or services.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Company

[Docket No. ER94-959-000]

Take notice that on February 8, 1994, West Texas Utilities Company (WTU) submitted for filing seven (7) executed Delivery Point and Service Specifications sheets providing for various minor changes to the Service Agreement between WTU and three of its wholesale customers: Midwest Electric Cooperative, Inc., Brazos Electric Power Cooperative, Inc., and Rio Grande Electric Cooperative, Inc., executed under WTU's FERC Electric Tariff, Original Volume No. 1.

WTU states that copies of the filing have been sent to the Public Utility Commission of Texas and the affected full-requirements wholesale customers.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Elkem Metals Company

[Docket No. ER94-966-000]

Take notice that on February 9, 1994, Elkem Metals Company (Elkem), tendered for filing with the Commission as initial rate schedules pursuant to Part 35.12 of the Commission's regulations a Special Contract which provides, *inter alia* for the sale from time to time of electricity by Elkem to Appalachian Power Company (Appalachian).

The Special Contract sets forth terms pursuant to which Elkem will sell to Appalachian excess electric energy generated by its hydroelectric facility. The Special Contract will be effective as of December 1, 1993, and has a term of two years, subject to extension by the parties.

Copies of the filing were served by Elkem upon what will be its sole jurisdictional customer, Appalachian.

The parties have requested a waiver of the Commission's Rules and Regulations

to permit the proposed sale to become effective on less than 60 days notice.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. GWF Power Systems, L.P.

[Docket No. QF86-138-005]

On February 7, 1994, GWF Power Systems, L.P. of 225 Lennon Lane, Suite 120, Walnut Creek, California 94598, submitted for filing an application for certification of a facility as a small power production facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility is located in Hanford, Kings County, California and consists of a fluidized bed boiler and a steam turbine generator. The maximum net power production capacity of the facility is approximately 25.44 MW. The primary energy source is petroleum coke. The installation of the facility began in November of 1988.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER94-962-000]

Take notice that on February 9, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing an Amended Appendix A to the Settlement Agreement (Agreement) between PG&E and Northern California Power Agency (NCPA) which was previously accepted for filing and designated as PG&E Rate Schedule FERC No. 28.

The Agreement provides for the sale of non-peak firm energy by PG&E to NCPA and includes provisions for adjusting rates. Due to the discontinuation of an index, the Amended Appendix A proposes to change the indices used for adjusting rates.

PG&E has also requested a waiver of the Commission's notice requirements of the Commission's regulations so that the rate change may become effective January 1, 1993 pursuant to the Agreement and Amended Appendix A.

Copies of this filing were served on NCPA and the California Public Utilities Commission.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Company

[Docket No. ER94-953-000]

Take notice that on February 7, 1994, Florida Power Corporation (FPC)

tendered for filing an agreement between itself and Georgia Power Company (GPC) pursuant to which FPC will sell to GPC between 150 MW and 500 MW of peaking capacity and energy in the months of June through September in each year between 1996 and 1999. The Agreement also provides GPC the option to purchase up to 300 MW of peaking capacity and energy in the summer of 1995. FPC also has tendered as a supplement to the Agreement a unilateral cap on the total revenues to be collected under the Agreement.

FPC proposes to make the Agreement effective 60 days after filing. FPC states that copies of its filing have been served upon GPC and the Public Service Commissions of Georgia and Florida.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER94-960-000]

Take notice that New York State Electric & Gas Corporation (NYSEG), on February 8, 1994, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures, as an initial rate schedule, an agreement with Baltimore Gas and Electric Company (BG&E). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to BG&E and BG&E will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on February 9, 1994, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Maryland Public Service Commission and BG&E.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. United Illuminating Company

[Docket No. ER94-195-000]

Take notice that on January 13, 1994, United Illuminating Company tendered for filing an amendment to its November 30, 1993, filing in the above-referenced docket.

Comment date: February 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER92-812-003]

Take notice that on December 14, 1993, Wisconsin Electric Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Century Power Corporation

[Docket No. ER94-923-000]

Take notice that on January 25, 1994, Century Power Corporation tendered for filing a Service Agreement for the Provision of Short Term Power between Century and Tri-State Generation and Transmission Association under Century's FERC Electric Tariff, Original Volume No. 1 Century requests that this filing be allowed to become effective on May 1, 1994, when service is to commence under the Service Agreement.

Comment date: March 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Eastern Power Distribution, Inc.

[Docket No. ER94-964-000]

Take notice that on February 8, 1994, Eastern Power Distribution, Inc. (EPD), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207 (1993), a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective the earlier of April 9, 1994, or the date of a Commission order granting approval of this Rate Schedule.

EPD intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where EPD purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, EPD will be functioning as a marketer. In EPD's marketing transactions, EPD proposes to charge rates mutually agreed upon by the parties. In transactions where EPD does not take title to the electric power and/or energy, EPD will be limited to the role of a broker and will charge a fee for its services. EPD is not in the business of producing or transmitting electric power. EPD does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER94-961-000]

Take notice that on February 8, 1994, Florida Power Corporation (Florida Power), tendered for filing a wholesale rate change in its full requirements, partial requirements and transmission rates. The amount of the rate change, depends on the rates to which the current ones are compared. If compared to the presently effective rates (the 1993 "as proposed" rates in Docket Nos. ER93-299-000 and ER93-18-000), the filed rate accomplish a rate increase in the amount of \$10.3 million or 7.5% on a 1994 calendar-year basis. If the rates filed herein are compared to the rates negotiated in settlement of Florida Power's last filing, (Consolidated Docket Nos. ER93-299-000 and EL93-18-000), an increase of \$13.3 million per year or 10% on a 1994 calendar-year basis results.

Florida Power requests that the rate change be permitted to become effective on March 2, 1994. Florida Power states that it has served copies of its filing on the affected customers and the Florida Public Service Commission.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Central Louisiana Electric Company

[Docket No. ER94-37-000]

Take notice that on January 25, 1994, Central Louisiana Electric Company (CLECO) tendered for filing an amendment in the above-referenced docket.

Comment date: March 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-4015 Filed 2-22-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RM93-19-000]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Establishing Dates for Technical Conference

February 15, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice Establishing Dates For Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission is issuing this notice to establish dates for the technical conference to be held in this proceeding to discuss transmission pricing issues.

DATES: The technical conference will be held on April 8 and 15, 1994. Persons wishing to speak at the technical conference should notify the Commission no later than March 1, 1994, in a pleading referencing Docket No. RM93-19-000 (not exceeding one page) and should identify the entities for whom they propose to speak.

ADDRESSES:

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary (202) 208-0400.

SUPPLEMENTARY INFORMATION: By order dated June 30, 1993, the Commission initiated this proceeding to consider whether it is appropriate to revise the Commission's present pricing policy for transmission services provided by public utilities under the Federal Power Act. Notice of Technical Conference and Request for Comments, 64 FERC ¶ 61,109 (1993); 58 FR 36400, July 7, 1993 (June 30 Order). In the June 30 Order, the Commission provided for public comment on transmission pricing issues and announced that a technical conference to discuss transmission pricing issues would be scheduled after the Commission had an opportunity to review the comments.

Notice is hereby given that the Commission will hold a technical conference to discuss transmission pricing issues on April 8 and 15, 1994, in Washington, DC. Persons wishing to speak at the technical conference should

notify the Commission no later than March 1, 1994, in a pleading referencing Docket No. RM93-19-000 (not to exceed one page) and should identify the entities for whom they propose to speak. A further notice will be issued specifying the agenda and format (including speakers), time and specific location of the technical conference.

Lois D. Cashell,

Secretary.

[FR Doc. 94-3949 Filed 2-22-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP93-261-001]

Algonquin Gas Transmission Co.; Amendment

February 16, 1994.

Take notice that on February 15, 1994, Algonquin Gas Transmission Company (Algonquin), located at 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an amendment in Docket No. CP93-261-001, pursuant to Section 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity authorizing Algonquin to construct and operate facilities and to transport and deliver a total of approximately 14,758 MMBtu of natural gas per day on a firm basis to Bay State Gas Company (Bay State), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin states that the withdrawal of New England Power from the AFT-5 project has resulted in a reduction in the service and facility requirements originally proposed.

Specifically, Algonquin now proposes to: (1) Construct and operate 3.8 miles of 16-inch loop on Algonquin's I-2 system from Valve I-22 to the Brockton Meter Station in Brockton, Massachusetts; (2) upgrade Turbine Nos. C-7 and C-8 to 4,700 hp at the Cromwell Compressor Station in Cromwell, Massachusetts; and (3) make various modifications to metering and regulating facilities in Waterford and Pomfret, Connecticut and in Ashland, Brockton and Norwood, Massachusetts. The cost of Algonquin's proposed facilities is estimated to be \$13,139,000.

Algonquin would provide the firm transportation service for Bay State under proposed Rate Schedule AFT-5, and would charge a 100% demand rate of \$19.3606 per MMBtu for the incremental service.

Algonquin seeks a shortened notice period and expeditious Commission action in order to construct the necessary facilities and commence the proposed service by November 1, 1994.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before February 23, 1994, file with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 94-4017 Filed 2-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-219-000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

February 16, 1994.

Take notice that on February 8, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94-219-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to establish a new delivery point for deliveries of natural gas for the account of the City of Decatur, Alabama (Decatur Utilities), under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to construct the new delivery point in order to effectuate the delivery of up to 24,000 Dekatherms of natural gas to its existing customer, Decatur Utilities under one or more of Decatur Utilities' existing transportation contracts with Tennessee.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the

Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 94-4018 Filed 2-22-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR93-4-000]

Transok, Inc.; Staff Panel

February 16, 1994.

Take notice that a Staff Panel shall be convened in accordance with the Commission order¹ in the above-captioned docket to allow opportunity for written comments and for the oral presentation of views, data, and arguments regarding the fair and equitable rates to be established for system-wide transportation service under section 311 of the Natural Gas Policy Act of 1978 on Transok, Inc.'s system. The Staff Panel will not be a judicial or evidentiary-type hearing and there will be no cross examination of persons presenting statements. Members participating on the Staff Panel before whom the presentations are made may ask questions. If time permits, Staff Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Tuesday, April 26, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426.

The parties also agreed to certain filing dates prior to the Staff Panel proceeding to assist the Panel in developing a record. Those dates are as follows:

- February 23, 1994: Transok files written presentation.
- March 4, 1994: Intervenor discovery request.
- March 14, 1994: Transok response to discovery.
- March 29, 1994: Intervenor files written presentation.
- April 5, 1994: Transok discovery request.

April 18, 1994: Intervenor response to discovery.

April 26, 1994: Staff Panel.

Attendance is open to all interested parties and staff. Any questions regarding these proceedings should be directed to Mark Hegerle at (202) 208-0927.

Lois D. Cashell,
Secretary.

[FR Doc. 94-4019 Filed 2-22-94; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-400083; FRL-4755-6]

Notice of Availability of Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Pollution Prevention Grants.

SUMMARY: EPA is announcing the availability of approximately \$6 million in FY 94 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. The purpose of this program is to support State, Tribal, and regional-based programs that address the reduction or elimination of pollution across all environmental media: Air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pollution Prevention Coordinator. Contact names for each Regional Office are listed under unit IV of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Since its inception in 1989, approximately \$30 million has been awarded to over 100 State, Tribal, and regional organizations under EPA's multimedia pollution prevention grant program.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Pub. L. 101-508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the

environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State programs will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Act authorizes EPA to establish a national source reduction clearinghouse, expands EPA's authority to collect data to better track source reduction activities, and requires EPA to report periodically to Congress on EPA's progress in implementing the Act.

II. Availability of FY 94 Funds

With this publication, EPA is announcing the availability of approximately \$6 million in grant/cooperative agreement funds for FY 1994. The Agency has delegated grant authority to the EPA Regional offices which formally transfers the decisionmaking and awarding process for the PPIS grants to the Regions. Regional offices now assume responsibility for the solicitation of interest, screening of proposals, and the actual selection of awards. This sixth round of awards represents a more direct and active Regional role in determining FY '94 awardees. PPIS grant guidance will be developed separately by each Regional program and will be provided to all applicants along with any supplemental information the Regions may wish to provide. Interested applicants should contact their Regional Pollution Prevention Coordinator for more information.

¹See Transok, Inc., 62 FERC ¶ 61,291 (1993).

III. Eligibility

In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all Federally-recognized Indian tribes. For convenience, the term "State" in this notice refers to all eligible applicants. Local governments, private universities, private non-profit entities, private businesses, and individuals are not eligible. These organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

1. *The Catalogue of Federal Domestic Assistance.* The number assigned to the PPIS program is 66.900. Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50 percent. For example, the Federal government will provide half of the total allowable cost of the project, the State half of the total allowable cost of the project. A grant request for \$100,000 would support a total allowable project cost of \$200,000, with the State also providing \$100,000. State contributions may include dollars, in-kind goods and services and/or third party contributions.

2. *Eligible activities.* In general, the purpose of the PPIS grant program is to support the establishment and expansion of State-, Regional-, Tribal-, or local-based multimedia pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: Air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State- or Region-wide and where appropriate, seek to address State environmental equity issues. States might focus on, for example:

a. Developing other multi-media pollution prevention activities, including but not limited to: Providing direct technical assistance to businesses; collecting and analyzing data to target

outreach and technical assistance opportunities; conducting outreach activities; developing measures to determine progress in pollution prevention; and identifying regulatory and non-regulatory barriers and incentives to pollution prevention and developing plans to implement solutions, where possible.

b. Institutionalizing multi-media pollution prevention as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the pollution prevention ethic within both governmental and non-governmental institutions of the State or region.

c. Initiating demonstration projects that test and support innovative pollution prevention approaches and methodologies.

Proposals accepted for review under this program must qualify as pollution prevention as defined by section 6603 of the Act. In May of 1992, EPA released a "Statement of Definition" as the formal embodiment of the Agency's working definition of pollution prevention, consistent with the Act. (See "EPA Statement of Definition" under unit VI of this notice.)

3. *Program management.* Awards for FY 1994 funds will be managed through the EPA Regional Offices.

4. *Contact.* Interested applicants are requested to contact the appropriate EPA Regional Pollution Prevention Coordinator listed under unit IV of this notice to obtain specific instructions and guidance for submitting proposals. For general information on EPA's Pollution Prevention Grant Program, contact: Lena Hann, Pollution Prevention Division (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 260-2237.

IV. Regional Pollution Prevention Contacts

Mark Mahoney (PAS), US EPA Region 1, JFK Federal Bldg., Room 2203, Boston, MA 02203, (617) 565-1155
 Janet Sapadin (2-PM-PPIB), US EPA Region 2, 26 Federal Plaza, New York, NY 10278, (212) 264-1925
 Cathy Libertz (3ES43), US EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597-0765
 Carol Monell, US EPA Region 4, 345 Courtland St., NE, Atlanta, GA 30365, (404) 347-7109
 Cathy Allen, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604-3590, (312) 353-3387
 Rob Lawrence (6M-PP), US EPA Region 6, 1445 Ross Ave., 12th Floor, Suite

1200, Dallas, TX 75202, (214) 655-6580

Steve Wurtz, US EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101 (913) 551-7315

Sharon Riegel (8PM-SIPO), EPA Region 8, 999 18th St., Suite 500 Denver, CO 80202-2405, (303) 293-1471

Hilary Lauer (H1B), US EPA Region 9, 75 Hawthorne Ave., San Francisco, CA 94105 (415) 744-2189

Robyn Meeker, US EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, (206) 553-8579

V. Media State Grants

Though the PPIS grant program is an instrumental component for building and maintaining State pollution prevention programs, EPA is seeking to further integrate pollution prevention into the Agency's existing media-specific grant programs. To this end, States are encouraged to access, where appropriate, media grant dollars to support state pollution prevention activities. This new Agency policy provides State programs with the opportunity to utilize grant funds, traditionally targeted for end-of-pipe activities, to support source reduction efforts. In November of 1992, in support of the Act and to further integrate pollution prevention into the Agency's existing regulatory programs, EPA released a Guidance for the Integration of Pollution Prevention into Media State Grants. The Agency-wide pollution prevention Guidance, beginning with the FY 1994 State grants cycle has four goals:

1. Promoting pollution prevention in State programs supported through Federal grants by establishing national principles to guide workplans negotiated between Regional Offices and States.

2. Ensuring that grant requirements as interpreted by EPA/State workplans are flexible enough to support innovative State pollution prevention activities.

3. Establishing a simple accounting process to share information on successful State projects, and identify statutory or other barriers to funding State proposals.

4. Building sustained State capacity in pollution prevention to the extent consistent with statutory grant requirements.

The new Guidance is designed to help integrate pollution prevention into the Agency's activities as required by the Act. In other words, it will now be possible, as a result of this guidance to use these traditional media State grants to support pollution prevention purposes. By emphasizing flexibility, the Guidance complements other

Agency efforts to build a productive environmental management system in partnership with the States, and improve coordination with existing State pollution prevention programs.

EPA's FY 1994 grant programs, in conjunction with the States, should build on the Agency's many successful pollution prevention efforts to explicitly promote pollution prevention in State workplans (also called agreements). This Guidance will be incorporated into the annual Agency Operating Guidance as well as program-specific Guidance developed in conjunction with the State/EPA Operations Committee. Program Guidance, intended to tailor the Agency-wide commitment to each grant program, will be applied by EPA Regional offices and States in the development of grant-assisted work. In general, the Guidance applies to all of the Agency's media-specific State grant programs.

For further information, or for a copy of the Guidance, contact Tom McCully, Acting Director, Pollution Prevention Policy Staff in the Office of the Administrator, at (202) 260-8621, or Lena Hann, Pollution Prevention Division, at (202) 260-2237.

VI. Definition of Pollution Prevention

EPA's "Statement of Definition" as defined in May of 1992 follows:

The following EPA "Statement of Definition" is a formal embodiment of what has been the Agency's working definition of pollution prevention, and is consistent with the Pollution Prevention Act of 1990. It makes clear that prevention is our first priority within an environmental management hierarchy that includes: 1) prevention, 2) recycling, 3) treatment, and 4) disposal or release.

While it is subject to further refinement, this definition should provide a common reference point for all of us. As you review and apply the definition in your work, please keep the following points in mind:

- As always, whether the pollution prevention option is selected in any given situation will depend on the requirements of applicable law, the level of risk reduction that can be achieved, and the cost-effectiveness of that option.

- Accordingly, the hierarchy should be viewed as establishing a set of preferences, rather than an absolute judgment that prevention is always the most desirable option. The hierarchy is applied to many different kinds of circumstances that will require judgment calls.

- Drawing an absolute line between prevention and recycling can be difficult. "Prevention" includes what is commonly called "in-process recycling," but not "out-of-process recycling." Recycling conducted in an environmentally sound manner shares many of the advantages of prevention, e.g. energy and resource conservation, and reducing the need for end-of-pipe treatment or waste containment.

As EPA looks at the "big picture" in setting strategic directions for the decade ahead, it is clear that prevention is key to solving the problems that all our media programs face, including the increasing cost of treatment and cleanup. In the common-sense words of Benjamin Franklin, "an ounce of prevention is worth a pound of cure."

Please keep EPA's definition of pollution prevention in mind as you perform your environmental work.

POLLUTION PREVENTION: EPA STATEMENT OF DEFINITION

(pursuant to the Pollution Prevention Act)
Under the Pollution Prevention Act of 1990, Congress established a national policy that:

- pollution should be prevented or reduced at the source whenever feasible;
- pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible;
- pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and
- disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Pollution prevention means "source reduction", as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through:

- increased efficiency in the use of raw materials, energy, water or other resources, or
- protection of natural resources by conservation.

The Pollution Prevention Act defines "source reduction" to mean any practice which:

- reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants.

The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

Under the Pollution Prevention Act, recycling, energy recovery, treatment, and disposal are not included within the definition of pollution prevention. Some practices commonly described as "in process recycling" may qualify as pollution prevention. Recycling that is conducted in an environmentally sound manner shares many of the advantages of prevention — it can reduce the need for treatment or disposal, and conserve energy and resources.

Pollution prevention approaches can be applied to all pollution-generating activity: including energy, agriculture, Federal, consumer as well as industrial sectors. The impairment of wetlands, ground water sources, and other critical resources

constitutes pollution, and prevention practices may be essential for preserving these resources. These practices may include conservation techniques and changes in management practices to prevent harm to sensitive ecosystems. Pollution prevention does not include practices that create new risks of concern.

In the agricultural sector, pollution prevention approaches include:

- reducing the use of water and chemical inputs;
- adoption of less environmentally harmful pesticides or cultivation of crop strains with natural resistance to pests; and
- protection of sensitive areas.

In the energy sector, pollution prevention can reduce environmental damages from extraction, processing, transport and combustion of fuels. Pollution prevention approaches include:

- increasing efficiency in energy use;
- substituting environmentally benign fuel sources; and
- design changes that reduce the demand for energy.

Dated: February 14, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94-4048 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4840-9]

Open Meeting of the Environmental Financial Advisory Board

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting on Tuesday, March 15, 1994, from 1 p.m. to 5 p.m. and Wednesday, March 16, 1994, from 9 a.m. to 4 p.m. The meeting will be held at the Radisson Park Terrace Hotel located at 1515 Rhode Island Avenue, NW., Washington, DC 20005.

EFAB is chartered with providing authoritative analysis and advice to the EPA Administrator on environmental finance issues. This meeting will set the agenda regarding directions of EFAB analyses for the remainder of the year. Additionally, EFAB will organize working committees associated with agenda priorities.

The meeting will be open to the public, but seating is limited. For further information, please contact Eugene Pontillo, U.S. EPA on (202) 260-6044 or Joanne Lynch, U.S. EPA on (202) 260-1459.

Dated: February 3, 1994.

David E. Osterman,

Acting Director, Resource Management Division.

[FR Doc. 94-4054 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50775; FRL-4761-2]

Receipt of an Application for an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 21, 1993, EPA received an application from Monsanto Company for an Experimental Use Permit (EUP) for a transgenic plant pesticide. This is the fourth EUP application under the Federal Insecticide, Fungicide, and Rodenticide Act for testing with a pesticidal substance that is produced in a plant. The Agency has determined that this application may be of regional and national significance. Therefore in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received by March 25, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP-50775 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202, (703)305-7690.

SUPPLEMENTARY INFORMATION: On October 21, 1993 EPA received an

application for an EUP from Monsanto Company, 700 Chesterfield Village Parkway, St. Louis, Missouri 63198. The application was assigned EPA File Symbol 524-EUP-IE. Monsanto proposes to test the cryIA(b) δ -endotoxin (derived from the soil microbe *Bacillus thuringiensis*) as expressed in a series of corn lines from March 1, 1994, to February 28, 1995. The amino acid sequence of the δ -endotoxin in corn was maintained to be identical to the amino acid sequence produced in *Bacillus thuringiensis*. However, the nucleotide sequence of the cryIA(b) gene was modified to enhance expression in corn. In addition to expressing the cryIA(b) δ -endotoxin, the majority of the corn lines being evaluated also express the 5-enol-pyruvylshikimate-3-phosphate (CP4, ESPS) and/or glyphosate oxidoreductase (GOX) proteins which are used as selectable markers and bestow glyphosate resistance. A minimal number of the cryIA(b) δ -endotoxin expressing corn lines expressed neomycin phosphotransferase II (NPTII) as the selectable marker. NPTII bestows resistance to the common aminoglycoside antibiotics kanamycin, G418, or panomomycin.

Several small-scale field experiments have been conducted under permits granted by the United States Department of Agriculture. Larger scale testing is now required in order to further evaluate the performance of the expressed protein against the European Corn Borer in various geographical areas in which corn is commercially produced. These experiments include: Isopopulation yield trials, gene efficacy, ECB ecological studies, and various evaluations of the Bt δ -endotoxin corn lines in combination with glyphosate. In addition to experiments related to efficacy, breeding nursery and seed increase trials are planned.

Up to 605 acres are proposed for planting with approximately 17,274 pounds of transgenic seed. This amount of seed will contain approximately 205 grams (dry weight) of the cryIA(b) δ -endotoxin. The following States are included in the program: Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Wisconsin, and Puerto Rico.

No temporary tolerances are being requested relative to the proposed experimental use permit since any reserved transgenic plant material will be used only for research or future plantings. All other materials will be

destroyed. Professionally qualified Monsanto employees will supervise the program, which will be carried out by the public and private cooperators in addition to professionals at Monsanto test facilities.

Upon review of the Monsanto application, any comments received in response to this notice and any other relevant information, EPA will set conditions under which the experiments will be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Dated: February 15, 1994.

Stephanie R. Irene,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-4050 Filed 2-22-94; 8:45 am]

BILLING CODE 8560-60-F

[OPP-66189; FRL 4757-4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by May 24, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 21

pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000016-00058	Dragon 5% Malathion Dust	<i>O,O</i> -Dimethyl phosphorodithioate of diethylmercaptosuccinate
000100-00677	Duet Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-Chloro- <i>N</i> -(2-ethyl-6-methylphenyl)- <i>N</i> -(2-methoxy-4-methylphenyl)acetamid
000100 MS-92-0007	Curacron 8E Insecticide-Miticide	<i>O</i> -(4-Bromo-2-chlorophenyl) <i>O</i> -ethyl <i>S</i> -propylphosphorothioate
000279-01053	Niagara Malathion 5 EC	<i>O,O</i> -Dimethyl phosphorodithioate of diethylmercaptosuccinate
000279-02821	Dimethoate 267 Systemic Insecticide	<i>O,O</i> -Dimethyl <i>S</i> -((methylcarbamoyl)methyl)phosphorodithioate
000279-02945	Diazinon 4 EC	<i>O,O</i> -Diethyl <i>O</i> -(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000279-02989	Diazinon 14 Granular Code 3386	<i>O,O</i> -Diethyl <i>O</i> -(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000279-03037	Diazinon 50 WP	<i>O,O</i> -Diethyl <i>O</i> -(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000352 FL-78-0051	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL-80-0026	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 FL-84-0029	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000655 NJ-89-0004	Rotenox 5 EC	Rotenone Cube Resins other than rotenone Xylene range aromatic solvent
005481-00161	Phosdrin 10.3	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
005905-00228	Helena Phosdrin 4-E	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
005905-00298	Helena Phosdrin 2-E	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
008848-00007	Leader Brand New Super 25	<i>N</i> -Octyl bicycloheptene dicarboximide <i>O,O</i> -Diethyl <i>O</i> -(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
010650-20001	Mon-O-Clor	Sodium hypochlorite
011715-00146	Better World Gypsy Moth Larvae & Japanese Beetle Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% (1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid,cyano(3-phenoxyphenyl)methyl
034704-00343	Clean Crop Phosdrin 4.0 Miscible	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
062719-00094	Balan E.C.	<i>N</i> -Butyl- <i>N</i> -ethyl- α,α,α -trifluoro-2,6-dinitro- <i>p</i> -toluidin
062719-00114	Balan L.C. Herbicide	<i>N</i> -Butyl- <i>N</i> -ethyl- α,α,α -trifluoro-2,6-dinitro- <i>p</i> -toluidin

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000016	Dragon Corp., Box 7311, Roanoke, VA 24019.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
005905	Helena Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
008848	Safeguard Chemical Corp., 806 E. 144 St., Bronx, NY 10454.
010650	Monarch Chemicals, Inc., 37 Meadow St., Box 176, Utica, NY 13503.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
034704	Platte Chemical Co., Inc., c/o William M. Mahlborg, Box 667, Greeley, CO 80632.
062719	DowElanco, 9330 Zionsville Rd, Indianapolis, IN 46268.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before May 24, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the

EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 8, 1994.

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

[FR Doc. 94-3831 Filed 2-22-94; 8:45 am] BILLING CODE 6560-50-F

[OPP-50770; FRL-4639-2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

4581-EUP-41. Issuance. Elf Atochem North America, Inc., Agrichemicals Division, 3 Parkway, Rm. 619, Philadelphia, PA 19102. This experimental use permit allows the use of 100 pounds of the herbicide mono(N,N-dimethylalkylamine) salt of endothall on 74.25 acres of cotton to evaluate the control of desiccation and defoliation. The program is authorized only in the State of Texas. The experimental use permit is effective from June 17, 1993 to June 17, 1994. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, (703-305-7830)).

34147-EUP-3. Renewal. Hoechst-Roussel Agri-Vet Company, Route 202-206, P.O. Box 2500, Sommerville, NJ 08876-1258. This experimental use permit allows the use of 800 pounds of the insecticide (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (s)-alpha-cyano-3-phenoxybenzyl ester on 4,000 acres of cotton to evaluate the control of various cotton insects. The program is authorized only in the States of Alabama, Arkansas, California, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 1, 1993 to June 1, 1994. A temporary tolerance for residues of the active ingredient in or on cotton has been established. (Susan Lewis, PM 21, Rm. 227, CM #2, (703-305-5663)).

524-EUP-75. Issuance. Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This experimental use permit allows the use of 1,633.5 pounds (810.0 pounds on citrus and 823.5 pounds on cotton each year) of the herbicide 3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester on 3,615 acres per year of citrus and cotton to

evaluate the control of various weeds. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, and Texas. The experimental use permit is effective from July 27, 1993 to July 27, 1995. Temporary tolerances for residues of the active ingredient in or on citrus, cotton forage, and cotton seed have been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703-305-7830)).

65626-EUP-1. Issuance. Mycotech Corporation, 630 Utah Ave., P.O. Box 4113, Butte, MT 59702. This experimental use permit allows the use of 600 pounds of the microbial insecticide *Beauveria bassiana* - Mycotech grasshopper strain on 3,390 acres of rangeland to evaluate the control of grasshoppers and mormon crickets. The program is authorized only in the States of Idaho, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. The experimental use permit is effective from June 25, 1993 to July 15, 1994. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on rangeland has been established. (Phil Hutton, PM 18, Rm. 213, CM #2, (703-305-7690)).

45639-EUP-49. Issuance. Nor-Am Chemical Company, Little Falls Centre One, 2711 Centerville, Rd., Wilmington, DE 19808. This experimental use permit allows the use of 525 pounds of the herbicides diuron and thidiazuron on 3,500 acres of cotton to be evaluated as a pre-harvest aid through defoliation. The program is authorized only in the States of Arizona, California, and Texas. The experimental use permit is effective from August 12, 1993 to August 12, 1994. Permanent tolerances for residues of the active ingredients in or on cotton have been established (40 CFR 180.106 and 180.403). (Joanne Miller, PM 23, Rm. 237, CM #2, (703-305-7830))

58998-EUP-8. Extension. Novo Nordisk Bioindustrials, Inc., 33 Turner Road, Danbury, CT 06813. This experimental use permit allows the use of 44 pounds of the microbial insecticide *Bacillus thuringiensis* subspecies *israelensis* on 453 acres of catch basins, clean water, curb gutters in residential areas, ditches, flood water, polluted waters, ponds, rivers, salt marshes, storm water retention areas,

streams, and tidal water. The program is authorized only in the States of California, Delaware, Florida, Michigan, Minnesota, New York, Pennsylvania, South Carolina, Tennessee, Texas, and Utah. The experimental use permit is effective from July 6, 1993 to January 31, 1994. (Phil Hutton, PM 18, Rm. 213, CM #2, (703-305-7690))

66204-EUP-1. Issuance. Sylvan Foods, Inc., One Moonlight Dr., Worthington, PA 16262. This experimental use permit allows the use of 14 pounds of the *pseudomonas fluorescens* strain NCIB 12089 on 13 acres of mushrooms to evaluate the control of bacterial blotch. The program is authorized only in the State of Pennsylvania. The experimental use permit is effective from June 15, 1993 to June 30, 1994. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on mushrooms has been established. (Susan Lewis, PM 21, Rm. 227, CM #2, (703-305-5663))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection,
Experimental use permits.

Dated: January 24, 1994.

Stephen L. Johnson,
Acting Director, Registration Division, Office
of Pesticide Programs.

[FR Doc. 94-3762 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-34052; FRL 4753-7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on May 24, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request. The requests included in this notice were received in response to the Worker Protection Standard (WPS), and are intended to remove the products from the scope of the WPS.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 121 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before [insert date 90 days after date of publication in the Federal Register] to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete From Label
000228-00151	Riverdale MCPP Low Volatile Ester	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
000228-00168	Riverdale 101 Selective Weed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00169	Riverdale 81 Selective Weed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00178	Riverdale Weedestroy Triamine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00185	Riverdale Weedstroy Tri-Ester	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00191	Riverdale 2 MCPP + 2d Amine Turf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00192	Riverdale Weedestroy MCPP-4 Amine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00205	Riverdale Weedestroy Tri-Ester II	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00206	Riverdale Weedestroy Triamine II	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00228	Riverdale Triamine II W.S.	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00253	Riverdale Weedestroy MCPP-2 Amine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00262	Riverdale Tri-Power Selective Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00264	Riverdale Triplet Selective Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000228-00275	Riverdale MCPP-80tm Amine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000241-00303	Image Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000241-00317	Event Grass Growth Regulator	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000241-00319	Image 70 DG	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000264-00522	Weedar Ivm 44 Broadleaf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000432-00553	Pramex Insecticide E. C. 13.3% for Use on Plants	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432-00559	Sbp-1382/PYR. / P.B.O. Transparent Emuls. Spray 0.08	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000498-00116	Chase-MM Flying Insect Killer, Formula 2	Nurseries, seed houses
000498-00117	Chase-MM House and Garden Insect Killer Formula 3	Nurseries, seed houses
000498-00137	Spray Pak Flying and Crawling Insect Killer	Nurseries, seed houses
000498-00139	Spray Pak Flying & Crawling Insect Killer 2	Nurseries, seed houses
000498-00142	Spray Pak Flea and Tick Killer for Cats & Dogs	Nurseries, seed houses
000655-00450	Prentox Pyronyl Oil Concentrate #3610	Mushrooms
000655-00584	Prentox Diazinon 1e Insecticide	Commercial production of ornamentals
000655-00587	Prentox Emulsifiable Spray Concentrate #96	Drosophila or fruit fly control
000655-00644	Prentox Pyronyl Oil Concentrate #1233a	Mushrooms
000655-00683	Prentox Pyronyl Oil Concentrate #15a	Use in mushroom production & processing
000655-00684	Prentox Pyronyl Oil Concentrate #15	Mushrooms
000655-00694	Prentox Pyrifos 25% Mfg. Conc.	Use to control mushroom flies & fungus gnats in mushroom production & processing
001386-00451	UNICO 5% Sevin Dust	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
001386-00627	Red Panther Dursban Granular Turf and Lawn Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
002217-00648	Gordon's Brushkiller 801	Forests
002217-00651	Trimec 800 Herbicide	Forests
002217-00676	Casoron 50W Dichlorobenil Herbicide	Terrestrial food & non-food crops
002217-00678	Barrier 2% Dichlobenil Granules	Terrestrial food crops (fruit in orchards & nurseries)
002217-00751	EH 951 Grass Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
002217-00758	Trimec 937 Herbicide	Forests
003125-00184	Dylox 80% Soluble Powder Crop Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
003125-00381	Morestan 4 Ornamental Miticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125-00406	Dylox 6.2 Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
003862-00079	Insect Death Mist	Asparagus, beans, broccoli, cabbage, brussel sprouts, cauliflower, celery, leaf tier, cranberries, eggplant, lettuce, mustard greens, kale, collards, turnips, peppers, potatoes, radishes, spinach, tomatoes, ornamentals, drosophila/fruit fly control
004816-00514	Pyrenone 25-5 M.A.G. Concentrate	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816-00534	Pyrenone Food Plant Fogging Insecticide	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816-00567	Pyrenone M.A.G.C. 5-1	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816-00568	Pyrenone M.A.G.C. 10-1	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816-00570	Pyrenone M.A.G.C. 12.5-2.5	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816-00571	Pyrenone MAGC 10-3.34	Use to control mushroom flies & fungus gnats in mushroom production & processing
004816-00688	Permanone Multi-Purpose 10% E.C.	Trees & shrubs
004816-00707	Kicker E.C.	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
007501-00042	Gustafson Apron-FI Seed Treatment Fungicide	Agricultural establishments in hopper-box, planter box, slurry box, or other seed treatment applications at or immediately before planting
008590-00072	Agway "60" Spray Oil E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
008590-00483	Balan Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009404-00066	Dursban 2-E Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404-00033	Lescosan 3.6G + Fertilizer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404-00052	Lesco Pre-M 60 DG Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404-00053	Lesco Turf Fertilizer with Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404-00062	Lesco Fertilizer W / 4% Sevin Brand Carbaryl Insect	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404-00063	Turfic for Crabgrass with Ronstar	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404-00065	Lesco 17-0-17 Elite Fertilizer W / systemic Turf Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
010404-00066	Lesco Horticultural Oil Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404-00067	Lesco 1% Dursban Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404-00069	Lesco Three-Way 53% Dg Selective Broadleaf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404-00070	Eliminate 47% Dg Selective Broadleaf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404-00074	LESCO Pre-M WP	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404-00081	LESCO 0.97 Dursban Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
032802-00022	Dursban 2.32G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802-00023	Stop Grub Plus W / 20-3-5 Fertilizer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802-00024	Excel-N-Plus W/crabgrass Control + Lawn Food	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802-00031	All Season Triamine Weed and Feed 25-3-3	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802-00039	Dursban .5 Granules Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802-00068	Dimension 0.086 Plus	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
032802-00069	Dimension 0.172 Plus	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
032802-00071	Dimension 0.107 Plus	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704-00101	Clean Crop Benefin 2.5 G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704-00131	Clean Crop MCPP Green	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704-00209	Clean Crop Betasan 12.5G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704-00210	Clean Crop Betasan 3.6G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704-00211	Clean Crop Betasan 4-E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704-00249	Clean Crop Oftanol 1.5g	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704-00423	Dursban 2 Coated Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
034704-00720	Dichlorobenil 2G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
037915-00006	Professional Pest Control Formula DC 500	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
045639-00001	Ficam W	Greenhouses
045639-00066	Ficam Plus	Greenhouses
050534-00011	2 Plus 2 (MCPP + 2,4-D Amine)	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
051793-00029	Elite Quick-Kill Spray Concentrate	Use in mushroom production & processing
051793-00105	Elite Quick Kill Spray Concentrate II	Rural fields or wood lots, roadside edges, pathways, coastal vegetation areas
051793-00106	Elite Aerosol Insect Spray with Permethrin Plus	Seed houses
051793-00170	Elite Rotenone Fire Ant Killer - R100	Agricultural land

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
051793-00179	Elite Dursban 4E-R143	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
051793-00180	Elite Dursban 1-12 - R144 Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
055947-00144	Barricade F Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
059639-00019	Dibrom Concentrate	Trees being grown for sale or other commercial use, or for commercial seed production, or for the production of timber or wood products, or for research purposes
061282-00010	Snail and Slug LG Pelleted Bait	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719-00011	Dursban 4E Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719-00065	Dursban 2E Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719-00068	Dursban 50W Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719-00091	Exetor Herbicide	Forests
062719-00092	Confront Specialty Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00096	Balan 2.5 G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00127	Balan Dry Flowable	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00137	Team 2-G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00140	Surflan 0.25 A.S.	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00146	Turf Fertilizer contains Balan 0.92%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00147	Turf Fertilizer contains Balan 1.15%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00148	Turf Fertilizer contains Balan 1.25%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00149	Turf Fertilizer contains Balan 0.575% + Surflan 0.575%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00150	Turf Fertilizer contains Team 1.15%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00151	Turf Fertilizer contains Team 0.92%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00152	Turf Fertilizer contains Team 1.25%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00155	Cutless 50W Turf Plant Growth Regulator	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00158	Turf Fertilizer contains Surflan 1%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00159	Turf Fertilizer contains Surflan 0.75%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00163	Pageant DF	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
062719-00177	DowElanco Basal Herbicide	Forests
062719-00178	Gallery Turf Fertilizer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
062719-00192	Turf Fertilizer contains Gallery Plus Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
062719-00193	Turf Fertilizer contains Galley Plus Surfian	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000228	Riverdale Chemical Co., 425 W. 194th St., Glenwood, IL 60425.
000241	American Cyanamid Co., Agri Research Div - U.S. Reg, Box 400, Princeton, NJ 08543.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000432	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000498	Chase Products Co., The Quality First Co., Box 70, Maywood, IL 60153.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
001386	Universal Cooperatives Inc., Box 460, 7801 Metro Parkway, Minneapolis, MN 55440.
002217	Chemical Consultants Interna., Agent For: PBI / Gordon Corp., 7270 W 98th Terrace, Suite 1, Overland Park, KS 66212.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003862	ABC Compounding Co, Inc., Box 16247, Atlanta, GA 30321.
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645.
007501	Gustafson, Inc., Box 660065, Dallas, TX 75266.
008590	Universal Cooperatives Inc., Agent For: Agway Inc., Box 460, Minneapolis, MN 55440.
009404	Sunniland Corp., Box 1697, Sanford, FL 32771.
010404	Lesco Inc., 20005 Lake Rd., Box 16915, Rocky River, OH 44116.
032802	H. R. McLane Inc., Agent For: Howard Johnson's, 7210 Red Rd., Suite 206, Miami, FL 33143.
034704	William M. Mahlburg, Agent For: Platte Chemical Co., Box 667, Greeley, CO 80632.
037915	Regwest Co., Agent For: Professional Supp, Box 2220, Greeley, CO 80632.
045639	Nor-Am Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808.
050534	ISK Biotech Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061.
051793	RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620.
055947	Sandoz Agro Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
059639	Valent U.S.A. Corp., 1333 N. California Blvd., Walnut Creek, CA 94596.
061282	Hacco, Inc., 537 Atlas Ave., Madison, WI 53716.
062719	DowElanco, 9330 Zionsville Rd., Indianapolis, IN 46268.

III. Existing Stocks Provisions

The products listed in this notice are within scope of the Worker Protection Standard (WPS), but the current labeling does not comply with WPS. As a result, after April 21, 1994, except as provided in PR Notice 93-11, registrants cannot distribute or sell products under the current approved labeling.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 26, 1994.

Douglas D. Campit,

Director, Office of Pesticide Programs.

[FR Doc. 94-3829 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

Swiss Bank Corporation; Application to Engage in Certain Nonbanking Activities

Swiss Bank Corporation, Basel, Switzerland (Applicant), has applied

pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23), through its wholly owned subsidiary, SBC Government Securities, Inc., New York, New York (Company), to acquire substantially all the assets and certain of the liabilities of O'Connor & Associates, Chicago, Illinois (OCA), and to engage in the following nonbanking activities:¹

¹ Applicant's proposal involves, *inter alia*, the consolidation into Company of certain activities currently conducted by OCA and two of Applicant's

1. Underwriting and dealing in, to a limited extent, all types of debt and equity securities (other than securities issued by open-end investment companies), including sovereign debt securities, municipal revenue bonds, mortgage-related securities, consumer receivable-related securities, commercial paper, corporate debt securities, convertible debt securities, debt securities issued by a trust or other vehicle secured by or representing interests in debt obligations, preferred stock, common stock, American Depositary Receipts, other direct and indirect equity ownership interests in corporations and other entities, and options on debt and equity securities;²

2. Providing discount brokerage services, engaging in related securities credit activities, and conducting activities incidental thereto such as offering custodial services, individual retirement accounts, and cash management services, pursuant to § 225.25(b)(15)(i) of Regulation Y;

3. Providing full-service brokerage services, i.e., the discount brokerage activities specified in paragraph 2, above, in combination with investment advisory services permissible under § 225.25(b)(4) of Regulation Y, pursuant to § 225.25(b)(15)(ii) of Regulation Y;

wholly owned subsidiaries, SBC Derivatives, Inc., Chicago, Illinois (SBC Derivatives), and SBCI Swiss Bank Corporation Investment Banking Inc., New York, New York (SBCI). In connection with, and substantially contemporaneously with, this transaction, OCA proposes to acquire certain assets and liabilities of K K & Company, New York, New York (KK). Company, a primary dealer in government securities, currently engages in (i) underwriting and dealing in obligations of the United States and other obligations that state member banks of the Federal Reserve System are authorized to underwrite and deal in, pursuant to § 225.25(b)(16) of Regulation Y, and (ii) trading in futures, options, and options on futures with respect to certain bank-eligible securities and money market instruments. See *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991). OCA engages in trading, for its own account, debt and equity securities, options on debt and equity securities, and options on stock, bond, and commodity indexes. SBC Derivatives currently engages in foreign exchange options trading for its own account. See *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 126 (1990). SBCI currently engages in various nonbanking activities, including underwriting and dealing in corporate debt and equity securities. KK currently engages in executing securities transactions for third party customers.

The activities of Company and SBC Derivatives are conducted pursuant to section 4(c)(8) of the BHC Act. Applicant controls SBCI pursuant to the grandfather provisions of section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)). SBCI would cease to exist upon consummation of this proposal, and Applicant's grandfather rights relating to SBCI would thereby terminate.

² Applicant also proposes that Company engage in certain activities which Applicant maintains are incidental to these proposed underwriting and dealing activities, including engaging in bonds borrowed and other securities lending transactions.

4. Acting as agent in the private placement of all types of securities, including providing related advisory services;

5. Purchasing and selling all types of securities as a "riskless principal" on the order of customers;

6. Providing various types of investment and financial advisory services, including providing financial and transaction advice regarding the structuring and arranging of swaps and similar transactions (including swap derivative products) relating to interest rates, currency rates, and economic and financial indexes, and similar transactions, pursuant to § 225.25(b)(4) of Regulation Y;

7. Trading for its own account in futures, options, and options on futures with respect to certificates of deposit and other money market instruments eligible for investment by national banks;

8. Trading for its own account in futures, options, and options on futures with respect to commodity prices and stock, bond, and commodity indexes;³

9. Engaging in the following activities with respect to swaps and swap derivative products:⁴

(A) Intermediating in the international swap markets by acting as originator and principal for interest rate swap and currency swap transactions;

(B) Acting as originator and principal with respect to swap derivative products relating to interest rate swap and currency swap transactions;

(C) Acting as agent or broker with respect to interest rate swap and currency swap transactions and swap derivative products relating thereto;

(D) Intermediating in the international swap markets by acting as originator and principal for commodity price swap transactions and swap transactions linked to stock and/or bond indexes or to a hybrid of interest rates and such indexes;

(E) Acting as originator and principal with respect to swap derivative products relating to the swap transactions described in subparagraph (D), above; and

(F) Acting as agent or broker with respect to the swap transactions and swap derivative products described in subparagraphs (D) and (E), above.

³ The specific contracts to be traded by Company for its own account in conducting the activities described in paragraphs 7 and 8 are listed either (i) in SR Letter No. 93-27 (FIS) (May 21, 1993), or (ii) in Appendix A attached hereto. Applicant also expects that Company will engage, in the over-the-counter market, in options transactions based on the underlying prices, indexes, and instruments for the contracts referred to in the preceding sentence.

⁴ For this purpose, the term "swap derivative products" means caps, floors, collars, and options on swaps, caps, floors, and collars.

10. Acting as a futures commission merchant (FCM) for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts based on bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, pursuant to § 225.25(b)(18) of Regulation Y;⁵

11. Providing investment advice with respect to the purchase and sale of futures contracts and options on futures contracts described in paragraph 10, above, pursuant to § 225.25(b)(19) of Regulation Y;

12. Acting as a FCM for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts based on commodity prices, bonds, and stock and bond indexes;⁶

13. Providing investment advice with respect to the purchase and sale of futures contracts and options on futures contracts described in paragraph 12, above;

14. Trading for its own account in gold and silver bullion, bars, rounds, and coins;

15. Trading for its own account in platinum coin and bullion;

16. Trading for its own account in foreign exchange spot, forward, futures, options, and options on futures transactions; and

17. Making, acquiring, or servicing loans or other extensions of credit for its own account or for the account of third parties, pursuant to § 225.25(b)(1) of Regulation Y.

Applicant seeks approval to conduct the proposed activities throughout the United States, and plans to conduct the activities on a world-wide basis.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or

⁵ Applicant has proposed that both Company and SBC Derivatives engage in the activities listed in paragraphs 10 through 13. Applicant has stated that SBC Derivatives may execute trades that will be given-up at a customer's request to an unaffiliated FCM for clearance, and that SBC Derivatives may also engage in clearing-only activities. Company may conduct the proposed FCM activities through omnibus customer trading accounts.

⁶ The specific contracts with respect to which Company and SBC Derivatives will conduct the activities described in paragraphs 12 and 13 are listed either (i) in SR Letter No. 93-27 (FIS) (May 21, 1993), or (ii) in Appendix A attached hereto.

managing or controlling banks as to be a proper incident thereto." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are

(1) Whether banks generally have in fact provided the proposed services,

(2) Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and

(3) Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. See 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant states that the Board previously has determined by regulation that certain of the proposed activities, when conducted within the limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. See 12 CFR 225.25(b)(1) (making, acquiring, and servicing loans and other extensions of credit); 12 CFR 225.25(b)(4) and (15) (certain investment and financial advisory services and discount and full-service brokerage activities); and 12 CFR 225.25(b)(18) and (19) (certain FCM services and related advisory activities).

Applicant also maintains that the Board previously has determined by order that several of the other proposed activities, when conducted within the limitations established by the Board in its previous orders, are closely related to banking, and, where applicable, consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). See, e.g., *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990), *Order Approving Modifications to the Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989), *Canadian Imperial Bank of Commerce, et al.*, 76 Federal Reserve Bulletin 158 (1990), *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 228 (1993), and

Supplement to Order Approving Modifications to Section 20 Orders, 79 Federal Reserve Bulletin 360 (1993) (underwriting and dealing activities); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) (private placement and riskless principal activities); *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991) (trading for own account in futures, options, and options on futures contracts based on U.S. government securities and certain money market instruments); *The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (1990) (intermediation, origination, principal, agent, and brokerage activities related to interest rate swap and currency swap transactions and swap derivative products related thereto); *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990) (trading for own account in gold and silver bullion, bars, rounds, and coins); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988) (trading for own account in foreign exchange); and *The Long-Term Credit Bank of Japan, Limited*, 79 Federal Reserve Bulletin 347 (1993) (trading for own account in foreign exchange forward, futures, options, and options on futures transactions). See also SR Letter No. 93-27 (FIS) (May 21, 1993) (listing various futures, options, and options on futures contracts previously approved by order or regulation for FCM services and related advisory activities).

Applicant maintains that Company will conduct the foregoing, previously approved activities in conformity with the conditions and limitations established by the Board in prior cases.

Applicant further states that the Board has not previously approved, as closely related to banking within the meaning of the BHC Act, some or all of the activities described in paragraphs 7, 8, 9(D), 9(E), 9(F), 12, 13, and 15, above. Applicant maintains, however, that all of these proposed activities are closely related to banking.

With respect to the proposal for Company to trade for its own account in various futures, options, and options on futures transactions based on certificates of deposit and other money market instruments eligible for investment by national banks, Applicant maintains that the Board has previously determined that trading in derivative instruments which represent the right to purchase or sell bank-eligible securities is closely related to banking. See *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991) (approving such trading for instruments based on U.S.

government securities and certain money market instruments).

Applicant also proposes that Company trade for its own account, for purposes other than hedging, in futures, options, and options on futures contracts based on commodity prices and stock, bond, and commodity indexes. With respect to this aspect of the proposal, Applicant maintains that the New York State Banking Department (NYSBD) and the Office of the Comptroller of the Currency (OCC) have permitted banks under their respective jurisdictions to engage in these activities, subject to certain limitations. In this regard, Applicant also states that over-the-counter options contracts entered into by Company would represent a form of financial intermediation of the type in which banks have traditionally engaged. Applicant also maintains that Company's portfolio-wide hedging methodology is consistent with the limitations the NYSD and the OCC have placed upon trading in exchange-traded derivative instruments. Applicant also argues, *inter alia*, that Company needs to be able to trade in these contracts in order to manage commodity-based risks that may arise from its dealing in securities of issuers with commodity price exposure.

With respect to the swap-related activities that have not previously been determined to be closely related to banking, Applicant states that the NYSD and the OCC have permitted banks under their respective jurisdictions to engage in commodity-based swap activities, and that the NYSD has permitted banks to offer swaps linked to financial or economic indexes. Applicant also states that the Board has recognized, in an interpretation of the Board's Regulation H, that banks are engaged as principal or broker in swap transactions based on commodity prices, stock and bond indexes, and hybrids of such indexes and interest rates. See 12 CFR 208.128. In addition, Applicant maintains that these types of swap transactions, like interest rate and currency swaps, are a form of the financial intermediation services traditionally offered by banks.

Applicant also proposes that Company and SBC Derivatives engage in FCM activities and provide related advisory services with respect to futures contracts and options on futures contracts based on commodity prices, bonds, and stock and bond indexes. Applicant states that the Board has previously determined by order that offering FCM and related advisory services with respect to certain futures contracts and options on futures

contracts based on bonds and stock and bond indexes is an activity closely related to banking. See generally SR Letter No. 93-27 (FIS) (May 21, 1993) (listing various futures, options, and options on futures contracts previously approved by order or regulation for FCM services and related advisory activities). Applicant maintains that the bond- and index-based futures contracts and options on futures contracts in this proposal which have not previously been approved by the Board are substantially similar to those which have been so approved. With respect to the proposed instruments based on commodity prices, Applicant states that the OCC has permitted national banks to execute and clear such contracts. Applicant also maintains that the reasons justifying Company's trading in such contracts for its own account should apply equally to Company's and SBC Derivatives' engaging in execution, clearance, and advisory activities with respect to such contracts. Applicant further states that providing these services with respect to commodity-based contracts is functionally equivalent to providing such services with respect to financial futures and options on futures contracts. Applicant also notes that the clearing function of an FCM is a form of extending credit, a primary banking function.

With respect to its proposal that Company trade for its own account in platinum coin and bullion, Applicant states that the NYSBD and the OCC have approved this activity for banks under their respective jurisdictions. Applicant also maintains that the Board has approved under section 4(c)(8) of the BHC Act the purchase and sale of platinum coins, under limited circumstances. See *Standard Chartered PLC*, 76 Federal Reserve Bulletin 681 (1990). Applicant also states that the Board has approved, under Regulation K (12 CFR part 211), trading in platinum by bank holding company subsidiaries located outside the United States. See *J.P. Morgan & Co. Incorporated*, 76 Federal Reserve Bulletin 552 (1990).

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and enable Company to offer its customers a broader range of products. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 14, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, February 15, 1994.

Jennifer J. Johnson,
Associate Secretary of the Board.

Appendix A

Chicago Mercantile Exchange

FT-SE 100 Share Index Futures, and options thereon
Standard & Poor's Midcap 400 Index Futures, and options thereon
Russell 2000 Stock Price Index Futures, and options thereon
British Pound Rolling Spot Futures, and options thereon

Commodity Exchange, Inc.

Eurotop 100 Index Futures, and options thereon

Mercado de Futuros Financieros, S.A.

Spanish Peseta/Deutsche Mark Futures
Spanish Peseta/U.S. Dollar Futures

Mibor '90 Futures
Mibor '90 Options

Montreal Stock Exchange

One-Month Canadian Bankers' Acceptance Futures
Three-Month Canadian Bankers' Acceptance Futures

London International Financial Futures Exchange

Spanish Government Bond (Bonos) Futures
Three-Month Eurodollar Interest Rate Futures
Italian Government Bond (BTP) Futures, and options thereon

New York Mercantile Exchange

Light Sweet Crude Oil Futures, and options thereon
New York Harbor Unleaded Gasoline Futures, and options thereon
Heating Oil Futures, and options thereon
Natural Gas Futures, and options thereon

[FR Doc. 94-3974 Filed 2-22-94; 8:45 am]

BILLING CODE 6210-01-F

Cardinal Bancshares, Inc., Lexington, Kentucky; Application to Engage in Nonbanking Activities

Cardinal Bancshares, Inc., Lexington, Kentucky (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage through its indirect subsidiary, Mutual Service Corporation, Somerset, Kentucky (Company), in securities brokerage activities pursuant to section 225.25(b)(15) of Regulation Y, and to act as riskless principal in buying and selling in secondary market trading all types of securities on the order of investors. Applicant proposes that Company enter into an arrangement with Compulife Investor Services, Inc., Richmond, Virginia (Compulife), whereby joint employees of Company and Compulife will conduct the proposed activities at branches of Applicant's thrift subsidiary, Mutual Federal Savings Bank, Somerset, Kentucky. These activities will be conducted throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board previously has approved the proposed riskless principal activities, and Applicant has stated that it will conduct these activities using the same methods

and procedures and subject to the prudential limitations established by the Board in its previous orders. See *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 18, 1994. Any request for a hearing on this application must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, February 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-3975 Filed 2-22-94; 8:45 am]

BILLING CODE 9210-01-F

FEDERAL TRADE COMMISSION

[Docket No. 911 0022]

American Society of Interpreters; and The American Association of Language Specialists; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent agreements, accepted subject to final Commission approval, would prohibit, among other things, two professional associations of interpreters, based in Washington, DC, from fixing or otherwise interfering with any form of price or fee competition among language specialists in the future.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Michael McNeely, FTC/S-3308, Washington, DC 20580, (202) 326-2904.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following two consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of American Society of Interpreters, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the American Society of Interpreters, a corporation, and it now appearing that the American Society of Interpreters, hereinafter sometimes referred to as "ASI" or "proposed respondent," is willing to enter into an agreement containing an order to cease and desist from engaging in certain acts and practices being investigated,

It is hereby agreed by and between ASI, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. ASI is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its offices and principal place of business located at Washington, DC.

2. ASI admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. ASI waives:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft

of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by ASI that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered. That for purposes of this order, the following definitions shall apply:

"Respondent" or "ASI" mean American Society of Interpreters, its directors, trustees, general assemblies, councils, committees, working groups, boards, divisions, chapters, officers, representatives, delegates, agents, employees, successors, and assigns.

"Fees" means any cash or non-cash charges, rates, prices, benefits or other compensation received or intended to be received for the rendering of interpretation, translation, or other language services, including but not limited to, salaries, wages, transportation, lodging, meals, allowances, reimbursements for expenses, compensation for time not worked, compensation for travel time and preparation and study time, cancellation fees, and payments in kind.

"Interpretation" means the act of expressing, in oral form, ideas in a language different from an original spoken statement.

"Translation" means the act of expressing, in written form, ideas in a language different from an original writing.

"Other language service" means any service that has as an element the conversion of any form of expression from one language into another or any service incident to or related to interpretation and translation including briefing or conference preparation, equipment rental, conferences organizing, teleconferencing, précis writing, supervision or coordination of interpreters, reviewing or revising translations, or providing recordings of interpretations.

"Interpreter" means one who practices interpretation.

"Translator" means one who practices translation.

"Language specialist" means one who practices interpretation, translation, or any other language service.

"Unbiased" means lacking any systematic errors that would result from the selection or encouragement of one outcome or answer over others.

"Person" means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

II

It is further ordered. That respondent, directly or indirectly, or through any person, corporation, or other device, in

or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade

Commission Act, cease and desist from:

A. Creating, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to, endorsing, publishing letters or articles supporting, or authorizing any list or schedule of fees for interpretation, translation, or any other language service, including but not limited to fee reports, fee guidelines, suggested fees, proposed fees, fee sheets, standards fees, or recommended fees;

B. Entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, raise, maintain, or otherwise interfere with or restrict the fees for interpretation, translation, or other language services;

C. Suggesting, urging, encouraging, recommending, or attempting to persuade in any way interpreters, translators, or other language specialists to charge, pay, file, or adhere to any existing or proposed fee, or otherwise to charge or refrain from charging any particular fee;

D. For a period of ten (10) years after the date this order becomes final, continuing a meeting of interpreters, translators, or other language specialists, after (1) any person makes a statement, addressed to or audible to the body of the meeting, concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and ASI fails to declare such statement to be out of order, (2) any person makes two such statements and ASI fails to eject him or her from the meeting, or (3) two people make such statements;

E. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition, including but not limited to offering to do work for less remuneration than a specific competitor, undercutting a competitor's actual fee, offering to work for less than a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

F. Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, half-day fees, weekly fees, or fees calculated on other than a full-day basis; and

G. Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or at a discount, or from paying their own

travel, lodging, meals, or other expenses.

Provided That, nothing contained in this Paragraph II shall prohibit respondent from:

1. Compliance or distributing accurate aggregate historical market information concerning past fees actually charged in transactions completed no earlier than three (3) years after the date this order becomes final, provided that such information is compiled and presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions;

2. Collecting or publishing accurate and otherwise publicly available fees paid by governmental and intergovernmental agencies, if such publication states the qualifications and requirements to be eligible to receive such fees; or

3. Continuing a meeting following statements concerning historical, governmental, or intergovernmental fees that are made in order to undertake the activities permitted in Paragraph II.1 and II.2. of this order.

III

It is further ordered That, respondent shall clearly and conspicuously state the following in any publication of fees made pursuant to Paragraphs II.1 and II.2 of this order:

By order of the Federal Trade Commission, ASI is prohibited from recommending, suggesting, or enforcing fees. Under United States Law, interpreters and other language specialists must unilaterally and independently determine their own fees.

IV

It is further ordered. That respondent, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to:

A. Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study; or

B. Limit, restrict, or mandate the number of interpreters, translators, or other language specialists used for a given job or type of job.

Provided That, nothing contained in Paragraph IV of this order shall prohibit respondent from providing information or its nonbinding and non-coercive views concerning the hours of work or

preparation or the number of language specialists used for types of jobs.

V

It is further ordered, That respondent shall, within thirty (30) days after the date this order becomes final, amend its Code of Professional Standards and all Professional Guidelines, including those found in the annual Membership List of ASI, and all appendices to conform to the requirements of Paragraphs II and IV of this order and amend its bylaws to require each member, chapter, or other subdivision, to observe the provisions of Paragraphs II and IV of this order.

VI

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute to each ASI member, affiliate, chapter, organizational subdivision, or other entity associated directly or indirectly with ASI, copies of: (1) This order, (2) the accompanying complaint, (3) appendix A to this order, (4) and any document that ASI revises pursuant to this order, with the exception of the annual Membership List; and

B. Within one-hundred eighty (180) days after the date this order becomes final, distribute copies of the annual Membership List as revised pursuant to this order; and

C. For a period of five (5) years after the date this order becomes final, distribute to all new ASI officers, directors, and members, and any newly created affiliates, chapters, or other organizational subdivisions, within thirty days of their admission, election, appointment, or creation, a copy of: (1) This order, (2) the accompanying complaint, (3) appendix A to this order, and (4) any document that ASI revises pursuant to this order.

VII

It is further ordered, That respondent shall:

A. Within ninety (90) days after the date this order becomes final, and annually for three (3) years thereafter on the anniversary of the date this order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order, and any instances in which respondent has taken any action within the scope of the provisions in Paragraphs II.1 or II.2 or II.3 of this order:

B. For a period of five (5) years after the date this order becomes final, notify and provide copies to the Federal Trade

Commission staff, within thirty (30) days, of any fee reports, fee lists, fee schedules, fee guidelines or similar materials produced by or for any association that come into respondent's possession;

C. For a period of five (5) years after the date this order becomes final, collect, maintain and make available to the Federal Trade Commission staff for inspection and copying: records adequate to describe in detail any action taken in connection with the activities covered in this order; all minutes, records, reports or tape recordings of meetings of the Board General Assembly, and all chapters, committees, subcommittees, working groups, or any other organizational subdivisions of ASI; and all ASI mailings to the ASI Board or general membership;

D. For a period of three (3) years after the date this order becomes final, provide copies to the Federal Trade Commission, within thirty (30) days of its adoption, of the text of any amendment to the ASI Bylaws, ASI Professional Guidelines, ASI Code of Professional Standards, ASI Yearbook Professional Guidelines, and any new rules, regulations or guidelines of respondent; and

E. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution or reorganization of itself or any chapter, division, or of any proposed change resulting in the emergence of a successor corporation or association, or any other change in the corporation or association that may affect compliance obligations arising out of this order.

Appendix A

[Date]

Announcement

The American Society of Interpreters ("ASI") has entered into a consent agreement with the Federal Trade Commission. Pursuant to this consent agreement, the Commission issued an order on [Date] that prohibits ASI, including its chapters, committees, or organizational subdivisions, from:

(1) Creating, distributing, authorizing, or endorsing any list or schedule of fees or other charges for interpretation, translation, or other language services;

(2) Entering into, or maintaining any agreement, plan, or program, to construct, fix, stabilize, raise, maintain, or otherwise interfere with the fees or other charges for interpretation, translation, or other language services;

(3) Suggesting, recommending, or encouraging, in any way, interpreters, translators, or other language specialists

that charge, adhere to, or refrain from charging any existing or proposed fee;

(4) For a period of ten (10) years after the date this order becomes final, continuing a meeting after (a) Any person makes a statement to the body of the meeting, concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and ASI fails to declare such statement to be out of order, (b) any person makes two such statements and ASI fails to eject him or her from the meeting, or (c) two people make such statements;

(5) Prohibiting, restricting, regulating, or advising against any form of price competition among its members or other interpreters, translators, or other language specialists, including undercutting a competitor's actual fee or a customer's announced fee, advertising discounted rates or accepting any particular lodging or travel arrangements;

(6) Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, weekly fees, or fees calculated on other than a full-day basis; and

(7) Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or from paying their own travel, lodging, meals, or other expenses.

In addition, the order prohibits ASI from maintaining any agreement, understanding, plan or program to:

(1) Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study; or

(2) Limit, restrict, or mandate the number of interpreters, translators, or other language specialists hired for a job or type of job.

Under the order, "fees" are defined to include all cash or non-cash charges, rates, benefits, or other compensation for interpretation, translation or other language services, including but not limited to, lodging, meals, subsistence and travel allowances, reimbursements for expenses, cancellation fees, and compensation for time not worked, travel time or briefing time. "Language specialist" means one who performs "other language services," which are defined to refer to any services that involve the conversion of any form of expression from one language into another or any services incident to or related to interpretation and translation. Consequently, when the order mentions "language specialists," it includes

anyone who rents equipment, organizes conferences, performs teleconferencing or précis writing, supervises or coordinates interpreters, reviews or revises translations, or provides recordings of interpretations.

Further, under the order, ASI must amend its Code of Professional Standards, Professional Guidelines, and Yearbook Professional Guidelines to conform to the requirements of Paragraphs II and IV of the attached order, which are summarized above. ASI must also amend its bylaws to require each member, chapter, and organizational subdivision to observe the requirements of the order. In addition, the order requires ASI to provide to its members and affiliates and to the Federal Trade Commission the text of each amendment to the ASI Bylaws, the ASI Code of Professional Standards, and all ASI Professional Guidelines, including those found in the ASI Membership Lists, and the texts of any new rules, regulations or guidelines. The order also requires that, within thirty days after obtaining them, ASI must provide to the Federal Trade Commission copies of all lists of fees that have been produced by any associations and come into ASI's possession.

We note, however, that ASI will be permitted to compile and distribute accurate aggregate historical market information concerning past fees that were actually charged no earlier than three years after this order becomes final, if presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions underlying such reports. Similarly, the order does not prohibit ASI from collecting and publishing accurate publicly available information on fees paid by governmental and intergovernmental agencies if such publication states the qualifications and requirements for such fees. With any publication of fees permitted by the order, ASI must include a statement that it is prohibited from recommending fees and that interpreters must independently determine their own fees. In addition, the order states that it does not prohibit ASI from providing information or its nonbinding and non-convictive views concerning the hours of work or preparation or the number of language specialists used for a type of job.

For more specific information, members should refer to the FTC order itself, which is enclosed.

Counsel,

American Society of Interpreters.

Agreement Containing Consent Order To Cease and Desist

In the Matter of the American Association of Language Specialists, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The American Association of Language Specialists, a corporation, and it now appearing that The American Association of Language Specialists, hereinafter sometimes referred to as "TAALS" or "proposed respondent," is willing to enter into an agreement containing an order to cease and desist from engaging in certain acts and practices being investigated,

It is hereby agreed by and between TAALS, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. TAALS is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its offices and principal place of business located at 1000 Connecticut Avenue NW., Washington, DC 20036.

2. TAALS admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. TAALS waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by TAALS that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered, That for purposes of this order, the following definitions shall apply:

"Respondent" or "TAALS" mean The American Association of Language Specialists, its directors, trustees, general assemblies, councils, committees, working groups, boards, divisions, chapters, officers, representatives, delegates, agents, employees, successors, and assigns.

"Fees" means any cash or non-cash charges, rates, prices, benefits or other

compensation received or intended to be received for the rendering of interpretation, translation, or other language services, including but not limited to, salaries, wages, transportation, lodging, meals, allowances (including subsistence and travel allowances), reimbursements for expenses, cancellation fees, compensation for time not worked, compensation for travel time and preparation or study time, cancellation fees, and payments in kind.

"Cancellation fee" means any fee intended to compensate for the termination, cancellation or revocation of an understanding, contract, agreement, offer, pledge, assurance, opportunity, or expectation of a job.

"Interpretation" means the act of expressing, in oral form, ideas in a language different from the language used in an original spoken statement.

"Translation" means the act of expressing, in written form, ideas in a language different from the language used in an original writing.

"Other language service" means any service that has as an element the conversion of any form of expression from one language into another or any service incident to or related to interpretation or translation, including briefing or conference preparation, equipment rental, conference organizing, teleconferencing, précis writing, supervision or coordination of interpreters, reviewing or revising translations, or providing recordings of interpretations.

"Interpreter" means one who practices interpretation.

"Translator" means one who practices translation.

"Language specialist" means one who practices interpretation, translation, or any other language service.

"Unbiased" means lacking any systematic errors that would result from the selection or encouragement of one outcome or answer over others.

"Person" means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

II

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Creating, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to,

endorsing, or authorizing any list or schedule of fees for interpretation, translation, or any other language service, including but not limited to fee guidelines, suggested fees, proposed fees, fee sheets, standard fees, or recommended fees;

B. Entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, standardize, raise, maintain, or otherwise interfere with or restrict fees for interpretation, translation, or other language services;

C. Suggesting, urging, encouraging, recommending, or attempting to persuade in any way interpreters, translators, or other language specialists to charge, pay, offer, or adhere to any existing or proposed fee, or otherwise to charge or refrain from charging any particular fee;

D. For a period of ten (10) years after the date this order becomes final, continuing a meeting of interpreters, translators, or other language specialists, after (1) any person makes a statement, addressed to or audible to the body of the meeting, concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and TAALS fails to declare such statement to be out of order, (2) any person makes two such statements and TAALS fails to eject him or her from the meeting, or (3) two people make such statements;

E. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition, including but not limited to offering to do work for less remuneration than a specific competitor, undercutting a competitor's actual fee, offering to work for less than a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

F. Advising against, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, half-day fees, weekly fees, or fees calculated or payable on other than a full-day basis;

G. Advising against, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or at a discount, or from paying their own travel, lodging, meals, or other expenses; and

H. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any forms of personal publicity, including but not limited to advertising by

interpreters, translators, or other language specialists.

Provided that, nothing contained in this Paragraph II shall prohibit respondent from:

1. Compiling or distributing accurate aggregate historical market information concerning past fees actually charged in transactions completed no earlier than three (3) years after the date this order becomes final, provided that such information is compiled and presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions;

2. Collecting or publishing accurate and otherwise publicly available fees paid by governmental and intergovernmental agencies, if such publication states the qualifications and requirements to be eligible to receive such fees;

3. Continuing a meeting following statements concerning historical, governmental, or intergovernmental fees that are made in order to undertake the activities permitted in Paragraphs II.1 and II.2 of this order; or

4. Formulating, adopting, disseminating to its organizational subdivisions and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act.

III

It is further ordered That, respondent shall clearly and conspicuously state the following in any publication of fees made pursuant to Paragraphs II.1 and II.2 of this order:

By order of the Federal Trade Commission, TAALS is prohibited from recommending, suggesting, or enforcing fees applicable in the United States. Under United States law, interpreters and other language specialists must unilaterally and independently determine their own fees.

IV

It is further ordered, That respondent, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from entering into, adhering to, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to:

A. Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists

work in a given period, or for which they are paid for preparation or study;

B. Limit, restrict, or mandate the number of interpreters, translators, or other language specialists used for a given job or type of job;

C. Limit, restrict, or mandate the reimbursement of or payment to interpreters, translators, or other language specialists for travel expenses or time spent traveling, or otherwise prevent consumers from receiving any advantages, based on interpreters', translators', or other language specialists' actual travel arrangements or geographic location, by restricting, requiring declarations of, or regulating the number or duration of residences or domiciles of members or by other means; or

D. Limit, restrict, or mandate the equipment used in performing interpretation, translation, or other language services.

Provided that, nothing contained in Paragraph IV of this order shall prohibit respondent from providing information or its nonbinding and noncoercive views concerning interpretation equipment, the hours of work or preparation, or the number of language specialists used for types of jobs.

V

It is further ordered, That respondent shall, within thirty (30) days after the date this order becomes final, amend its Professional Code For Language Specialists and all appendices to conform to the requirements of Paragraphs II and IV of this order and amend its bylaws to require each member, chapter, or other organizational subdivision, to observe the provisions of Paragraphs II and IV of this order.

VI

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute to each TAALS member, affiliate, chapter, organizational subdivision, or other entity associated directly or indirectly with TAALS, copies of: (1) This order, (2) the accompanying complaint, (3) appendix A to this order, (4) and any document that TAALS revises pursuant to this order; and

B. For a period of ten years after the date this order becomes final, distribute to all new TAALS officers, directors, and members, and any newly created affiliates, chapters, or other organizational subdivisions, within thirty days of their admission, election, appointment, or creation, a copy of: (1) This order, (2) the accompanying

complaint, (3) appendix A to this order, and (4) any document that TAALS revises pursuant to this order.

VII

It is further ordered, That respondent shall:

A. Within ninety (90) days after the date this order becomes final, and annually for five (5) years thereafter on the anniversary of the date this order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order, and any instances in which respondent has taken any action within the scope of the provisos in Paragraphs II.1, II.2, II.3, or II.4 of this order;

B. For a period of five (5) years after the date this order becomes final, collect, maintain and make available to the Federal Trade Commission for inspection and copying: Records adequate to describe in detail any action taken in connection with the activities covered in this order; all minutes, records, reports or tape recordings of meetings of the Council, General Assembly, and all committees, subcommittees, working groups, or any other organizational subdivisions of TAALS; and all TAALS mailings to the TAALS Council or general membership;

C. For a period of five (5) years after the date this order becomes final, provide copies to the Federal Trade Commission, within thirty (30) days of its adoption, of the text of any amendment to the TAALS Bylaws, TAALS Professional Code for Language Specialists or Appendix thereto, Working Conditions for Interpreters, Working Conditions for Translators, Working Conditions for Precis-Writers, and any new rules, regulations or guidelines of respondent; and

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution or reorganization of itself or any chapter, division, or of any proposed change resulting in the emergence of a successor corporation or association, or any other change in the corporation or association that may affect compliance obligations arising out of this order.

Appendix A

[Date]

Announcement

The American Association of Language Specialists ("TAALS") has entered into a consent agreement with the Federal Trade Commission.

Pursuant to this consent agreement, the Commission issued an order on [Date] that prohibits TAALS, including its chapters, committees, or organizational subdivisions, from:

(1) Creating, distributing, authorizing, or endorsing any list or schedule of fees or other charges for interpretation, translation, or other language services;

(2) Entering into, or maintaining any agreement, plan, or program, to construct, fix, stabilize, raise, maintain, or otherwise interfere with fees or other charges for interpretation, translation, or other language services;

(3) Suggesting, recommending, or encouraging, in any way, that interpreters, translators, or other language specialists charge, adhere to, or refrain from charging any existing or proposed fee;

(4) For a period of ten (10) years after this order becomes final, continuing a meeting after (1) Any person makes any statement to the body of the meeting concerning the fees charged or proposed to be charged for interpretation, translation, or any other language service and TAALS fails to declare such statement to be out of order, (2) any person makes two such statements and TAALS fails to eject him or her from the meeting, or (3) two people make such statements;

(5) Prohibiting, restricting, regulating, or advising against any form of price competition among its members or other interpreters, translators, or other language specialists, including undercutting a competitor's actual fee or a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

(6) Advising against, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, weekly fees, or fees calculated or payable on other than a full-day basis;

(7) Advising against, restricting, or prohibiting interpreters, translators, or other language specialists from performing services free of charge or from paying their own travel, lodging, meals, or other expenses; or

(8) Prohibiting, restricting, impeding, declaring unethical, or advising against any forms of personal publicity, including but not limited to advertising by interpreters, translators, or other language specialists.

In addition, the order prohibits TAALS from maintaining any agreement, understanding, plan or program to:

(1) Limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists

work in a given period, or for which they are paid for preparation or study;

(2) Limit, restrict, or mandate the number of interpreters, translators, or other language specialists used for a job or type of job;

(3) Limit, restrict, or mandate the payment or reimbursement for travel or the travel time of interpreters, translators, or other language specialists, or otherwise prevent consumers from receiving any advantages, based on travel arrangements or geographic location, by regulating domiciles of members or by other means; or

(4) Limit, restrict, or mandate the equipment used in performing interpretation, translation, or other language services.

Under the order, "fees" are defined to include all cash or non-cash charges, rates, benefits, or other compensation for interpretation, translation or other language services, including but not limited to, lodging, meals, subsistence and travel allowances, reimbursements for expenses, cancellation fees, and compensation for time not worked, travel time or briefing time. "Language specialist" means one who performs "other language services," which are defined to refer to any services that involve the conversion of any form of expression from one language into another or any services incident to or related to interpretation and translation. Consequently, when the order mentions "language specialists," it includes anyone who rents equipment, organizes conferences, performs teleconferencing or précis writing, supervises or coordinates interpreters, reviews or revises translations, or provides recordings of interpretations.

Further, under the order, TAALS must amend its professional code to conform to the requirements of paragraphs II and IV of the attached order, which are summarized above. TAALS must also amend its bylaws to require each member, chapter, and organizational subdivision to observe the requirements of the order. In addition, the order requires TAALS to provide to the Federal Trade Commission the text of each amendment to the TAALS Bylaws, Professional Code or Working Conditions, and the text of any new rules, regulations or guidelines.

We note, however, that the order does not prevent TAALS from adopting and enforcing reasonable ethical guidelines prohibiting advertising that would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act. In addition, TAALS will be permitted to compile and distribute accurate aggregate historical

market information concerning past fees that were actually charged no earlier than three years after this order becomes final, if presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions underlying such reports. Similarly, the order does not profit TAALS from collecting and publishing accurate publicly available information on fees paid by governmental and intergovernmental agencies if such publication states the qualifications and requirements for such fees. With any publication of fees permitted by the order, TAALS must include a statement that it is prohibited from recommending fees applicable in the United States and that interpreters must independently determine their own fees. In addition, the order states that it does not prohibit TAALS from providing information or its nonbinding and noncoercive views concerning interpretation equipment, the hours of work or preparation, or the number of language specialists used for a type of job.

For some specific information, members should refer to the order itself, which is enclosed.

Counsel,

American Association of Language Specialists.

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted separate agreements to proposed consent orders from the American Society of Interpreters (ASI) and The American Association of Language Specialists (TAALS).

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

ASI and TAALS are professional associations of conference interpreters. The accompanying complaints allege that both TAALS and ASI have been and are acting as combinations or conspiracies of their members to restrain price and other forms of competition in the sale of interpretation services. In particular, the complaint against ASI charges that from as early as 1967, that association annually created and distributed a list of minimum daily fees that members were required to charge. The complaint against TAALS alleges that since 1973, TAALS required

its members to refrain from accepting private sector fees below those adopted by vote of the association and then specified in the Fee Reports sent to members. In addition, the complaints allege that both ASI and TAALS have maintained a set of work rules binding on all of their members requiring, among other things, that all interpreters on a team be paid the same rate; that fees be paid in day-long increments; and that members charge for travel, rest, and study days. The complaints further allege that the binding work rules required, among other things, that interpreters work no more than six hours per day and that teams be staffed with a specified number of interpreters. The TAALS complaint also alleges that TAALS established rules limiting its members' use of portable electronic simultaneous interpretation equipment and prohibited its members from engaging in all forms of personal publicity and advertising. The TAALS complaint further alleges that TAALS required members to declare a single professional domicile and charge for travel expenses from that location even if no travel was actually involved. The complaints allege that TAALS' and ASI's lists of fees and work rules restrained competition in violation of section 5 of the FTC Act, and that absent the proposed consent orders, injury to the public will continue.

The proposed consent orders prohibit ASI and TAALS, including their chapters, committees, and any other subdivision, from creating, distributing, or endorsing any list of fees for interpretation, translation, or other language services. They also forbid each of the associations from entering into or maintaining any agreement, plan, or program, to fix or otherwise interfere with fees. In addition, TAALS and ASI are barred from recommending or encouraging, in any way, interpreters, translators, or other language specialists to charge, adhere to, or refrain from charging any existing or proposed fee.

Under the orders, for a period of ten years ASI and TAALS are required to declare out-of-order any person who makes a statement at a meeting concerning fees to be charged. If any person makes two such statements, the association must eject him or her from the meeting. If two people make statements concerning fees, TAALS or ASI must end the meeting.

Under the orders, ASI and TAALS are further barred from prohibiting, regulating, or advising against any form of price competition, including undercutting a competitor's actual fee, advertising discounted fees, or accepting any particular lodging or

travel arrangements. The orders also bar TAALS and ASI from advising against or prohibiting hourly fees, weekly fees, or fees calculated on other than a full-day basis. Furthermore, under the orders, the associations cannot prohibit interpreters, translators, or other language specialists from performing services free of charge or from paying their own travel, lodging, meals, or other expenses.

In addition, the orders prohibit both ASI and TAALS from maintaining any agreement, understanding, plan or program to limit, restrict, or mandate the length of time that interpreters, translators, or other language specialists work in a given period, or for which they are paid for preparation or study. Further, under the orders the associations cannot maintain any agreement, understanding, or program to limit, restrict, or mandate the number of interpreters, translators, or other language specialists hired for a job or type of job.

In addition to the restrictions they both share, the TAALS order prohibits further activities not addressed in the ASI order. TAALS may not limit or mandate the equipment used for performing interpretation, translation, or other language services. TAALS is also barred from restricting, regulating, or declaring unethical any form of personal publicity, including advertising. Finally, TAALS may not deprive consumers of any advantages, based on travel arrangements or geographic location, by regulating domiciles of members or by other means.

Under both orders, "fees" are defined to include all cash or non-cash charges, rates, benefits, or other compensation. Thus, the term "fees" includes (but is not limited to): Lodging, meals, subsistence and travel allowances, reimbursements for expenses, cancellation charges, and compensation for time not worked, travel time or briefing time. "Language specialist" means one who performs "other language services," which are defined as any services that involve the conversion of any form of expression from one language into another or any services incident to or related to interpretation and translation. Consequently, when the orders mention "language specialists," they include, among others, anyone who rents equipment, organizes conferences, performs teleconferencing or precis writing, supervises or coordinates interpreters, reviews or revises translations, or provides recordings of interpretations.

Further, ASI must amend its Code of Professional Standards, Professional

Guidelines, and Yearbook Professional Guidelines to conform to the requirements of the order, which are summarized above. TAALS must amend its Professional Code for Language Specialists and all appendices to conform to the requirements of its order. Both associations must also amend their bylaws to require each member, chapter, and organizational subdivision to observe the requirements of the respective orders. In addition, the orders require the associations to provide to their members and affiliates and to the Federal Trade Commission the text of each amendment to their bylaws, and the taxes of any new or amended rules, regulations or guidelines. The ASI order also requires that, within thirty days after obtaining them, ASI must provide to the Federal Trade Commission copies of all lists of fees produced by any association that come into ASI's possession.

We note, however, that TAALS and ASI will be permitted to compile and distribute accurate aggregate historical market information concerning past fees that were actually charged in transactions completed no earlier than three years after the orders become final. Such information must be presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions. Similarly, the orders permit the associations to collect and publish accurate publicly available information on fees paid by governmental and intergovernmental agencies, if the publication states the qualifications and requirements to receive such fees. Whenever they publish the fees that are permitted by the orders, ASI and TAALS must include a statement that they are prohibited from recommending fees and that interpreters must independently determine their own fees. In addition, the orders authorize the associations to provide information or their nonbinding and noncoercive views concerning the hours of work or preparation or the number of language specialists used for a type of job.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-4042 Filed 2-23-94; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9256]

Columbia Hospital Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, any hospital combination in the Charlotte County, Florida, area involving Columbia that would threaten competition. The proposed consent agreement would require the respondent to seek prior Commission approval, for ten years, before consummating any partial or total merger of a hospital in the designated area with any other hospital in that area. **DATES:** Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Oscar Voss, FTC/S-3115, Washington, DC 20580. (202) 326-2750.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between Columbia Healthcare Corporation (a corporation into which Columbia Hospital Corporation was merged after the issuance of the complaint in this matter), hereinafter sometimes referred to as "respondent," by its duly designated officer and attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Columbia Healthcare Corporation is a corporation organized, existing and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky.

2. Respondent's predecessor Columbia Hospital Corporation has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;
(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a record of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same

time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. Respondent understands that once the order has become final, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That, for the purposes of this order, the following definitions shall apply:

A. "Columbia" means Columbia Healthcare Corporation, a corporation organized, existing and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, employees, or agents of Columbia's divisions, subsidiaries, affiliates, successors and assigns.

B. "Acute care hospital" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities. For purposes of this Order, health facilities whose inpatient services are limited to mental health care, rehabilitation or substance abuse are not "acute care hospitals."

C. To "acquire an acute care hospital" means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital

of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

D. To "operate an acute care hospital" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

E. "Affiliate" means an entity whose management and policies are controlled or directed in any way, directly or indirectly, by the persons with which it is affiliated.

F. The "Charlotte County area" means the combined area consisting of Charlotte County, Florida, together with those portions of Sarasota and DeSoto Counties, Florida within twelve (12) miles of the present site of Columbia's Fawcett Memorial Hospital in Port Charlotte, Florida, *excluding* the part of that combined area which is west of the Myakka River.

G. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

H. The "Commission" means the Federal Trade Commission.

II

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, Columbia shall not, without the prior approval of the Commission:

A. Acquire any acute care hospital in the Charlotte County area; or

B. Permit any acute care hospital it operates in the Charlotte County area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the Charlotte County area.

Provided, however, that such prior approval shall not be required for:

(1) The establishment of a new hospital service or facility (other than as a replacement for a hospital service or facility, not operated by Columbia, in the Charlotte County area, pursuant to an agreement or understanding between Columbia and the person operating the replaced service of facility); or

(2) Any transaction subject to this Paragraph II of this Order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the hospital, part thereof or interest therein to be acquired does

not exceed one million dollars (\$1,000,000).

III

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, Columbia shall not, without providing advance notification to the Commission, consummate any joint venture or other arrangement with any other acute care hospital in the Charlotte County area for the joint establishment or operation of any new acute care hospital, hospital medical or surgical diagnostic or treatment service or facility, or part thereof in the Charlotte County area. Such advance notification shall be filed immediately upon Columbia's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

The notification required by this Paragraph III of this Order shall be given on the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations (as amended), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of Columbia and not of any other party to the transaction. If the transaction for which notification is required by this Paragraph III of this Order requires state regulatory approval under a health facilities certificate of need law, Columbia may, in lieu of the foregoing notification, submit to the Commission a copy of the application for such state approval.

Columbia shall comply with reasonable requests by the Commission staff for additional information concerning any transaction subject to this Paragraph III of this Order, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this Paragraph III of this Order if:

- (1) The fair market value of the assets to be contributed to the joint venture or other arrangement by acute care hospitals not operated by Columbia does not exceed one million dollars (\$1,000,000);
- (2) The service, facility or part thereof to be established or operated in a transaction subject to this Order is to engage in no activities other than the provision of the following services: Laundry; data processing; purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing;

security; records management; laboratory testing; personnel education, testing, or training; or health care financing (such as through a health maintenance organization or preferred provider organization); or

(3) Notification is required to be made, and has been made, pursuant to section 7A of the Clayton Act, 15 U.S.C. 18a, or prior approval by the Commission is required, and has been requested, pursuant to Paragraph II of this order.

IV

It is further ordered, That, for a period of ten (10) years from the date this Order becomes final, Columbia shall not permit all or any substantial part of any acute care hospital it operates in the Charlotte County area to be acquired by any other person unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement Columbia shall require as a condition precedent to the acquisition.

V

It is further ordered, That Columbia shall, one year after the date this Order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this Order.

VI

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Columbia made at its principal offices, Columbia shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in Columbia's possession or control relating to any matter contained in this Order; and
2. Upon five days' notice to Columbia and without restraint or interference from Columbia, to interview its officers or employees, who may have counsel present, regarding such matters.

VII

It is further ordered, That Columbia shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a

successor corporation or association, or the creation or dissolution of subsidiaries or affiliates, which may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order To Aid Public Comment

Columbia Hospital Corp. (Docket No. 9256)

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Columbia Healthcare Corporation, successor to respondent Columbia Hospital Corporation (hereinafter collectively "Columbia"). The agreement would settle charges by the Federal Trade Commission that Columbia's proposed acquisition of Medical Center Hospital, in Punta Gorda, Florida, violated section 5 of the Federal Trade Commission Act, and would also have violated section 7 of the Clayton Act if it had been carried out.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

The Complaint

The Commission issued an administrative complaint against Columbia Hospital Corp. on February 18, 1993. According to the complaint, Columbia operates Fawcett Memorial Hospital, a general acute care hospital in Port Charlotte, Florida, and related health care facilities. Columbia agreed to acquire Medical Center Hospital, a general acute care hospital in Punta Gorda, Florida, about five miles south of Port Charlotte. The complaint alleges that Fawcett and Medical Center were competitors in the market for acute care inpatient hospital services in an area including all but the westernmost portions of Charlotte County, Florida, plus adjacent portions of DeSoto and Sarasota Counties in Florida. That market, according to the complaint, was already highly concentrated, and entry by new competitors would be difficult. The complaint charged that if Columbia carried out its agreement to acquire Medical Center, the effect of that acquisition would be substantially to lessen competition in the Charlotte County area hospital market, in

violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act.

The proposed acquisition challenged in the administrative complaint was never completed. After the Commission issued the complaint, the proposed acquisition was preliminarily enjoined by a Federal court, pursuant to section 13(b) of the FTC Act. *Federal Trade Commission v. Columbia Hospital Corp.*, 93-30-Civ-FTM-23D (M.D. Fla., injunction issued May 21, 1993). The court's injunction prohibiting the acquisition will remain in effect until the Commission gives final approval to the proposed consent order, or until the Commission's administrative proceeding against Columbia is otherwise concluded.

The Proposed Consent Order

The first paragraph of the proposed order defines certain other terms used in the order.

Paragraph II would prohibit Columbia from acquiring, without the prior approval of the Federal Trade Commission, all or any significant part of a general acute care hospital in the "Charlotte County area" (an area including most of Charlotte County, Florida, and some adjacent portions of DeSoto and Sarasota Counties in Florida). It would also prohibit Columbia from transferring, without prior Commission approval, any general hospital or significant part thereof it operates in that area to another person operating (or simultaneously acquiring) a general hospital in the area. These provisions would give the Commission authority to prohibit any substantial combination of the general acute care hospital operations of Columbia with those of any non-Columbia general hospital in the Charlotte County area, unless Columbia convinced the Commission that a particular transaction would not endanger competition in the Charlotte County area hospital market.

Paragraph III would require Columbia to provide advance notice to the Commission of joint ventures with non-Columbia hospitals for the establishment of new hospital facilities or services in the Charlotte County area. This Paragraph would not apply to transactions subject to the prior approval requirement of Paragraph II, or to the Clayton Act's premerger notification requirements.

Both Paragraph II and Paragraph III would not cover acquisitions and joint ventures where the value of the acquired assets, or the assets contributed to a joint venture by participants other than Columbia, is \$1

million or less. Nor would Paragraph III apply to joint ventures between Columbia and non-Columbia hospitals that are limited to the provision of certain specified hospital support services (such as laundry or laboratory testing) or the establishment of new health plans (such as health maintenance organizations). In addition, Paragraphs II and III would both expire ten years after the order becomes final.

Paragraph IV of the proposed order would prohibit, for ten years, Columbia from transferring any hospital in the Charlotte County area to any other person without first filing with the Commission an agreement by the transferee to be bound by the order. Paragraphs V and VI of the proposed order would require Columbia to make annual reports to the Federal Trade Commission, and to make certain documents and personnel available to the Commission upon request, so the Commission may verify compliance with the order. Finally, Paragraph VII of the proposed order would require Columbia to notify the Commission at least thirty days before any proposed change in corporate structure that may affect compliance with the order.

The purpose of this analysis is to invite public comment concerning the proposed order, in order to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by the respondent that its proposed acquisition violated or would have violated the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Columbia Hospital Corporation, Docket 9256

I concur in the decision to publish the proposed consent agreement for comment, but I would have preferred that the proposed order require Columbia to provide notice of acquisitions outside the relevant market. Prior notice can be useful, the Commission has required such relief in other litigated hospital merger cases, see, e.g., *Hospital Corporation of America*, 106 F.T.C. 361, 524 (1985), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, 107 S. Ct. 1975 (1987), and there

is no apparent reason for granting more favorable treatment to this respondent.

[FR Doc. 94-4043 Filed 2-22-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3000]

Eggland's Best, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Pennsylvania company from misrepresenting the amount of nutrients or other ingredients in its eggs or foods containing egg yolks, and would require the respondent to have competent and reliable scientific evidence to substantiate future health-benefit claims for such foods and, for one year, to label certain egg packages with a corrective notice stating that no studies show Eggland's eggs are different from other eggs in their effect on serum cholesterol.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler, FTC/S-4002, Washington, DC 20580, (202) 326-3090.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Eggland's Best, Inc., a corporation, and it now appearing that Eggland's Best, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Eggland's Best, Inc., by its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Eggland's Best, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 842 First Street, King of Prussia, Pennsylvania 19406.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint attached hereto.

3. Proposed respondent waives:

(a) Any procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access To Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint here attached.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of

service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Definition

For purposes of this Order, the phrase "food containing egg yolk" shall not include "medical foods" by 21 U.S.C. 360ee(b)(3) as currently in effect as of the date of this Order.

I

It is ordered, That respondent Egglund's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of cholesterol, total fat, saturated fat or any other nutrient or ingredient in such food.

II

It is further ordered, That respondent Egglund's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative effect of such food and serum cholesterol, whether or not such food is consumed as part of an

unrestricted diet or as part of any specific dietary regimen, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation; *Provided, however*, That any such representation that is specifically permitted in labeling for such food by regulation promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to be substantiated as required by this paragraph. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered, That respondent Egglund's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative health benefits of such food, including but not limited to its effect on heart disease, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation; *Provided, however*, That any such representation that is specifically permitted in labeling for such food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to be substantiated as required by this paragraph.

IV

It is further ordered, That respondent Egglund's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale,

sale, or distribution of any food in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

V

It is further ordered, That respondent Egglund's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to disclose clearly and prominently in any advertisement or promotional material that refers, directly or by implication, to the absolute or comparative amount of cholesterol, fat or saturated fat in such food, the average cholesterol content of such food expressed in the following terms:

1. The number of milligrams; and
2. The percentage of "Maximum Daily Value."

The statements required by subparagraphs A.1 and A.2 of this Part shall appear in close proximity. For purposes of this Part, the term "Maximum Daily Value" shall mean: (1) The daily reference value or other daily intake limit for cholesterol established in an effective final regulation of the Food and Drug Administration; or (2) in the absence of such a regulation, the daily intake limit of cholesterol advised by any one of the following three organizations: the National Academy of Sciences, the Surgeon General of the Public Health Service, or the American Heart Association. In the event that the Food and Drug Administration does not have a final effective regulation and none of the three named organizations advises that daily cholesterol intake be limited to a specific maximum amount, subparagraph A.2 of this Part shall not apply. *Provided, however*, That this Part will not be deemed to apply to any representation that is specifically permitted in labeling for such food product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

B. For a time period of one year, beginning no later than forty-five (45)

days from the date this Order becomes final, offering for sale, selling, or distributing eggs unless the package label for such eggs clearly and prominently states, in the exact language that follows, that: "There are no studies showing that these eggs are different from other eggs in their effect on serum cholesterol." *Provided, however*, That this requirement shall apply only in those geographic areas where respondent has disseminated or caused to be disseminated advertising or promotional materials containing any representation, directly or by implication, about the effect of Egglund's Best eggs or other eggs on serum cholesterol over a period of 12 weeks or more, or at any time between January 1, 1993 and the date of the acceptance of this Order by the Commission for public comment, including but not limited to those geographic areas listed in Attachment A to this Order.

For purposes of this Order, "clearly and prominently" shall mean as follows:

1. In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;

2. In a print advertisement, the disclosure shall be in type size which is at least the same size as that in which the principal portion of the text of the advertisement appears, shall be located in close proximity to the statement or other reference requiring the disclosure and shall be of a color or shade that readily contrasts with the background of the advertisement;

3. In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it;

4. On a package label, the disclosure shall be in a conspicuous and prominent place on the package, in a conspicuous format, and in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package. *Provided, however*, That if the disclosure is displayed on the top or front panel of a standard twelve-egg carton or on the top, front or side panel of a standard six-egg carton, is in at least ten (10) point type and is either on a

separate label or enclosed within a border, and both the type and the border are of a color or shade that readily contrasts with the background of the carton, the disclosure shall be deemed to have been made clearly and prominently for purposes of this Order.

VI

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this Order, respondent Egglund's Best, Inc., or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation, including complaints from consumers and complaints or inquiries from governmental organizations.

VII

It is further ordered, That respondent Egglund's Best, Inc. shall, within thirty (30) days after service upon it of this Order, distribute a copy of the Order to each of its operating divisions, to each of its franchisees, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this Order and shall secure from each such person a signed statement acknowledging receipt of this Order.

VIII

It is further ordered, That respondent Egglund's Best, Inc. shall, notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this Order.

IX

It is further ordered, That respondent Egglund's Best, Inc. shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Attachment A.—Geographic Areas With Cholesterol-Related Advertising or Promotion Pursuant to Paragraph V.B of Agreement Containing Consent Order

1. Iowa
2. Maine
3. Rhode Island
4. Western and Central Pennsylvania
5. Virginia
6. Maryland
7. Washington, DC
8. Georgia
9. South Carolina
10. Alabama
11. Mississippi
12. Louisiana
13. Arkansas
14. California
15. Nevada
16. Idaho
17. Michigan
18. Colorado
19. South Dakota
20. Washington
21. Montana
22. Alaska
23. Wyoming
24. Missouri
25. Oklahoma
26. Salt Lake City, Utah
27. Raleigh-Durham, North Carolina
28. Southern Illinois (St. Louis Market)

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Eggland's Best, Inc. ("Eggland's").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Eggland's in its advertising and promotional materials for eggs.

The Commission's complaint in this matter charges Eggland's with engaging in unfair or deceptive practices in connection with the advertising of its eggs. According to the complaint, Eggland's falsely represented that it had a reasonable basis for claims that eating its eggs will not increase serum cholesterol in an absolute sense and that eating its eggs will not increase serum cholesterol as much as eating ordinary eggs.

The complaint also alleges that Eggland's falsely represented that

clinical studies have proven that adding twelve Eggland's eggs per week to a low-fat diet does not cause an increase in serum cholesterol.

Finally, the complaint alleges that Eggland's falsely represented that its eggs are both low in saturated fat in an absolute sense, and are lower in saturated fat than ordinary eggs.

The consent order contains provisions designed to remedy the violations charged and to prevent Eggland's from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Eggland's from misrepresenting the absolute or comparative amount of cholesterol, total fat, saturated fat or any other nutrient or ingredient in eggs or in any food containing egg yolk.

Part II of the order prohibits Eggland's from making any claims about the absolute or comparative effect on serum cholesterol of eggs or any food containing egg yolk unless, prior to making such claims, Eggland's has competent and reliable scientific evidence to substantiate the claims. This requirement applies to claims about the effect of such foods on serum cholesterol when consumed either as part of a regular, unrestricted diet or as part of a specific dietary regimen, for instance, a low-fat diet. Part II of the order also provides that representations that would be specifically permitted in food labeling, under regulations issued by the Food and Drug Administration ("FDA") pursuant to the Nutrition and Labeling Education Act of 1990 ("NLEA"), will be deemed to be adequately substantiated.

Part III of the order prohibits Eggland's from making any claims about the health benefits, including the effect on heart disease, of eggs or food containing egg yolk unless, prior to making such claims, Eggland's has competent and reliable scientific evidence to substantiate the claims. This requirement applies to claims about both the absolute and comparative health benefits associated with consuming such foods. Like Part II, this Part provides that claims specifically permitted in food labeling, under regulations issued by FDA pursuant to the NLEA, will be deemed to be adequately substantiated.

Part IV of the order prohibits Eggland's from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test or study.

Part V.A of the order requires a clear and prominent disclosure of the cholesterol content of eggs or any food containing egg yolk, in any advertisement or promotional material

that references the absolute or comparative amount of cholesterol, fat or saturated fat in such food. This disclosure of cholesterol content must be expressed both in terms of the number of milligrams and as a percentage of the "Maximum Daily Value" for cholesterol intake as established by FDA or other specified organizations. Part V.A exempts from this disclosure requirement any representation that is specifically permitted in food labeling under regulations issued by FDA pursuant to the NLEA.

Part V.B of the Order requires Eggland's to include a clear and prominent notice on the package label for its eggs that "There are no studies showing that these eggs are different from other eggs in their effect on serum cholesterol." This corrective notice requirement applies for a period of one year beginning forty-five (45) days from the date the order becomes final in those geographic areas where Eggland's disseminated advertising or promotional materials discussing the effect of its eggs on serum cholesterol either for a period of twelve (12) weeks or more, or at any time between January 1, 1993 and to the date of the acceptance of this order by the Commission for public comment.

Part V also includes various specific provisions as to what constitutes a clear and prominent disclosure and corrective notice for purposes of this order.

Part VI of the order requires Eggland's to maintain copies of all materials relied upon in making any representations covered by the order.

Part VII of the order requires Eggland's to distribute copies of the order to its franchisees and to various officers, agents and representatives of Eggland's.

Part VIII of the order requires Eggland's to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part IX of the order requires Eggland's to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,
Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, in Eggland's Best, Inc., File No. 932-3000

The Commission today accepts for public comment a consent agreement

settling charges that Egglund's Best made deceptive advertising claims about its eggs. I agree that there is reason to believe that these claims were deceptive and join in approving the order except for ¶ V.B. I do not agree that the corrective advertising provision contained in ¶ V.B. is warranted, and I dissent from the order to that extent.

In imposing a corrective advertising remedy, the Commission must consider whether an advertisement has played a substantial role in creating in the public's mind a false belief about a product that will linger on after the false advertisement ceases. *Warner-Lambert Co. v. FTC*, 562 F.2d 749, 762 (D.C. Cir. 1977), cert. denied, 435 U.S. 950 (1978). Corrective advertising is intended to dissipate the lingering effects of a deceptive advertisement so that future advertisements do not become part of a continuing deception of the public. *Id.* at 769.

Here, there is no direct evidence, such as the consumer surveys and expert testimony in *Warner Lambert Co.*, that Egglund's Best's advertisements created a lingering false impression about the effects on serum cholesterol of its eggs. Given the relatively short period of time during which Egglund's Best's advertisements were run, it seems unlikely that any such lingering false impression has been created. Without a stronger showing of the need for corrective advertising under the *Warner-Lambert* test, I cannot support including a corrective advertising provision in the proposed order.

Statement of Commissioner Deborah K. Owen, Concurring in Part and Dissenting in Part, in Egglund's Best Inc., File No. 932-3000

I concur in the Commission's decision to issue a complaint, and to provisionally accept a consent agreement in this matter, except as to section V.B. of the Order. With respect to that Section, which requires corrective advertising, I dissent.

The seminal case on corrective advertising is the Listerine case, *Warner-Lambert Company*, 86 F.T.C. 1398 (1975), where the Commission opined:

[I]f a deceptive advertisement has played a substantial role in creating or reinforcing in the public's mind a false and material belief which lives on after the false advertising ceases, there is clear and continuing injury to competition and to the consuming public as consumers continue to make purchasing decisions based on the false belief. Since this injury cannot be avoided by merely requiring respondent to cease disseminating the advertisement, we may appropriately order respondent to take affirmative action

designed to terminate the otherwise continuing ill effects of the advertisement.

86 F.T.C. at 1499-1500.

As the complaint alleges, Egglund's ads, in my judgment, certainly create a false impression that its eggs will not increase serum cholesterol, or, comparatively, increase cholesterol as much as ordinary eggs. However, we must also find that the beliefs created by the challenged ads are likely to linger after the deceptive advertising ceases. As to that likelihood, it seems to me important to compare and contrast the facts in *Warner-Lambert* to the situation here.

In *Warner-Lambert*, decided in 1975, the Commission noted that the challenged advertising claims had been made directly to the consuming public since 1921, and involved expenditures of large sums in print and television media. 86 F.T.C. at 1501. The Commission cited to the ALJ's Findings of Fact, which noted that Listerine had made the contested representations since the product went on the market almost a century before; that cold and sore throat claims had been made continuously on its labelling since prior to 1938; and that over the ten years preceding the decision, Listerine had spent several million dollars on its colds advertising, the vast majority occurring on network and spot television, covering all parts of the day and evening and particularly in network prime time. *Id.* at 1468 (IDFF 219-220); see also *id.* at 1407-1408 (IDFF 5-8). The Commission pointed to record testimony indicating the high percentage of consumers taking such claims that would remain as long as five years after the ads ended. It concluded: "The record demonstrates that long after Listerine cold efficacy advertising ceased, a substantial proportion of the public would continue to believe in Listerine's efficacy for the treatment and prevention of colds and sore throats." *Id.* at 1503 (emphasis supplied).

If we contrast the length in time, and the magnitude of Listerine's advertising to the instant case, Egglund's advertising would hardly appear to rise to even a two-digit percentage thereof. We have no evidence that Egglund's campaign was so similarly saturated and extended that long after it ceases, a substantial portion of the public will continue to believe the challenged claims in the absence of the corrective advertising that the Commission has provisionally accepted. Moreover, one significant factor is in evidence here that was not present in the Listerine case; the barrage of contrary information to which the public is exposed.

While the public received little, if any, information from sources other than the advertiser about the true effect of Listerine on colds and sore throats, the vast majority of information available to consumers challenges the Egglund claims, and links egg consumption with increased serum cholesterol. Articles in the popular press, television and radio programs, and many cookbooks recommend that consumers lower their consumption of eggs. Doctors and the American Heart Association advise people to limit their egg consumption for health reasons. The general ambient information and perception is that eggs are unhealthy, and this climate is highly relevant in determining whether the false beliefs created by Egglund's Best advertisements will likely linger. Egglund's Best advertisements attempted to counteract the common wisdom, but ran for only a short time. Because the information that eating eggs is likely to increase serum cholesterol will continue to be widely disseminated to consumers through media sources, it is unlikely that the false beliefs regarding the effects of Egglund's Best eggs on serum cholesterol, or their comparative benefits to other eggs, will be maintained. In sum, the half-life of Egglund's advertising campaign is probably very short.

This is not to suggest, however, that corrective advertising is only appropriate where the ad campaign is decades-old and swamps the public. A classic opportunity for appropriately imposing the remedy was the *Sun Company* case two years ago. File No. 902-3268. There, the Commission challenged claims linking octane and automobile engine performance made by a company that was previously under a Commission order for earlier false performance and uniqueness claims for its gasoline. *Sun Oil Co.*, 84 F.T.C. 247 (1974). Nonetheless, the Commission agreed to merely a cease-and-desist order, despite the fact that the challenged claims took advantage of, and further contributed to, widespread consumer misperception about the relationship between octane and performance. The contrast between the Commission's decision there, and here, suggests that the Commission's current posture on corrective advertising may be more a function of respondents' willingness to agree to the remedy, rather than of a well defined and implemented policy.

Finally, a comment on the remedy itself. The corrective advertising is ordered to be placed on Egglund's Best carton label. Due to other legal limitations, Egglund's Best has not made

serum cholesterol or heart health claims on the carton. Thus, while the attempt to limit the breadth of the remedy may be well-intentioned, I find it highly ironic that corrective advertising has been mandated in a medium where the original deceptive claims were never made.

Statement of Roscoe B. Starek, III, in Egglund's Best, Matter No. 932-3000

After very careful deliberation, I have decided to support the corrective advertising provision in this order. I arrived at this decision somewhat reluctantly, since I think this remedy should be used sparingly. The appeals court decision in *Warner-Lambert* accords the Commission substantial discretion in applying such a remedy.¹ The Commission must take great care, however, to exercise such broad discretion judiciously. Thus, the question I had to answer was whether corrective advertising is appropriate in the absence of an extended period of deceptive advertising or extrinsic evidence demonstrating that the false impressions will persist in consumers' minds after the ads cease.²

I have determined that a limited corrective advertising requirement is an appropriate remedy here. First, I have reason to believe that the Egglund's ads have created in consumers' minds enduring false impressions about these eggs. Because Egglund's is able to charge for its eggs about 200% of the typical price per dozen, we have strong evidence that the company's ads have been successful in creating in the minds of their consumers a belief that their eggs are meaningfully superior to other eggs. Second, the superiority touted by Egglund's ads—ads disseminated as recently as two months ago—pertains to their effect on serum cholesterol. Common sense tells me that this belief is not going to disappear overnight, simply because advertising making that claim ceases. Third, consumers who continued to believe that Egglund's had a demonstrated superiority over typical

eggs would suffer an identifiable injury, again due to the price differential. Corrective advertising placed on the egg package would enable consumers to avoid further injury.

Finally, I am persuaded by the careful crafting of the corrective remedy. In my view, corrective advertising should educate, not punish. The instant notice is designed to reach the Egglund's target (those who are preparing to purchase the product) rather than the population at large. It has a limited dissemination schedule and will not be unreasonably costly. Moreover, the notice itself is a statement of fact that is neither derogatory of Egglund's eggs nor implies criticism of other companies' products.

Although I support the very narrow corrective advertising provision in this case, I am not an advocate of this type of remedy.

Statement of Commissioner Dennis A. Yao, in Egglund's Best, Inc.

I voted to accept the proposed consent agreement for public comment. Although I support the terms of the consent agreement, I would have preferred that the complaint include an implied heart disease allegation.

The Commission alleges in its complaint that, among other things, Egglund's Best falsely represented that it had a reasonable basis for claims that eating its eggs will not increase serum cholesterol in an absolute sense and that eating its eggs will not increase serum cholesterol as much as eating ordinary eggs. I believe that reasonable consumers would interpret the express claim that Egglund's eggs will not increase serum cholesterol to imply that those eggs would therefore not increase the risk of heart disease—especially when the express claim was made for eggs, a product notoriously well known for its negative impact on heart health. Although the proposed order does include a requirement that health claims, including claims about heart disease, be substantiated by competent and reliable scientific evidence, I believe that industry and the public would best be served if the Commission communicated its belief that an implied heart claim has been made here.³

³ I would note that the complaint also alleges that Egglund's Best falsely represented that its eggs are low in saturated fat in an absolute sense, and are lower in saturated fat than ordinary eggs. Although I agree that the implied saturated fat claims challenged in the complaint were made, in my view this claim is further down the spectrum of implied claims towards those needing extrinsic evidence than the implied heart disease claim I discuss here. I thus can discern no reason for excluding the implied heart disease claim from the proposed complaint while including the saturated fat claims.

[FR Doc. 94-4044 Filed 2-22-94; 8:45 am]
BILLING CODE 6750-01-M

[File No. 932 3092]

Jockey International, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Wisconsin-based manufacturer of underwear, hosiery, and sportswear to disclose the country where its clothing is made and to use the correct generic fiber name for clothing in advertisements contained in its mail order catalogs.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Easton, FTC/S-4631, Washington, DC 20580. (202) 326-3029.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Jockey International, Inc., a corporation (hereinafter referred to as Jockey International, Inc. or proposed respondent) and it now appearing that Jockey International, Inc., is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

¹ *Warner-Lambert Co. v. F.T.C.*, 562 F.2d 749 (D.C. Cir. 1977). The court suggested that the purpose of advertising is to create enduring beliefs in consumers' minds, such that the FTC might well presume in some cases that the standard for imposing corrective advertising had been met. It stated that it need not rely upon such a presumption in *Warner-Lambert*, however, because the record contained evidence that the Listerine ads had created, in the minds of consumers exposed to the advertising, false beliefs that would persist after the ads ended. *Id.*, 562 F.2d at 762-63; see, 86 F.T.C. 1398 (1975), at 1471 n.23 (data relied upon was survey of "consumers who have seen or heard a lot of advertising for Listerine").

² It is certainly unrealistic to think that we will have this data when the respondents enter into a consent agreement before a complaint is filed.

It is hereby agreed by and between Jockey International, Inc., by its duly authorized officer and counsel for the Federal Trade Commission that:

1. Proposed respondent Jockey International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 2300 60th Street, Kenosha, Wisconsin.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The

order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service.

Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered, That respondent Jockey International, Inc., a corporation, its successors and assigns, trading under its own name or under any other name or names, and its officers, agents, licensees, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) ("Textile Act"), do forthwith cease and desist from:

1. Failing to state in the description of such textile fiber product in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both; and

2. Mentioning or implying fiber content without using the generic fiber names in a manner consistent with the Textile Act and the rules and regulations thereunder.

II

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting

in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.

III

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its employees, agents, licensees and representatives acting in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) ("Textile Act").

IV

It is further ordered, That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Jockey International, Inc. ("Jockey").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Jockey is a large, privately owned corporation headquartered in Kenosha, Wisconsin, that uses the mail to sell clothing and other textile products. The complaint alleges that Jockey, in selling textile clothing products through mail order catalogs, did not tell customers whether the products were made in the United States or imported. Further, the complaint alleges that Jockey did not use the generic name "spandex" with the trademark "Lycra" to describe the type of textile fibers used in goods it sold, but instead only used the trademark "Lycra." The complaint alleges that these actions by Jockey violated the Textile Fiber Products Identification Act ("Textile Act") and the Commission's implementing rules, and constituted unfair methods of

competition and unfair and deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act.

The Textile Act and the Commission's rules, among other things, require companies that sell textile products by mail order catalogs or mail order promotional materials, such as coupons, to state clearly and conspicuously whether the textile products are made in the United States, or imported, or both. If fiber content is mentioned or implied in a written advertisement, the Textile Act requires disclosure of the generic name of the fiber. Additionally, if a fiber trademark is used in advertising textile products, the Textile Act requires that the generic name of the fiber appear next to the trademark.

The proposed order requires Jockey, in compliance with the Textile Act and the Commission's rules, to inform its customers whether the textile products it sells by mail are made in the United States, or imported, or both, and to use the generic fiber names of such textile products if it mentions or implies fiber content. Jockey does not admit that it violated the law, but agrees to provide the information in the future.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-4045 Filed 2-22-94; 8:45 am]

BILLING CODE 6760-01-M

[Dkt. 9251]

**Synchronal Corporation, et al.;
Proposed Consent Agreement With
Analysis To Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Thomas L. Fenton, a former officer of Synchronal Corporation, from disseminating a purported baldness cure infomercial, for a product called Omexin; from misrepresenting that any commercial is an independent program; and from making unsubstantiated claims for any food, drug or device in the future.

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lisa Kopchik, FTC/S-4002, Washington, DC 20580. (202) 326-3139.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order
To Cease and Desist**

In the matter of:

Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations,

Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation,

Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and

Ana Blau a/k/a Anushka, and Steven Victor, M.D. individually.

The agreement herein, by and between Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., hereinafter sometimes referred to as respondent, and his attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Thomas L. Fenton is or was at relevant times herein an officer and director of Synchronal Corporation and Synchronal Group, Inc. He formulated, directed, and controlled the policies, acts and practices of said corporations. His home address is 160 East 38th Street, New York, New York 10036.

2. Respondent has been served with copies of the complaint and the

amended complaint issued by the Federal Trade Commission charging him with violations of Sections 5(a) and 12 of the Federal Trade Commission Act and the provisions of the Postal Reorganization Act, 39 U.S.C. 3009, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint and amended complaint in this proceeding.

4. Respondent waives:

- (a) Any further procedural steps;
- (b) The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the complaint and the amended complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall

constitute service. Respondent waives any right he might have to any other manner of service. The complaint and the amended complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint, the amended complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this Order:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

2. "Video advertisement" shall mean any advertisement intended for dissemination through television broadcast, cablecast, home video, or theatrical release.

I

It is ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole, the program-length television advertisement for Omexin described and identified in the Complaint as "Can You Beat Baldness?"

II

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of

Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Omexin or any other substantially similar hair loss treatment product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains an ingredient that can or will curtail hair loss for a large majority of balding men and women;

2. Such product or service contains an ingredient that can or will promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women;

3. Such product or service contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of men and women;

4. Such product or service contains an ingredient that has been scientifically proven to promote the growth of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women; or

5. Such product or service has successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

For purposes of this Order a "substantially similar hair loss treatment product or service" shall be defined as any product or service that is advertised or intended for sale over-the-counter to treat, cure or curtail hair loss and which contains omentum or any extract thereof.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as "commerce" is defined in The Federal Trade Commission Act, that:

1. The use of the product or service can or will prevent, cure, relieve, reverse, or reduce loss of hair;

2. The use of the product or service can or will promote the growth of hair where hair has already been lost;

3. The product or service is an effective remedy for hair loss in a substantial number of cases; or

4. Any test or study establishes that the product or service relieves, cures, prevents or reverses hair loss, unless such representation is true and unless, at the time of making such

representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

C. Advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, provided that, this subpart shall not limit the requirements of Part II.A and B herein.

III

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

IV

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

V

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of

Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement;

B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

The program you are watching is a paid advertisement for [the product or service].

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

VI

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless such is the fact.

VII

It is further ordered, That respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., shall, for three (3) years after the date of the last dissemination to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon by respondent in disseminating any representation covered by this order; and

(B) All reports, tests, studies, surveys, demonstrations or other evidence in respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondent relied upon for such representation, including complaints from consumers.

VIII

It is further ordered, That respondent Thomas L. Fenton shall, for a period of ten (10) years from the date of entry of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities. The expiration of the notice provision of this Part VIII shall not affect any other obligation arising under this Order.

IX

It is further ordered, That respondent shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Thomas L. Fenton.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take

other appropriate action or make final the agreement's proposed order.

This matter concerns advertising and promotional practices related to the sale of the Omexin System for Hair ("Omexin"), which was advertised on the "Can You Beat Baldness?" infomercial.

The Commission's Amended Complaint, issued on October 13, 1993, charges that respondent Fenton falsely represented that Omexin will curtail hair loss, will promote hair growth, is scientifically proven to curtail hair loss and promote hair growth, and has successfully curtailed hair loss and promoted hair growth for thousands of balding men and women.

According to the allegations of the Amended Complaint, the infomercial was falsely represented to be independent programming, rather than a paid advertisement. The Amended Complaint further charges that consumer testimonials on the infomercial were falsely represented to reflect the typical experience of members of the public who used the product.

The proposed consent order contains provisions which are designed to remedy the advertising violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from disseminating the "Can You Beat Baldness?" infomercial.

With regard to Omexin or any substantially similar product, Part II.A prohibits Fenton from making the claims alleged in the Complaint to be false. Part II.B prohibits him from representing that any product or service will prevent or reduce hair loss, will promote hair growth, is an effective remedy for hair loss, or is proven through any test or study to relieve hair loss unless the claim is true and substantiated by competent and reliable scientific evidence. Part II.C forbids this respondent from advertising or promoting any hair loss product unless it is the subject of an approved New Drug Application by the Food and Drug Administration.

Part III of the proposed order prohibits respondent from misrepresenting the validity, results, conclusions, or interpretations of any test or study. Part IV prohibits him from making any representation about the performance, benefits, efficacy, or safety of any food, drug, or device unless he possesses competent and reliable scientific evidence that substantiates the representation.

Part V.A of the proposed order prohibits Fenton from disseminating

any advertisement that misrepresents that it is not a paid advertisement. Part V.B requires that any advertisement fifteen minutes or longer display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty seconds of the commercial and immediately before each presentation of ordering instructions, the following disclosure: "The program you are watching is a paid advertisement for [the product or service]." Part V.B specifies that an oral or visual presentation of an ordering address or telephone number shall also require the display of this disclosure.

Under the terms of Part VI, Fenton may not represent that any endorsement of a product or service represents the typical or ordinary experience of members of the public, unless such is the fact.

Parts VII, VIII, and IX relate to respondent's obligation to maintain records, notify the Commission of changes in business or employment status, and file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-4046 Filed 2-22-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3477]

White Castle System, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Ohio-based chain of fast-food restaurants from misrepresenting the extent to which its fast-foot container or any product or package is capable of being recycled or the extent of the availability of recycling collection programs for such products. In addition, the consent order prohibits the respondent from representing the environmental benefit of any product or packaging it uses unless it possesses competent and reliable evidence to substantiate the representation.

DATES: Complaint and Order issued January 6, 1994.¹

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Theresa McGrew, FTC/Chicago Regional Office, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: On Monday, October 25, 1993, there was published in the *Federal Register*, 58 FR 55072, a proposed consent agreement with analysis in the Matter of White Castle System, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94-4041 Filed 2-22-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Vital and Health Statistics National Committee; Meetings

"Federal Register" Citation of Previous Announcement: 58FR67795—dated December 22, 1993.

Change of Time, Date, and Place for the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics: Meeting.

ORIGINAL TIME AND DATE: 9:30 a.m.—4 p.m., January 18, 1994.

NEW TIME AND DATE: 1 p.m.—4 p.m., March 10, 1994.

NEW PLACE: Room 703A-729A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

SUMMARY: Notice is given that the meeting for the NCVHS Subcommittee on Mental Health Statistics has been

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

rescheduled due to inclement weather. The meeting purpose announced in the original notice remains unchanged.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, National Center for Health Statistics, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436-7050.

Dated: February 17, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-4122 Filed 2-22-94; 8:45 am]

BILLING CODE 4163-18-M

Food and Drug Administration

Discussion of Activities of the International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop on the progress of activities associated with the International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use (ICH). The agency will present summary information on guidelines developed as a result of ICH harmonization initiatives and will respond to questions.

DATES: The workshop will be held on Wednesday, March 2, 1994, 8 a.m. to 5 p.m.

ADDRESSES: The workshop will be held in conference rms. O, P, and Q, third floor, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Janet Showalter, Office of Health Affairs (HFY-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1383.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically

based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Union, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association.

The ICH Steering Committee includes representatives from each of the organizing bodies and the International Federation of Pharmaceutical Manufacturers Associations (IFPMA), as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area. The ICH Secretariat, which coordinates the preparation of documentation, is provided by IFPMA.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from regulatory and industry representatives and other interested parties. FDA is committed to ensuring that there is an opportunity for public comment through Federal Register notices on all of the guidelines developed as a result of the ICH harmonization initiatives. A number of ICH draft guidelines will be published soon in the Federal Register for public comment.

The purpose of this public workshop is to provide an opportunity for the agency to present summary information about these documents and to respond to questions. In addition, general background information on ICH will be provided.

This public workshop should be of interest to professional and consumer organizations and to the pharmaceutical industry.

The status of the topics under consideration by ICH is as follows:

ICH Consensus Draft Guidelines (will be published in the Federal Register soon for public comment)

1. Guideline for the Validation of Analytical Procedures
2. Toxicokinetics: A Guidance for Assessing Systemic Exposure in Toxicology Studies
3. Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies

4. Dose Selection for Carcinogenicity Studies of Therapeutic Agents

5. Good Clinical Practices: Addenda on Investigators Brochure and Essential Documents

6. Population Exposure to Assess Clinical Safety

ICH Draft Guidelines and Texts in Preparation

7. Impurities in New Drug Substances (guideline)

8. Light Stability Testing (guideline)

9. Genotoxicity Testing Requirements (guideline)

10. Quality of Biotechnology Products: Genetic Stability (guideline)

11. Quality of Biotechnology Products: Stability Testing (annex to guideline on stability testing for new drugs and products)

12. Clinical Study Reports (proposals for a common format based upon a comparison of current FDA and European Community (EC) requirements)

13. Ethnic Factors in the Acceptability of Foreign Data (studies are in progress and a guideline is in preparation)

ICH Consensus Draft Guidelines (released for public comment in the Federal Register of July 9, 1993)

14. Dose-Response Information to Support Drug Registration

15. Clinical Safety Data Management: Definitions and Standards for Expedited Reporting

ICH Harmonised Tripartite Guidelines (released for public comment in the Federal Register of April 16, 1993)

16. Detection of Toxicity to Reproduction for Medicinal Products

17. Studies in Support of Special Populations: Geriatrics

18. Stability Testing of New Drug Substances and Products

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-4072 Filed 2-17-94; 3:38 pm]

BILLING CODE 4160-01-F

Health Resources and Services Administration

New Community Health Centers, Expanded Community Health Center Activities, and Integrated Service Network Development Activities for CHCs

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Advance Notice of Application Deadlines for New Community Health Centers, Expanded Community Health

Center Activities, and Integrated Service Network Development Activities for CHCs.

SUMMARY: The Health Resources and Services Administration's Bureau of Primary Health Care (BPHC) expects to provide discretionary grant funds of approximately \$17 million in fiscal year (FY) 1994 under section 330 of the Public Health Service (PHS) Act to establish new community health centers (CHCs), to expand existing CHCs, and to develop integrated service networks for CHCs. The purpose of this announcement is to give early notice of funding amounts and application deadlines for CHC new start/expansion applicants, as well as to announce the availability of supplemental funds for existing CHCs involved in integrated service network activities.

Approximately \$12.5 million will be available to support the establishment of new CHCs and the expansion of capacity in existing CHCs. For applicants seeking to establish new CHCs and for applicants seeking to expand existing CHCs, the following application deadlines are provided: (1) The application for designation as a medically underserved area (MUA) or medically underserved population (MUP) is March 15, 1994; and (2) the application deadline for grants is June 1, 1994. Applicants are also encouraged to submit Letters of Interest by March 15, 1994, to the PHS Regional Grants Management Officers (RGMOs) whose names and addresses are provided in the appendix to this document. This will enable the RGMOs to provide additional assistance and instructions.

Approximately \$4.5 million will be available under Section 330 (d)(1) to support existing CHCs in the development of integrated service networks. As part of their ongoing operational activities, CHCs are permitted to expend a reasonable amount of their grant funds or other revenues for corporate planning activities, including efforts to define their roles within the provider community. This special funding initiative earmarks an additional \$4.5 million for grant support of these activities.

Integrated Service Networks are defined as: the collaboration of a Section 330 health center and at least one other health care provider or health care entity (e.g., community health center, migrant health center, health care for the homeless center, center for residents of public housing, other primary care provider, specialty group, hospitals, academic medical center, mental health provider, laboratory,

pharmacy, insurance company, managed care organization and others) to form a horizontally and/or vertically integrated delivery system for managed purposes that will ensure access for the medically underserved.

For applicants interested in Integrated Service Network Development projects, a pre-application is required and may be submitted after the publication of this notice with a final deadline of May 1, 1994. The final deadline for Integrated Service Network Development applications is June 1, 1994. Interested applicants should contact their RGMOS for additional assistance and instructions.

FOR FURTHER INFORMATION CONTACT: For grant information, potential applicants may contact the PHS RGMOS. RGMOS are responsible for distributing application kits and guidance (Form PHS 5161-1 with revised face sheets DHHS Form 424, as approved by the OMB under control number 0937-0189). The RGMOS can also provide assistance on business management issues, Letters of Interest and Integrated Service Network Development projects. For general program information and technical assistance, contact Richard C. Bohrer, Director of Division of Community and Migrant Health, BPHC, 4350 East-West Highway, 7th Floor, Rockville, MD 20857 (301) 594-4300.

SUPPLEMENTARY INFORMATION: A notice of Availability of Funds for new CHCs and expanded CHC activities in FY 1994 will be published in the **Federal Register** announcing program provisions, requirements, and evaluation criteria.

Dated: February 16, 1994.

William A. Robinson,
Acting Administrator.

Appendix—Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565-1482.

Region II: Frank DiGiovanni, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264-4496.

Region III: Martin Bree, Acting Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101, (215) 596-6653.

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331-2597.

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353-8700.

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI,

1200 Main Tower, Dallas, TX 75202, (214) 767-3885.

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426-5841.

Region VIII: Susan Jaworowski, Acting Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844-4461.

Region IX: Al Tevis, Acting Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556-2595.

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553-7997.

[FR Doc. 94-3994 Filed 2-22-94; 8:45 am]

BILLING CODE 4160-15-P

Social Security Administration

Rescission of Social Security Acquiescence

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 88-5(1)—*McCuin v. Secretary of Health and Human Services*, 817 F.2d 161 (1st Cir. 1987).

SUMMARY: In accordance with 20 CFR 404.985(e), 416.1485(e) and 422.406(b)(2), published January 11, 1990 (55 FR 1012), the Principal Deputy Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 88-5(1).

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Darlynda Bogle, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-4237.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On October 27, 1988, we issued Acquiescence Ruling (AR) 88-5(1) to reflect the holding in *McCuin v. Secretary of Health and Human*

Services, 817 F.2d 161 (1st Cir. 1987), that, once the 60-day period for the Appeals Council's own-motion review had expired, the Secretary's reopening regulations (20 CFR 404.987, 404.988, 416.1487 and 416.1488) allowed reopening of an Administrative Law Judge (ALJ) decision only on the claimant's motion. Accordingly, under the McCuin AR, where an ALJ's decision had become final, (i.e., the time for requesting Appeals Council review of the decision had expired and no request for such review had been filed by the claimant and the Appeals Council had not taken own-motion review within the 60-day time limit), the Appeals Council could not reopen and revise the decision on its own initiative under the Secretary's regulations on reopening. The AR applied to cases in which the claimant resided in Maine, Massachusetts, New Hampshire, Rhode Island or, for title II claims only, in Puerto Rico at the time of the ALJ decision.

We indicated in the McCuin AR that the Social Security Administration (SSA) intended to clarify the reopening regulations at issue in the McCuin case through the rulemaking process, and that the AR would continue to apply until such clarification was made. On October 28, 1991, we published a Notice of Proposed Rulemaking and proposed rules (56 FR 55477) that would clarify these regulations. In this issue of the **Federal Register** we are now publishing final rules, which explicitly state that SSA may reopen a determination or decision that has become final either on its own initiative or at the request of an individual who was a party to the determination or decision. Accordingly, since the regulation that was the subject of the McCuin decision has now been revised, we are rescinding the McCuin AR concurrently with the publication of the revised regulations. Adjudicators of claims arising in the First Circuit (Maine, Massachusetts, New Hampshire, Rhode Island or Puerto Rico) will no longer follow the AR, but will decide cases in accordance with the revised regulations on reopening.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

¹ The court based its decision on the reopening regulations applicable to title II cases. However, since the reopening regulations applicable to title XVI cases are similar, the AR extended to both title II and title XVI cases.

Dated: November 4, 1993.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 94-3959 Filed 2-22-94; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-41-5700; WYW112756]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW112756 for lands in Park County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW112756 effective July 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Jean Mickey,

Acting Supervisory Land Law Examiner.

[FR Doc. 94-4030 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW112688]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW112688 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction

thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW112688 effective July 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Jean Mickey,

Acting Supervisory Land Law Examiner.

[FR Doc. 94-4031 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW111477]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111477 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111477 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94-4032 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW111488]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111488 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111488 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94-4033 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW111438]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111438 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land

Management is proposing to reinstate lease WYW111438 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94-4034 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW111476]

Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111476 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and 16 2/3 percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111476 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94-4035 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW111519]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

February 10, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111519 for lands in Park County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction

thereof, per year and 16 2/3 percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111519 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Victoria B. Jerome,

Acting Supervisory Land Law Examiner.

[FR Doc. 94-4036 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Extension of Public Comment Period on the Draft Pacific Coastal Barriers Study and Accompanying Maps of Areas Under Consideration for Inclusion in the Coastal Barrier Resources System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of time period for public comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service), is extending the comment period for review of the Draft Pacific Coastal Barriers Study and accompanying maps, prepared pursuant to the Coastal Barriers Improvement Act of 1990 (Act). The notice of availability for the Draft Study and maps was published on December 17, 1993. Public information meetings were held in the four affected States. Based on requests received from the public and the Governors of California, Oregon, and Washington during the initial public comment period, the Service determined an extended review period is necessary to allow interested parties additional time to submit written comments on the proposal.

DATES: Comments should be received from the appropriate Governors no later than April 25, 1994. Comments from all other interested parties should be received no later than March 25, 1994. ADDRESSES: Written comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Paula Levin, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland,

Oregon 97232-4181, (503) 231-2068. Copies of the Draft Study and accompanying maps are available for public inspection, during normal business hours, at the locations listed under supplementary information.

SUPPLEMENTARY INFORMATION: Reference December 17, 1993, Federal Register notice of availability of the Draft Pacific Coastal Barriers Study and Accompanying Maps of Areas Under Consideration for Inclusion in the Coastal Barriers Resources System.

On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law (Pub. L. 97-348). Section 4 of CBRA establishes the Coastal Barrier Resources System (System) as referred to and adopted by Congress, and sections 5 and 6 prohibit all new Federal expenditures and financial assistance within the units of that System unless specifically excepted by the Act. Coastal barrier units were designated along the Atlantic and Gulf of Mexico coasts.

On November 16, 1990, President Bush signed the Coastal Barrier Improvement Act of 1990 (CBIA) into law (Pub. L. 101-591). The CBIA greatly expanded the size of the System by adding coastal barriers of the Great Lakes, as well as additional areas along the Atlantic and Gulf of Mexico coasts. The CBIA amended section 1321 of the National Flood Insurance Act of 1968 to prohibit the issuance of new Federal flood insurance within "otherwise protected areas" identified on the maps referred to in the CBIA.

Section 6 of the CBIA directed the Secretary of the Interior to prepare a study which examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States and to prepare maps identifying undeveloped coastal barriers bordering the Pacific Ocean south of 49 degrees north latitude (approximately the Canada-Washington State boundary) which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System. Furthermore, the study is to examine:

(A) The potential for loss of human life and damage to fish, wildlife, and other natural resources, and the potential for the wasteful expenditure of Federal revenues given the geologic differences of the coastal barriers along the Pacific coast as opposed to those found along the Atlantic and Gulf coasts; and

(B) The differences in extreme weather conditions which exist along the Pacific coast as opposed to those found along the Atlantic and Gulf coasts.

In 1992, The Fish and Wildlife Service (Service) identified and mapped all undeveloped coastal barriers of the Pacific coast which meet the definition

of undeveloped coastal barriers as defined by section 2 of the CBIA and defined in the revised criteria published in the **Federal Register**, March 4, 1985 (50 FR 8698). The Service prepared draft maps for the states of Washington, Oregon, California, and Hawaii. The draft maps were released for a 90 day public review and comment period. Separate notices of Availability for each state were published in the **Federal Register** on April 23, 1992 (57 FR 14846) for Oregon; May 29, 1992 (57 FR 22821) for Washington; July 7, 1992 (57 FR 29883) for California; and August 14, 1992 (57 FR 36668) for Hawaii. Following the 90 day public comment periods, the draft maps were subsequently revised to address any technical errors noted during the comment period. The revised draft maps and all comments received were forwarded to the appropriate Governors for their review and use in eventual formulation of their recommendations as to which areas the Governors felt should be included in the System.

With publication of the December 17, 1993, **Federal Register** notice, the Service announced the availability of the Draft Pacific Coastal Barriers Study and the accompanying maps for public review and comment. This notice announces the continued availability for public review. All written comments received during the public comment period will be forwarded to the appropriate State Governors. By the end of the Governor's review period, the Service is soliciting the recommendations of the appropriate Governors for which areas should be included in the System. The recommendations of the Governors will be forwarded to Congress in their entirety along with the recommendations of the Secretary in the final Pacific Coastal Barriers Study and accompanying maps.

The Draft Pacific Coastal Barriers Study and accompanying maps can be viewed at the following locations:

All States

U.S. Fish and Wildlife Service,
Ecological Services, 700 N.E.
Multnomah Street, suite 320,
Portland, Oregon 972323-4181,
telephone: 503-231-2046.

U.S. Fish and Wildlife Service,
Ecological Services, 4401 N. Fairfax
Drive, room 400, Arlington, Virginia
22203, telephone: 703-358-2201.

Hawaii

Pacific Islands Office, U.S. Fish and
Wildlife Service, 300 Ala Moana
Boulevard, room 6307, Honolulu,

Hawaii 96813, telephone: 808-541-
2749.

Kauai National Wildlife Refuge
Complex, U.S. Fish and Wildlife
Service, Kilauea, Kauai, Hawaii
96754, telephone: 808-828-1413.

Hakalau Forest National Wildlife
Refuge, U.S. Fish and Wildlife
Service, Federal Building, 154
Waiianuenue Avenue, room 219, Hilo,
Hawaii 96720, telephone: 808-969-
9909.

Hawaii Office of State Planning, State
Coastal Zone Management, 1177
Alakea Street, 2nd floor, Honolulu,
Hawaii 96813, telephone: 808-587-
2880.

Mitchell Pauole Center, 90 Inoa Street,
Kaunakakai, Molokai 96748,
telephone: 808-553-3204.

Kaunakakai Public Library, P.O. Box
395, Kaunakakai, Molokai 96748,
telephone: 808-553-5483 (Across
from Molokai family health clinic).

California

Carlsbad Field Office, U.S. Fish and
Wildlife Service, 2730 Loker Avenue
West, Carlsbad, California 92008,
telephone: 619-431-9440.

Ventura Field Office, U.S. Fish and
Wildlife Service, 2140 Eastman
Avenue, suite 100, Ventura, California
93003, telephone: 805-644-1766.

Sacramento Field Office, U.S. Fish and
Wildlife Service, 2800 Cottage Way,
room E-1803, Sacramento, California
95825, telephone: 916-978-4613.

San Francisco Bay National Wildlife
Refuge, U.S. Fish and Wildlife
Service, 1 Marshlands Road, Fremont,
California 94536, telephone: 510-
792-0222.

Humboldt Bay National Wildlife Refuge,
U.S. Fish and Wildlife Service, 1020
Ranch Road, Loleta, California 95551,
telephone: 707-733-5406.

California Coastal Commission, 45
Fremont, suite 2000, San Francisco,
California 94105-2219, telephone:
415-904-5280.

California Coastal Commission
Legislative Office, 921 11th Street,
room 1200, Sacramento, California
95814, telephone: 916-445-6067.

State of California, The Resources
Agency, 1416 9th Street, suite 1311,
Sacramento, California 95814,
telephone: 916-654-2506.

Oregon

Portland Field Office, U.S. Fish and
Wildlife Service, 2600 S.E. 98th
Avenue, suite 100, Portland, Oregon
97266, telephone: 503-231-6179.

Oregon Coastal Refuges, U.S. Fish and
Wildlife Service, 2030 Marine Science
Drive, Newport, Oregon 97365-5296,
telephone: 503-867-4550.

Oregon Coastal/Ocean Management
Program, Department of Land and
Conservation Development, 1175
Court Street NE., Salem, Oregon
97310-0590, telephone: 503-373-
0092.

Bandon Public Library, P.O. Box 128,
Bandon, Oregon 97411, telephone:
503-347-3221, located in the Bandon
City Hall on Highway 101.

Tillamook Public Library, 210 Ivy
Avenue, Tillamook, Oregon 97141,
telephone: 503-842-4792.

Seaside Public Library, 60 N. Roosevelt
Boulevard, Seaside, Oregon 97138,
telephone: 503-738-6742.

Hatfield Marine Science Center, Guin
Library, 2030 Marine Science Drive,
Newport, Oregon 97365, telephone:
503-867-0249.

North Bend Public Library, 1800
Sherman Avenue, North Bend,
Oregon 97459, telephone: 503-756-
0400.

Washington

Olympia Field Office, U.S. Fish and
Wildlife Service, 3704 Griffin Lane
SE, suite 102, Olympia, Washington
98501-2192, telephone: 206-753-
9440.

Willapa National Wildlife Refuge, U.S.
Fish and Wildlife Service, HC 01, Box
910, Ilwaco, Washington 98624-9797,
telephone: 206-484-3482.

Nisqually National Wildlife Refuge, U.S.
Fish and Wildlife Service, 100 Brown
Farm Road, Olympia, Washington
98506, telephone: 206-753-9467.

Washington Coastal Refuges, U.S. Fish
and Wildlife Service, 1638 Barr Road
South, Port Angeles, Washington
98382, telephone: 206-457-8451.

Washington Department of Ecology,
Shorelands and Coastal Management
Program, 300 Desmond Drive (off of
Martin Way), Olympia, Washington
98504, telephone: 206-407-7250.

In addition to the above locations
copies of the accompanying maps may
be reviewed at the county planning and
zoning offices for all coastal counties in
each state.

Appendices A through D of this
notice list the proposed Coastal Barrier
Resources System Units for the Pacific
coast which are identified on the
accompanying maps.

Public Comments Solicited

The Service solicits written comments
on the Draft Pacific Coastal Barriers
Study and the accompanying maps
described above. All comments received
by the dates specified above will be
considered prior to the Department's
submission to Congress of the final
study and maps as required by section
6 of the CBIA.

Appendix A—Proposed Washington Coastal Barrier Resources System Units

County	Unit No.	Unit name
Whatcom	WA-01	Semiahmoo Spit/ Drayton Harbor.
Skagit	WA-04	Sinclair Island.
San Juan	WA-05	Waldron Island.
San Juan	WA-06	Henry Island/Nelson Bay.
San Juan	WA-07	Fisherman Bay North.
San Juan	WA-08	Fisherman Bay South.
San Juan	WA-09	Low Point.
San Juan	WA-10	San Juan Island South.
San Juan	WA-11	Mud Bay/Shoal Bight.
San Juan	WA-12	Spencer Spit.
San Juan	WA-13	Decatur Head.
Skagit	WA-14	Guemes Island.
Skagit	WA-15	Padilla Bay.
Skagit	WA-15A	Ship Harbor.
Island	WA-17	Ben Ure Spit.
Island	WA-18	Cranberry Lake.
Island	WA-19	South of Cranberry Lake.
Island	WA-20	Arrowhead Beach.
Island	WA-21	Polnell Point.
Island	WA-22	Crescent Harbor Area.
Island	WA-23	Oak Harbor Area.
Island	WA-24	Whidbey Island NW.
Island	WA-25	Whidbey Island SW.
Island	WA-26	Crockett Lake.
Island	WA-27	Race Lagoon.
Island	WA-28	Whidbey Island East.
Island	WA-29	Lake Hancock.
Island	WA-30	Useless Bay Area.
Island	WA-31	Cultus Bay.
Kitsap	WA-33	Battle Point.
King	WA-34	Point Heyer.
Pierce	WA-35	McNeil Island.
Mason	WA-37	Buffingtons Lagoon.
Pierce	WA-38	Vaughn Bay.
Pierce	WA-39	Henderson Bay Area.
Kitsap	WA-40	Stavis Bay.
Jefferson	WA-41	Zelatched Point.
Jefferson	WA-42	Tarboo Bay.
Jefferson	WA-43	Toandos Peninsula East.
Jefferson	WA-44	Thorndyke Bay.
Jefferson	WA-46	Bywater Bay.
Kitsap	WA-47	Fowlweather Bluff East.
Kitsap	WA-48	Fowlweather Bluff.
Jefferson	WA-49	Oak Bay East.
Jefferson	WA-50	Oak Bay.
Jefferson	WA-51	Oak Bay West.
Jefferson	WA-52	Kilisut Harbor.
Jefferson	WA-53	Kala Point.
Jefferson	WA-54	Port Discovery Area.
Clallam	WA-55	Thompson Spit.
Clallam	WA-56	Sequim Bay.
Clallam	WA-57	Kilakala Point.
Clallam	WA-58	Dungeness Spit.
Clallam	WA-60	Crescent Bay.
Clallam	WA-61	Pysht River.
Clallam	WA-62	Clallam Bay.
Clallam	WA-63	Mouth Hoko River.

County	Unit No.	Unit name
Grays Harbor.	WA-69	Copalis River.
Grays Harbor.	WA-70	Conner Creek.
Grays Harbor.	WA-71	Ocean Shores.
Grays Harbor.	WA-72	Ocean Shores South.
Grays Harbor.	WA-73	Westport.
Grays Harbor.	WA-74	Grayland North.
Pacific	WA-75	Grayland Beach.
Pacific	WA-75A	Grayland South.
Pacific	WA-76	Empire Spit.
Pacific	WA-77	North Beach Peninsula.
Pacific	WA-78	Jensen Point.
Pacific	WA-79	Long Beach/Seaview.
Pacific	WA-80	Cape Disappointment.

Appendix B—Proposed Oregon Coastal Barrier Resources System Units

County	Unit No.	Unit name
Clatsop	OR-01	Columbia R./Clatsop Spit.
Clatsop	OR-02	Necanicum River.
Clatsop	OR-03	Chapman Beach/Ecola Creek.
Tillamook	OR-04	Nehalem Spit & Bay.
Tillamook	OR-05	Manhattan Beach.
Tillamook	OR-06	Bayocean Peninsula/Tillamook Bay.
Tillamook	OR-07	Netarts Spit & Bay.
Tillamook	OR-08	Sand Lake Estuary.
Tillamook	OR-09	Nestucca Spit & Bay.
Tillamook	OR-10	Kiwanda Beach.
Tillamook/ Lincoln.	OR-11	Salmon River Estuary.
Lincoln	OR-12	Salishan Spit/Siletz Bay.
Lincoln	OR-13	South Beach.
Lincoln	OR-14	Ona Beach/Beaver Creek.
Lane	OR-15	Baker Beach.
Lane	OR-16	Heceta Beach.
Lane/Douglas.	OR-17	Oregon Dunes.
Douglas	OR-18	North Spit/Umpqua R.
Coos	OR-19	North Spit & Coos Bay/Oregon Dunes.
Coos	OR-20	Bullards Beach/Coquille River.
Coos/Curry .	OR-21	New River.
Curry	OR-22	Sixes River.
Curry	OR-23	Elk River.
Curry	OR-24	Garrison Lake.
Curry	OR-25	Euchre Creek.
Curry	OR-26	Greggs Creek.
Curry	OR-27	Hunter Creek.
Curry	OR-28	Pistol River.

Appendix C—Proposed California Coastal Barrier Resources Systems Units

County	Unit No.	Unit name
Del Norte	CA-01	Smith River/Lake Earl.
Del Norte	CA-02	Whaler Island.
Del Norte	CA-03	Klamath River.
Humboldt	CA-04	Fern Canyon.
Humboldt	CA-05	Gold Bluffs.
Humboldt	CA-06	Redwood Creek.
Humboldt	CA-07	Freshwater Lagoon.
Humboldt	CA-08	Stone Lagoon.
Humboldt	CA-09	Dry Lagoon.
Humboldt	CA-10	Big Lagoon.
Humboldt	CA-11	Little River.
Humboldt	CA-12	Clam Beach/Mad River.
Humboldt	CA-13A	North Spit.
Humboldt	CA-14	South Spit.
Humboldt	CA-15	Eel River.
Humboldt	CA-16	Mattole Beach.
Mendocino .	CA-17	Usal Creek.
Mendocino .	CA-18	Ten Mile River.
Mendocino .	CA-18A	Inglenook.
Mendocino .	CA-19	Navarro River.
Mendocino .	CA-20	Alder Creek.
Mendocino .	CA-21	Manchester Beach S.P. (north).
Mendocino .	CA-22	Manchester Beach S.P. (center).
Mendocino .	CA-23	Manchester Beach S.P. (south).
Mendocino/ Sonoma.	CA-24	Gualala River.
Sonoma	CA-25	Russian River.
Sonoma	CA-26	Salmon Creek Beach.
Marin	CA-27	Abbotts Lagoon.
Marin	CA-27A	Drakes Beach.
Marin	CA-28	Drakes Estero.
Marin	CA-29	Rodeo Cove.
San Mateo .	CA-30	Laguna Salada.
San Mateo .	CA-31	Elmar Beach.
San Mateo .	CA-32	Pescadero Creek.
Santa Cruz .	CA-33	Waddell Creek.
Santa Cruz .	CA-34	Scott Creek.
Santa Cruz .	CA-35	Sunset State Beach.
Santa Cruz/ Monterey.	CA-36	Zmudowski Beach S.P.
Monterey	CA-37	Moss Landing.
Monterey	CA-38	Salinas River.
Monterey	CA-39	Little River.
Monterey	CA-40	La Cruz Rock.
San Luis .	CA-41	Morro Bay S.P.
San Luis .	CA-42	Pismo State Beach (north).
San Luis .	CA-43	Pismo State Beach (south).
San Luis .	CA-44	Oso Flaco Lake.
San Luis .	CA-45	Santa Maria River.
San Luis .	CA-46	Santa Ynez River.
Santa Barbara.	CA-47	Goleta Beach C.P.
Santa Barbara.	CA-47A	Coal Oil Point.
Ventura	CA-48	Santa Clara River.
Ventura	CA-49	Mcgrath Lake.

County	Unit No.	Unit name
Ventura	CA-50	Ormond Beach.
Ventura	CA-51	Mugu Lagoon.
Los Angeles	CA-52	Malibu Point.
San Diego ..	CA-53	San Mateo Point.
San Diego ..	CA-54	Las Flores Creek.
San Diego ..	CA-55	Santa Margarita River.
San Diego ..	CA-56	Agua Hedionda.
San Diego ..	CA-57	Batiquitos Lagoon.
San Diego ..	CA-59	Silver Strand.
San Diego ..	CA-60	Tijuana Slough.

Appendix D—Proposed Hawaii Coastal Barrier Resources System Units

County	Unit No.	Unit name
Hawaii ..	HI-01	Pololu Valley.
Hawaii ..	HI-02	Waimanu Bay.
Hawaii ..	HI-03	Waipio Bay.
Hawaii ..	HI-03A	Waiopae Ponds.
Hawaii ..	HI-04	Honokohau Bay.
Hawaii ..	HI-05	Kiholo Bay.
Hawaii ..	HI-06	Makaiwa.
Maui	HI-07	Waihee.
Maui	HI-08	Paukukao.
Maui	HI-09	Kanaha Pond.
Maui	HI-10	Kealia Pond.
Molokai ..	HI-11	Pipio Fishpond.
Molokai ..	HI-12	Keawanui Fishpond.
Molokai ..	HI-13	Paialoa Fishpond.
Molokai ..	HI-14	Lepelepe.
Molokai ..	HI-15	Pahoa.
Molokai ..	HI-16	Pelekunu Bay.
Molokai ..	HI-17	Alii Fishpond.
Molokai ..	HI-18	Kamiloloa.
Molokai ..	HI-19	Kaunakakai.
Molokai ..	HI-20	Kahanui.
Kauai ...	HI-21	Wainiha Bay.
Kauai ...	HI-22	Lumahai Beach.
Kauai ...	HI-23	Puu Poa Point Area.
Kauai ...	HI-24	Kilauea Bay.
Oahu ...	HI-25	Kii NWR.
Oahu ...	HI-26	Kahana Bay.
Oahu ...	HI-27	Molii Pond.
Oahu ...	HI-28	Waiahole Beach.
Oahu ...	HI-29	Heeia.
Oahu ...	HI-30	Nuupia Pond.
Niihau ..	HI-31	Leahi Point.
Niihau ..	HI-32	Nonopapa.
Niihau ..	HI-33	Kiekie.
Niihau ..	HI-34	Kaununu.

Dated: February 15, 1994.

David C. Klinger,

Acting Regional Director, U.S. Fish and Wildlife Service, Region One, Portland, Oregon.

[FR Doc. 94-3986 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-55-P

Availability of a Draft Recovery Plan for the Snake River Aquatic Species for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for

public review of a draft recovery plan for the Snake River aquatic species. The Snake River species include five Snake River molluscs listed as threatened (Bliss Rapids Snail) or endangered (the Snake River Physa, Banbury Springs lanx or limpet, Utah Valvata Snail and Idaho Springsnail) (57 FR 59244), three additional molluscs and one fish taxa currently listed as Federal candidate species, and two State of Idaho Sensitive fish taxa. The aquatic habitats essential to all these species throughout the Snake River are similar and cannot be isolated for recovery purposes. The primary and immediate recovery objectives of this Plan include implementing the conservation measures to prevent the extinction and/or further decline of existing colonies of the listed snails by eliminating or reducing known threats. Basic information necessary to establish recovery criteria so that the listed species can be reclassified or delisted will also be collected. Long term objectives are to reverse declining habitat trends and restore the Snake River ecosystem so that self-reproducing colonies of the four endangered and one threatened snails are protected to the point that they are delisted. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 25, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Ecological Services—Idaho State Office, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 3705 or by calling (208) 334-1931. Written comments and materials regarding the draft recovery plan should be addressed to the State Supervisor—Ecological Services, at the above address. Comments and materials received are also available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Lobedell, Fish and Wildlife Service, Ecological Services—Idaho State Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. (208) 334-1931.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and

Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approving recovery plans.

The Snake River sub-basin above C.J. Strike dam provides habitat for a minimum 16 native fish taxa and 42 native molluscs. This includes five Snake River snails listed as threatened or endangered, three additional molluscs and one fish taxa currently listed as Federal candidate species, and two State of Idaho Sensitive fish taxa. With the advent of exploration and development, the Snake River ecosystem has undergone significant transformation from a primarily cold-water lotic system towards a slow-moving warm-water system when compared with its historic fauna. The human-induced environmental stressors to the formerly fast-and cold-water Snake River environment include numerous point and non-point pollution sources, diversion of water for irrigation or hydropower, and construction of several mainstem dams. The draft recovery plan specifically addresses the five Federally listed Snake River snails (December 24, 1992; 57 FR 59244). However, the aquatic habitats essential to these species and other candidate fish and mollusc endemic throughout the Snake River are similar and cannot be isolated for recovery purposes. Therefore, the draft recovery plan and the entire recovery effort is designed to restore the entire Snake River ecosystem from C.J. Strike Dam to the confluence of the Blackfoot River rather than individual species.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 11, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94-4029 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Mines**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032-0044), Washington, DC 20503, telephone 202-395-7340.

Title: Railroad Agent's Report of Shipments of Minerals and Mineral Products.

OMB Approval Number: 1032-0044.

Abstract: The Bureau's work of collecting and compiling mineral data is supervised by persons who have scientific and practical knowledge of the subject and a personal acquaintance with both the producing and consuming establishments. These personnel use Form 6-1998-Q, Railroad Agent's Report of Shipments of Minerals and Products, to obtain general information on mines not presently on the Bureau's mailing lists. If the information obtained from Form 6-1198-Q indicates that the mine is currently producing a mineral for which the Bureau collects data, the company operating the mine is added to the appropriate survey frame and mailed the corresponding collection.

Bureau form number: 6-1198-Q.

Frequency: Quarterly.

Description of respondents: Railroad agents handling mineral products.

Annual responses: 18.

Annual burden hours: 36.

Bureau clearance officer: Alice J. Wissman (202) 501-9569.

Dated: January 31, 1994.

Hermann Enzer,

Acting Director, Bureau of Mines.

[FR Doc. 94-3952 Filed 2-22-94; 8:45 am]

BILLING CODE 4310-53-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-345]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Hyundai Electronics Industries, Co. Ltd and Hyundai Electronics America, Inc.

In the Matter of: Certain anisotropically etched one megabit and greater drams, components thereof, and products containing such drams.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 15, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of

the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

By order of the Commission.

Issued: February 15, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-3989 Filed 2-22-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 731-TA-677 (Preliminary)]

Coumarin From the People's Republic of China**Determination**

On the basis of the record¹ developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of coumarin,² provided for in subheading 2932.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On December 30, 1993, a petition was filed with the Commission and the Department of Commerce by Rhône-Poulenc Specialty Chemicals Co., Cranbury, NJ, alleging that an industry

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² For purposes of this investigation, coumarin is an aroma chemical with the chemical formula C₉H₆O₂. All forms and variations of coumarin are included within the scope of the investigation, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (i.e. prior to purification or crystallization). Excluded from the scope are ethylcoumarins (C₁₁H₁₀O₂) and methylcoumarins (C₁₀H₈O₂).

in the United States is materially injured or threatened with material injury by reason of LTFV imports of coumarin from the People's Republic of China. Accordingly, effective December 30, 1993, the Commission instituted antidumping investigation No. 731-TA-677 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 7, 1994 (59 F.R. 1026). The conference was held in Washington, DC, on January 20, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 14, 1994. The views of the Commission are contained in USITC Publication 2733 (February 1994), entitled "Coumarin from the People's Republic of China: Investigation No. 731-TA-677 (Preliminary)."

By order of the Commission.

Issued: February 15, 1994.

Donna R. Koehnke,
Secretary.

[FR Doc. 94-3988 Filed 2-22-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-360]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: MacProducts USA now known as DGR Technologies, Inc.

In the Matter of: Certain Devices for Connecting Computers via Telephone Lines.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of

the initial determination. The initial determination in this matter was served upon parties on February 16, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

By order of the Commission.

Issued: February 16, 1994.

Donna R. Koehnke,
Secretary.

[FR Doc. 94-3992 Filed 2-22-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-360]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Total Technologies.

In the Matter of: Certain Devices for Connecting Computers via Telephone Lines.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 16, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

By order of the Commission.

Issued: February 16, 1994.

Donna R. Koehnke,
Secretary.

[FR Doc. 94-3990 Filed 2-22-94; 8:45 am]

BILLING CODE 7020-02-P

Investigations Nos. 701-TA-355 and 731-TA-659-660 (Final)

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-355 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of grain-oriented silicon electrical steel.¹

The Commission further gives notice of the institution of final antidumping investigations Nos. 731-TA-659 and 660 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Japan of grain-oriented silicon electrical steel.¹

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202-205-3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain

¹ The products covered by these investigations are grain-oriented silicon electrical steel, which are flat-rolled alloy steel products 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 millimeter, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness. The subject products are provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States. In the scope section of its preliminary antidumping determinations, the Department of Commerce noted that the HTS numbers identified in the scope of the countervailing duty determination will be conformed with those listed in the antidumping determinations.

information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Italy of grain-oriented silicon electrical steel, and as a result of affirmative preliminary determinations by the Department of Commerce that imports of grain-oriented silicon electrical steel from Italy and Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on August 26, 1993, by counsel on behalf of Allegheny Ludlum Corp., Pittsburgh, PA; Armco, Inc., Butler, PA; the Butler Armco Independent Union, Butler, PA; the United Steelworkers of America, Pittsburgh, PA; and the Zanesville Armco Independent Union, Zanesville, OH.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be

maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on March 30, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on April 12, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 4, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 6, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is April 6, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 20, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 20, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of

sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: February 16, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-3993 Filed 2-22-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigations Nos. 731-TA-678 through 682 (Preliminary)]

Stainless Steel Bar From Brazil, India, Italy, Japan, and Spain

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, India, Italy, Japan, and Spain of stainless steel bar, provided for in subheadings 7222.10.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).²

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² The imported stainless steel bar covered by these investigations comprises articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled, or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Except as specified above, the term does not include stainless steel semifinished products, cut-to-length flat-rolled products (i.e., cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, or sections. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled

Background

On December 30, 1993, a petition was filed with the Commission and the Department of Commerce by Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Inc., Massillon, OH; Slater Steels Corp., Fort Wayne, IN; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL-CIO/CLC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of stainless steel bar from Brazil, India, Italy, Japan, and Spain. Accordingly, effective December 30, 1993, the Commission instituted antidumping investigations Nos. 731-TA-678 through 682 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 7, 1994 (59 FR 1027). The conference was held in Washington, DC, on January 20, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 14, 1994. The views of the Commission are contained in USITC Publication 2734 (February 1994), entitled "Stainless Steel Bar from Brazil, India, Italy, Japan, and Spain: Investigations Nos. 731-TA-678 through 682 (Preliminary)."

By order of the Commission.

Issued: February 15, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-3991 Filed 2-22-94; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-No. 240X)]

Chicago and North Western Transportation Company; Abandonment Exemption; In Bellwood, Cook County, IL

Chicago and North Western Transportation Company (CNW) has

bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

filed a notice of exemption under 49 CFR part 1152, subpart F—Exempt Abandonments to abandon its 0.5 mile of line of railroad between milepost 12.94 and milepost 13.44, in Bellwood, Cook County, IL.

CNW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line is not used for movement of overhead traffic; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to the use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 25, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29³ must be filed by March 7, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 15, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

¹ A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

A copy of any petition filed with the Commission should be sent to applicant's representative: Thomas F. Flanagan, 165 North Canal Street, Chicago, IL 60606-1551.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CNW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 28, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94-4013 Filed 2-22-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 82-94]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act (5 U.S.C. 552a), the Department of Justice, United States Marshals Service, proposes to establish a new Privacy Act system of records entitled "U.S. Marshals Service (USMS) Key Control Record System, JUSTICE/USM-016."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on any new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system.

Therefore, please submit any comments by March 25, 1994. The public, OMB, and the Congress are invited to submit written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of

Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: February 4, 1994.

Stephen R. Colgate,
Assistant Attorney General for
Administration.

JUSTICE/USM-016

SYSTEM NAME:

U.S. Marshals Service (USMS) Key Control Record System.

SYSTEM LOCATION:

Internal Security Division, Office of Inspections, United States Marshals Service, 2611 Jefferson Davis Highway, Arlington, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the USMS who have been issued office keys for USMS Headquarters locations.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Records contained in this system consist of an automated index which includes the name of the employee to whom a key is issued; the social security number (only when two or more employees have identical names, including middle initial); unique key identification code number; key type (e.g., grand master, master, submaster, change); storage container hook number; description (e.g., number identification) of door(s), room(s), and/or area(s) the key opens or accesses; transaction type and/or status (e.g., key issued, transferred, retrieved, lost, broken) and transaction date; and, any other appropriate comment, e.g., comments regarding key, door, room, area, etc. In addition, a manual index with abbreviated data is maintained as a backup system. This manual index includes the room/suite number, the name of the employee to whom a key is issued, the key identification code number, and date(s) of issuance and retrieval.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE:

The USMS Key Control Record System serves as a record of keys issued and facilitates continuing security at USMS Headquarters locations. Records are maintained to assist in restricting office and work area access to authorized USMS personnel by

controlling, monitoring and tracking keys issued. In addition, records assist in identifying any repairs, changes, or additional security measures that may be necessary as a result of lost or broken keys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed: (a) In the event that a record(s) indicate a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order pursuant thereto, the relevant record(s) may be disclosed to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation, and/or charged with enforcing or implementing such statute, rule, regulation or order, (b) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions, (c) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy, (d) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record, and (e) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated index records are stored on magnetic disks. Paper copies of automated records are kept in file folders and original paper records of the manual index are stored in card files.

RETRIEVABILITY:

Records are retrieved by name of the individuals covered by the system.

SAFEGUARDS:

Access to these records is restricted to personnel of the USMS Internal Security Division. Computerized records may be accessed only by assigned code and password. Paper records are located in a restricted area and are maintained in metal filing cabinets or safes which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained for 3 years after turn-in of the key, at which time they are destroyed (General Records Schedule 18).

SYSTEM MANAGER AND ADDRESS:

Chief, Internal Security Division, Office of Inspections, United States Marshals Service, 2611 Jefferson Davis Highway, Arlington, Virginia.

NOTIFICATION PROCEDURES:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual and the system manager.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94-3947 Filed 2-22-94; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Assistance**FY 1994 Discretionary Grant Program Plan**

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Department of Justice.

ACTION: Public announcement of the Fiscal Year (FY) 1994 Discretionary Program Plan, enumerating grants to be awarded by the Bureau of Justice Assistance in accordance with the Anti-Drug Abuse Act of 1988.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing this notice of the FY 1994 Discretionary Program Plan for interested applicants.

DATES: Requests for proposals for competitive programs will be issued under a separate program announcement, with specific due dates for each program.

FOR FURTHER INFORMATION CONTACT:

The Bureau of Justice Assistance Response Center at (202) 307-1480. (This is not a toll-free number.) To obtain the FY 1994 Discretionary Program Plan, interested applicants should call or write the Bureau of Justice Assistance Clearinghouse 1-800-688-4252 at the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority: This action is authorized under sec. 6091 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181, 4328, 42 U.S.C. 3742(2).

Jack A. Nadol,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 94-3969 Filed 2-22-94; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR**Employment and Training Administration****Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance**

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under section 250(a) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than March 7, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than March 7, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C-4318, 200 Constitutional Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Hollywood Shake, Inc. (Co)	Forks, WA	02/04/94	02/03/94	NAFTA-00017	Cedar Shakes and Shingles.
Kemet Electronics (Wkrs)	Simpsonville, SC	02/07/94	02/02/94	NAFTA-00018	Capacitors (Electronics).
North American Phillips Lighting Co. (IEU).	Fairmount, WV	02/04/94	02/04/94	NAFTA-00019	Home Lighting Products, Auto Lights.
Northern Telecom, Inc. (Co) ...	Stone Mountain, GA	02/08/94	02/08/94	NAFTA-00020	Telecommunications Equipment.
Xerox Imaging Systems (Co) .	Peabody, MA	02/09/94	02/08/94	NAFTA-00021	Electronic Reading Device.
Litton Systems, Inc. (Wkrs)	Clifton, PA	02/09/94	02/08/94	NAFTA-00022	Appliance Motors.
Bonus Sportswear (Wkrs)	Tampa, FL	02/10/94	02/09/94	NAFTA-00023	Apparel, Sportswear.
Praxair (OCAWIU)	Tonawanda, NY	02/10/94	02/10/94	NAFTA-00024	Air Separation Equipment.
D & R Cedar Products, Inc. (Co).	Forks, WA	02/10/94	02/09/94	NAFTA-00025	Cedar Shakes and Shingles.

[FR Doc. 94-4071 Filed 2-22-94; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Workers Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,222; Mann Industries, Inc., Williamsburg, VA

TA-W-29,247; Greenbrier Industries, Clinton, TN

TA-W-29,098, TA-W-29,099; Northrop Corp., Hawthorn, CA and Anaheim, CA

TA-W-29,199; The Robbins Co., Kent, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-29,305; Decision Data Service, Inc., Horsham, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,300; Lake Stevens Timber, Lake Stevens, VA

The preponderant portion of production at the subject firm is exported; therefore, imports could not have contributed importantly to the absolute decline in sales or production of the subject firm.

TA-W-29,294; Praxair, Inc., Tonawanda, NY

U.S. imports of gas separators decreased in the twelve month period from November 1992 through October 1993 compared to the previous twelve month period from November 1991 through October 1992.

TA-W-29,257; Ethicon, Inc., San Angelo, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,986; Southern Shipbuilding Corp., Slidell, LA

U.S. imports of tug boats and pushers declined absolutely in the twelve month period of October 1992 through September 1993 as compared to the same period of a year earlier.

TA-W-29,270; Leviton Manufacturing Co., Inc., Brooklyn, NY

Predominate reason for the layoff of workers was a corporate decision to transfer certain product lines from the subject firm to more modern facilities in U.S. affiliates.

TA-W-29,242; B-5 Welding Special Services, Seminole, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,311; The LTV Corp., Dallas, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,341; Olsten Staffing Services, Messena, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,318; National Steel Pellet Co., Keewatin, MN

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,253; Plains Petroleum Operating Co., Lakewood, CO

The investigation revealed that criterion (2) has not been met. Sales or

production did not decline during the relevant period for certification.

TA-W-29,306; Bhalla Lighting, Inc., West Caldwell, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,252; Neste Oil, Inc., Houston, TX

The investigation revealed that the subject firm's parent company, Neste Oy, made the decision to divest itself of all United States oil and gas assets. These assets were managed by workers at the subject firm; when the sale of the assets was completed in mid-1993, the employees of Neste Oil, Inc., were severed from employment.

TA-W-29,240; The ARO Corp, Life Support Products Div., Buffalo, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29,272; Jo-Ann Apparel Mfg, Inc., Ebensburg, PA

A certification was issued covering all workers separated on or after November 16, 1992.

TA-W-29,192; Parsons Footwear, Parsons, WV

A certification was issued covering all workers separated on or after October 17, 1992.

TA-W-29,236; F-Bruno Faceting Corp., Union, NJ

A certification was issued covering all workers separated on or after November 12, 1992.

TA-W-29,264; Synektron, Portland, OR

A certification was issued covering all workers separated on or after November 16, 1992.

TA-W-28,972; AT&T, Westminster, CO

A certification was issued covering all workers separated on or after August 9, 1992.

TA-W-29,332; Recycled Aluminum Metals Co., Dallesport, WA

A certification was issued covering all workers separated on or after December 7, 1992.

TA-W-29,317; Rexham Graphics, Portland, OR

A certification was issued covering all workers separated on or after November 30, 1992.

TA-W-29,208; Roseburg Forest Products Co., Sawmill #1, Dillard, OR

A certification was issued covering all workers separated on or after September 27, 1992.

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with section 250(a) subchapter D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00002; Emerson Electric Co., White Rodgers Div., Logansport, IN

A certification was issued covering all workers engaged in employment related to the production of relays, contactors and solenoids at Emerson Electric Company, White Rodgers Div., Logansport, IN separated on or after December 8, 1993.

NAFTA-TAA-00010; Steward, Inc., ICD (Integrated Components Division), East Ridge, TN

A certification was issued covering all workers at Steward, Inc., ICD, in East Ridge, TN separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of February, 1994. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 15, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-4070 Filed 2-22-94; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA's Procurement Policies and Practices; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of public meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons/firms concerning NASA's procurement policies and practices. The purpose of the meeting is to have an open discussion between NASA's Associate Administrator for Procurement and industry/public. There will be a brief presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed including NASA policies used in the award and administration of contracts.

DATES: March 30, 1994; 2 p.m. to 4:30 p.m. Doors to the auditorium will open at 1:30 p.m. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 200 persons, therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited. The format for the meeting will be as described above.

ADDRESSES: The meeting will be held at NASA Headquarters, West Lobby

Auditorium, 300 E Street, SW.,
Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:
Susie Marucci, NASA Headquarters
Office of Procurement (Code H),
Washington, DC 20546, (202) 358-1896.

SUPPLEMENTARY INFORMATION: In addition to the general discussion mentioned above, NASA invites comments or questions relative to its ongoing Procurement Initiatives, some of which include: (i) Small Business and Small Disadvantaged Business Utilization. NASA is committed to an increased focus on developing opportunities for small and disadvantaged business participation in NASA contracting; (ii) Change Order Reduction and Process Change. NASA is attempting to improve overall change order management through the use of better technical definition, realistic cost estimates and more effective and timely negotiations; (iii) Contractor Metrics. The Contractor Metrics initiative has been implemented throughout NASA as a new reporting system to provide summary level reporting on contract performance; (iv) Award Fee Initiative. NASA has published new regulations for Award Fee policy; (v) MidRange Procurement Procedure. A test program for a third category of procurement between \$25,000 and \$500,000 (annually) is underway. Marshall Space Flight Center is the designated test site; and (vi) Procurement Reinvention Laboratory. The NASA Headquarters Acquisition Division is participating in this initiative which grew out of the National Performance Review. This Procurement Reinvention Laboratory is one of several procurement reinvention labs underway across the Government.

Thomas S. Luedtke,

*Deputy Associate Administrator for
Procurement.*

[FR Doc. 94-3956 Filed 2-22-94; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Leadership Initiatives

AGENCY: Institute of Museum Services,
NFAH.

ACTION: Notice of grant application
availability for Museum Leadership
Initiatives Program.

SUMMARY: This grant application
announcement applies to a new funding
category offered by the Institute of
Museum Services (IMS), the Museum
Leadership Initiatives award under 45
CFR part 1180 for Fiscal Year 1994.

**DEADLINE DATES FOR TRANSMITTAL OF
APPLICATIONS:** An application for a new
grant must be mailed or hand-delivered
by Friday, July 1, 1994.

APPLICATIONS DELIVERED BY MAIL: An
application sent by mail must be
addressed to the Institute of Museum
Services, 1100 Pennsylvania Avenue,
NW., room 609, Washington, DC 20506.

An applicant must be prepared to
show one of the following as proof of
timely mailing:

(1) A legibly dated U.S. Postal Service
Postmark.

(2) A legible mail receipt with the
date of mailing stamped by the U.S.
Postal Service.

(3) A dated shipping label, invoice, or
receipt from a commercial carrier.

(4) Any other dated proof of mailing
acceptable to the Director of IMS.

If any application is mailed through
the U.S. Postal Service, the Director
does not accept either of the following
as proof of mailing: (1) A private
metered postmark; or (2) a mail receipt
that is not date-canceled by the U.S.
Postal Service.

APPLICATIONS DELIVERED BY HAND:

Applications that are hand-delivered
must be taken to the Institute of
Museum Services, 1100 Pennsylvania
Avenue, NW., room 609, Washington,
DC 20506. Hand-delivered applications
will be accepted between 9 a.m. and
4:30 p.m. (Washington, DC time) daily,
except Saturdays, Sundays, and Federal
holidays. An application that is hand-
delivered will not be accepted after 4:30
p.m. on the deadline date.

ADDRESSES: Institute of Museum
Services, 1100 Pennsylvania Avenue,
NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:
Mamie Bittner, IMS Public Information
Officer, (202) 606-8536. Deaf and
hearing impaired individuals may call
the TDD Line, (202) 606-8636.

SUPPLEMENTARY INFORMATION: The
purpose of IMS Museum Leadership
Initiatives is to advance outstanding
projects that address issues of national
concern to museums. In 1994, IMS will
invite projects that partner museums,
schools and communities to further
education reform. Museums can
effectively enhance standards-driven
systemic reform by providing learning
opportunities in every school discipline
from history and science to mathematics
and art. Museums' collections and
exhibitions create an enriched learning
environment that is not available in any
other educational institution. The
purpose of IMS Museum Leadership
Initiatives awards will be to unleash and
focus museums' potential to be
powerful partners in education reform.

In 1994, awards will be made for
planning, including needs assessment,
program development, pilot testing and
analysis of results. IMS anticipates that
competitive awards will be available to
implement the plans in 1995. The
maximum award for 1994 will be
\$40,000. Successful projects will build
on existing museum-school partnerships
and will address one or more of the
following goals:

- All children in America will start
school ready to learn.

- The high school graduation rate
will increase to at least 90%.

- American students will be
competent in challenging academic
content areas such as English, History,
Math, Science, Geography, The Arts,
Foreign Languages, and prepared for
responsible citizenship.

- Teacher education and professional
development will be oriented toward
and available for teachers to teach to
challenging standards and prepare
students for the next century.

- U.S. students will be first in the
world in science and mathematics
achievement.

- Every adult American will be
literate and possess the skills necessary
to compete in a global economy.

- Children will have safe, disciplined
and drug-free learning environments.

- Every school and home will engage
in partnerships that will increase
parental involvement and participation
in promoting the social, emotional, and
academic growth of children.

Deadline for proposals is July 1, 1994.
Application materials are available from
the Institute of Museum Services, 1100
Pennsylvania Avenue, NW.,
Washington, DC 20506, (202) 606-8539.

Eligibility

Applicants must include museums,
museum organizations, individuals,
universities, consortia of museums, or
other organizations, depending on the
specifications outlined in the proposal.

Available Funds

An award made through the Museum
Leadership Initiatives program may not
exceed \$200,000; average award,
\$40,000. Awards are for projects that
will be completed within an eighteen
month period. IMS reserves the option
of awarding multiple, single, or no
awards as a result of this request for
proposals.

Application Forms

Applicants may obtain application
packets for the Museum Leadership
Initiatives program by writing or
telephoning the Institute of Museum
Services, 1100 Pennsylvania Avenue,

NW., room 609, Washington, DC 20506, (202) 606-8539. Deaf and hearing impaired individuals may call the TDD Line, (202) 606-8636.

Applicable Regulations

None.

(Catalogue of Federal Domestic Assistance No. 45.301, Institute of Museum Services)

Dated: February 14, 1994.

Diane B. Frankel,

Director, Institute of Museum Services.

[FR Doc. 94-3954 Filed 2-22-94; 8:45 am]

BILLING CODE 7036-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: March 3&4, 1994.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James E. Rodman, Division of Environmental Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1481.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Planning Grants and Career Advancement Award proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Inclement weather.

Dated: February 17, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-4066 Filed 2-22-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Biological Sciences; Meeting

Date and Time: Monday March, 14, 1994 from 8:30 am-6 pm. Tuesday, March 15, 1994 from 8:30 am-6 pm. Wednesday, March 16, 1994 from 8:30 am-5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., room 390, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Machi Dilworth, Program Director, Biological Instrumentation and Resources, room 615, National Science Foundation, Arlington, Virginia 22230, Telephone No. (703) 306-1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowships in Plant Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 17, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-4068 Filed 2-22-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development.

Date and Time: Friday, March 11, 1994; 8 a.m.-5 p.m.

Place: Room 880, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. William McHenry, Program Director, HRD, room 815, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1632.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Careers for Minority Scholars proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 17, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-4067 Filed 2-22-94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) scheduled for February 24, 1994, has been canceled. The notice for this meeting appeared in the **Federal Register** on February 9, 1994 (59 FR 6061).

The next meeting of the ACMUI will be held on May 19 and 20, 1994. Information regarding this meeting will be noticed no less than 15 days before the meeting.

FOR FURTHER INFORMATION, CONTACT: Sally L. Merchant, Office of Nuclear Material Safety and Safeguards, MS 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504-2637.

Dated: February 17, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94-4101 Filed 2-22-94; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information and collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission:* Revision.
2. *The title of the information collection:* 10 CFR Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations" and NRC Form 313, Application for Material License.
3. *The form number, if applicable:* NRC Form 313.
4. *How often the collection is required:* On occasion. Upon submittal of an application for a materials license or renewal, decommissioning review, petition for rulemaking, status as an independent certifying organization, or upon discovery of a leaking source.
5. *Who will be required to report:* Licenses and applicants requesting approvals for actions proposed in accordance with 10 CFR Part 34.

6. An estimate of the number of responses: Part 34—729, NRC Form 313—700.

7. An estimate of the total number of hours needed annually to complete the requirement or request: Part 34—1,530 hours for reporting (approximately 2.2 hours per response) plus an additional 64,285 hours for recordkeeping (approximately 91.8 hours per licensee); NRC Form 313—9,900 hours for 700 licensees (approximately 14 hours per response).

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Applicable.

9. Abstract: NRC regulation, 10 CFR part 34, specifies the information and data to be provided by applicants and licensees using byproduct material for industrial radiography. The 10 CFR part 34 is being revised in its entirety. The revision will add or modify the requirements to include mandatory certification of radiographers, additional training of radiographers' assistants, leak tests of "S" tubes, and specifies records to be kept at field stations, permanent installations, temporary jobsites and use or storage location exceeding 180 days. The proposed revision will require the following additional information to be reported on NRC Form 313, Application for Materials License: locations and descriptions of all field stations and permanent radiographic installations, the designation of a Radiation Safety Officer, and additional information on training and testing. This information is reviewed by NRC to ensure that the safety of radiographers and the public is protected.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20037.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150-0007 and 3150-0120), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 14th day of February 1994.

For the Nuclear Regulatory Commission.
Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 94-3981 Filed 2-22-94; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on ABB-CE Standard Plant Designs; Meeting

The ACRS Subcommittee on ABB-CE Standard Plant Designs will hold a meeting on March 8, 1994, in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, March 8, 1994—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC staff FSER, ABB-CE Standard Safety Analysis Report and Design Certification Material (Design Description/ITAAC) for the ABB-CE System 80+ design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, ABB-CE, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas H. Coe (telephone 301/492-8972) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named

individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 16, 1994.

Sam Duraiswamy,
Chief, Nuclear Reactors Branch.
[FR Doc. 94-3978 Filed 2-22-94; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on March 9, 1994, in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 9, 1994—8:30 a.m. until the conclusion of business.

The Subcommittee will review any residual issues associated with the Advanced Boiling Water Reactor (ABWR) design and prepare a proposed ACRS report on the ABWR Final Design Approval for consideration by the full Committee. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review. Representatives of the General Electric Nuclear Energy and its

consultants will participate, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 16, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94-3979 Filed 2-22-94; 8:45 am]

BILLING CODE 7590-01-M

Consolidation of Region V Office With Region IV Office; Transfer of Emergency Response Functions and Responsibilities

AGENCY: Nuclear Regulatory Commission.

ACTION: General notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) is transferring the emergency response functions and responsibilities of the current Region V office in Walnut Creek, California, to the Region IV office in Arlington, Texas.

EFFECTIVE DATE: March 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Samuel J. Collins, USNRC, Region IV, Arlington, Texas, telephone (817) 860-8183.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that the NRC is consolidating its Region V office in Walnut Creek, California, with the Region IV office in Arlington, Texas. Transition planning for this consolidation has established that, effective March 1, 1994, the emergency response functions and responsibilities of the current Region V office will transfer to the Region IV office.

The NRC Incident Response Plan, as stated in NUREG-0728, Rev. 2, will remain unchanged and all response functions and responsibilities currently in place in the Region V office will be transferred to the RIV office in Arlington, Texas. Licensee notifications for emergency response purposes will be unchanged and will be sent to the NRC Headquarters Operations Officer at 301-951-0550.

Sometime shortly after March 1, 1994, the actual realignment of organizational structure will occur eliminating Region V and establishing an NRC Field Office in Walnut Creek, California, as an integral part of the Region IV office in Arlington, Texas. Until the formal realignment, the lead for inspection program responsibility remains with Region V. Separate notification will be provided when Region V is abolished and the Region IV Field Office is established in Walnut Creek, California.

Dated at Arlington, Texas, this 14th day of February 1994.

For the Nuclear Regulatory Commission,

John M. Montgomery,

Deputy Regional Administrator.

[FR Doc. 94-3982 Filed 2-22-94; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 030-29567, License No. 20-27908-01, EA 94-035]

Cameo Diagnostic Centre, Inc., Springfield Massachusetts; Order Modifying Order Imposing Civil Monetary Penalty

I

Cameo Diagnostic Centre, Inc. (Licensee) is the holder of a Byproduct Material License No. 20-27908-01 (License) originally issued by the Nuclear Regulatory Commission (NRC or Commission) on January 30, 1987. The License authorizes the Licensee to perform diagnostic procedures with radioactive byproduct material and to store Promethium-147, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on December 29, 1992. During the inspection, nine violations of NRC requirements were identified. A Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 16, 1993. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice on June 11 and July 23, 1993. In its response, the Licensee objected to the characterization of Violations I.A and I.B as "willful", and to the classification of these violations at Severity Level III; protested the civil penalty assessed for Violations I.A and I.B; and requested remission of that penalty.

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained

therein, the NRC staff determined that the violations occurred as stated in the Notice, the Severity Level classification was appropriate, and the penalty proposed for Violations I.A and I.B should be imposed. Accordingly, the NRC issued an Order Imposing A Civil Monetary Penalty—\$1,750 on November 24, 1993. The Licensee responded in a letter dated December 17, 1993 and requested a hearing. On February 1, 1994, the Atomic Safety and Licensing Board (ASLB) designated to preside in this proceeding held a prehearing conference.

Violation I.B., as set forth in the Notice, cited the Licensee against 10 CFR 30.9(a) for a failure to provide to the Commission information that was complete and accurate in all material respects. During the February 1, 1994 prehearing conference, the ASLB ordered the Staff, among other things, to prepare a brief addressing whether a total failure to provide material information to the Commission can, as a matter of law, constitute a violation of 10 CFR 30.9(a).

III

The NRC staff has reconsidered whether Violation I.B. as stated in the Notice fully reflected the facts of this case. The original citation for Violation I.B. did not assert that a statement of the Licensee was inaccurate or incomplete, but rather, that the Licensee's omission constituted a violation of 10 CFR 30.9(a). After reevaluating the facts of this case, and statements made by the inspector and the Licensee, the staff is modifying Violation I.B. based on an inaccurate statement made by the Licensee in answer to a question asked during a telephone call on November 12, 1992. This statement was confirmed in a letter issued the next day on November 13, 1992. Thereafter, during calls on November 19 and 25, 1992 the staff reiterated the need to obtain a license amendment before possessing material at the new location. However, the licensee did not correct the staff's understanding after receipt of the letter or during the November 19 and 25, 1992 telephone calls.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that, Violation I.B. of the notice and order be modified to read: 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the Licensee did not provide to the Commission information that was complete and accurate in all material respects. Specifically, during a November 12, 1992 telephone conversation in response to a question from Region I as to whether the Licensee had licensed materials at its new address (153 Maple Street, Springfield, MA), the Licensee responded negatively. The licensee response was confirmed in a letter from NRC to the licensee dated November 13, 1992 which stated that it was the NRC "understanding that: * * * 2. You [licensee] do not as yet possess any licensed radioactive material at this new facility." Therefore, the Licensee provided inaccurate information to the Commission in that it had possessed licensed materials at its new address. This information was material because, had the correct information been known, it would have resulted in action by the NRC to prohibit licensed activity at the new address until a license amendment had been granted.

V

The Licensee shall respond to this modified Order within 20 days of the date of this Order by requesting that the NRC proceed with the Licensee's December 17, 1993 request for a hearing or by withdrawing its hearing request. The response to this Order shall be addressed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Atomic Safety and Licensing Board presiding over the proceeding on the December 13, 1993 hearing request and Counsel for the NRC staff in that proceeding at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If the Licensee withdraws its request for a hearing, payment of the civil penalty shall be made within 30 days of the date of this Order. If full payment of the civil penalty has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event that the Licensee requests proceeding with a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation I.A. of the Notice referenced in Section II above and Violation I.B. as modified in Section IV above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland, this 15th day of February 1994.

Hugh L. Thompson, Jr.,
Deputy Executive Director for Nuclear
Materials Safety, Safeguards and Operations
Support.

[FR Doc. 94-3980 Filed 2-22-94; 8:45 am]
BILLING CODE 7590-01-36

[Docket No. 50-443 (License No. NPF-86)]

North Atlantic Energy Service Corporation (Seabrook Station, Unit No. 1); Order for Modification of Order Approving Transfer of License

I.

Great Bay Power Corporation, formerly EUA Power Corporation, is the holder of a 12.1324 percent ownership share in Seabrook Station, Unit No. 1. Great Bay Power Corporation's interest in Seabrook Station, Unit No. 1, is governed by License No. NPF-86 issued by the U.S. Nuclear Regulatory Commission (NRC), pursuant to part 50 of title 10 of the Code of Federal Regulations (10 CFR), on March 15, 1990, in Docket No. 50-443. Under this license, only North Atlantic Energy Service Corporation, acting as agent and representative of the 11 joint owners listed in the license, has the authority to operate Seabrook Station, Unit No. 1. Seabrook Station, Unit No. 1, is located in Rockingham County, New Hampshire.

II.

The transfer of any right under License No. NPF-86 is subject to the NRC's approval pursuant to 10 CFR 50.80(a). By letter of May 14, 1993, from its counsel, Ropes & Grey, North Atlantic Energy Service Corporation filed two requests with the NRC. One requested NRC approval of the indirect transfer of control of EUA Power Corporation's 12.1324 percent ownership share in Seabrook Station, Unit No. 1. The other requested an amendment to the Operating License to reflect EUA Power Corporation's change of name to Great Bay Power Corporation. The name of EUA Power Corporation was formally changed to Great Bay Power Corporation in February 1993. The name change was filed with the Secretary of State of New Hampshire following the redemption of all outstanding stock in EUA Power Corporation from its corporate parent, Eastern Utility Associates. The stock redemption was one of several

interrelated steps in the Plan of Reorganization (of EUA Power Corporation) filed with the Bankruptcy Court. Following the redemption of its outstanding stock, EUA Power Corporation was no longer a subsidiary of Eastern Utility Associates, and the name was changed to remove any implication of a continuing relationship with its former corporate parent. The name change did not affect the corporate entity of the debtor in bankruptcy.

Indirect transfer of control, in this case, results from the elimination of the existing stock of the debtor (now known as Great Bay Power Corporation) and the issuance of new stock to the holders of the debtor's bonds and to others.

On August 16, 1993, the NRC issued Amendment 23 to License No. NPF-86 that incorporated the name change of EUA Power Corporation to Great Bay Power Corporation in the footnote to page 1 of the operating license and issued an order approving the indirect transfer of the ownership interest of EUA Power Corporation. The order was contingent on the transfer of control being completed no later than February 15, 1994, and included the provision that upon application and showing of good cause, the order may be extended for a short period beyond February 15, 1994.

On February 3, 1994, North Atlantic Energy Service Corporation, through their counsel Ropes & Grey, filed an application requesting extension of the order until June 30, 1994, and identified the reasons why the transfer of control can not be completed by February 15, 1994. In that application, North Atlantic Energy Service Corporation asserts that the sole obstacle to final implementation of the Plan of Reorganization has been the difficulty with completing the contemplated \$45 million credit facility for the source of funds to cover Great Bay Power Corporation's cash requirements. As an alternative to this credit facility, the bondholders have reached an agreement in principle with Omega Advisors that provides for an investment of \$35 million by Omega Advisors in exchange for 60 percent equity of Great Bay Power Corporation. This agreement, reached on February 2, 1994, is a modification to the Plan of Reorganization and requires supplemental disclosure to the creditors and reconfirmation by the Bankruptcy Court.

On the basis of the information provided in North Atlantic Energy Service Corporation's application (Ropes and Grey letter dated February 3, 1994), I find that there is good cause to extend the expiration date of the Order

Approving Transfer of License dated August 16, 1993.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201 et seq., and 10 CFR 50.80, it is hereby ordered that: The Order Approving Transfer of License dated August 16, 1993, is modified to change the latest date for completion of the transfer, as specified in section III of the August 16, 1993, Order, to June 30, 1994. The Order of August 16, 1993, except as modified herein, remains in effect.

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland this 15th day of February, 1994.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94-3977 Filed 2-22-94; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

- (1) *Collection title:* Application and Claim for RULA Benefits Unpaid at Death.
- (2) *Form(s) submitted:* UI-63.
- (3) *OMB number:* 3220-0055.
- (4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
- (5) *Type of request:* Revision of a currently approved collection.
- (6) *Frequency of response:* On occasion.
- (7) *Respondents:* Individuals or households.
- (8) *Estimated annual number of respondents:* 375.
- (9) *Total annual responses:* 375.
- (10) *Average time per response:* .06100 hours.
- (11) *Total annual reporting hours:* 23.
- (12) *Collection description:* The collection obtains the information needed by the Railroad Retirement Board to pay, under section 2(g) of the RULA, benefits under that Act accrued, but not paid because of the death of employee.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting

documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,
Clearance Officer.

[FR Doc. 94-3953 Filed 2-22-94; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF STATE

[Public Notice 1949]

Garnishment of Federal Employees Wages for Payment of Debt

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is giving notice that all requests for payments pursuant to court-ordered garnishments as authorized under section 9 of Public Law No. 103-94, Hatch Act Reform Amendments of 1993, for all employees of the Department of State shall be submitted to the Executive Director (L/EX), Office of the Legal Adviser, Department of State, room 5519A, 22nd and C Streets NW., Washington, DC 20520, (202) 647-8323. This is the same agent designated for service of garnishments under 5 CFR part 581.

The Executive Director of the Office of the Legal Adviser, Department of State, is not authorized to accept requests for payments pursuant to court-ordered garnishments for employees of any other Federal agency, and any such requests submitted will be returned.

EFFECTIVE DATE: February 23, 1994.

ADDRESSES: Comments regarding this notice should be sent to the Assistant Legal Adviser for Legislation and General Management (L/LM), Office of the Legal Adviser, Department of State, room 5425, 22nd and C Streets NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila McCoy at (202) 647-7359.

SUPPLEMENTARY INFORMATION: Congress has authorized the garnishment of Federal civilian employees' wages for debts pursuant to section 9 of Public Law 103-94, Hatch Act Reform Amendments of 1993. The applications and orders and legal issues related thereto will be reviewed by the Office of the Legal Adviser.

Dated: February 9, 1994.

Mary Beth West,

Assistant Legal Adviser for Legislation and General Management.

[FR Doc. 94-3948 Filed 2-22-94; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 162 Twenty-First Meeting; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 162 meeting to be held March 29-31, starting at 9:30 a.m. The meeting will be held at the Stanford Telecom (STEL): Steve VanTrees, Phone: (703) 438-8014.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the summary of the twentieth meeting held May 12-13, 1993. RTCA Paper No. 276-93/SC162-166 (previously distributed); (3) Reports of Related Activities being conducted by other organizations; (4) Review and plan the activity of Working Group 1, "ATN MASPS & Router MOPS."; (5) Plan the activity of Working Group 2, "Rewrite DO-205, Part 1."; (6) Review industry systems management activity; (7) Other business; (8) Date and place of next meeting. (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1994.

Note: The First Day, March 29, the SC-162 plenary will meet. The following two days, March 30-31, will be a working session to begin drafting the avionics router MOPS. The meeting will be held at STEL for all three days.

Joyce J. Gillen,
Designated Officer.

[FR Doc. 94-4001 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-13-P

RTCA, Inc., Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 135 meeting to be held March 10-11, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary of the twenty-first meeting in September 1993; (3) Review changes proposed for Section 21; (4) Review changes proposed for Section 20 (SC135 HIRF WG and EUROCAE WG33); (5) Review changes proposed for Section 22 (AEAL and EUROCAE WG31); (6) Review changes proposed for Section 8; (7) MOPS/TSO Process and DO-160; (8) Review changes proposed for all other sections in sequence; (9) EEHWG review status; (10) Review milestones for D-160/ED-14 revision "D" completion; (11) Other business; (12) Date and place of next meeting. (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1994.

Joyce J. Gillen,
Designated Officer

[FR Doc. 94-4002 Filed 2-22-94; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Mountain Loop, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway construction project on Forest Highway 7 between Darrington and Silverton, otherwise known as Mountain Loop, in

the Mount Baker-Snoqualmie National Forest, Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT: Allan Stockman, Environmental Engineer, or Edrie Vinson, Environmental Specialist, Federal Highway Administration, Western Federal Lands Highway Division, 610 East Fifth Street, Vancouver, Washington 98661-3893. Telephone: (206) 696-7952.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Forest Service, the Washington State Department of Transportation, and Snohomish County, will prepare an Environmental Impact Statement on a proposal to construct the Mountain Loop Highway, Forest Highway 7, in the Mount Baker-Snoqualmie National Forest between White Chuck River, east of Darrington to Barlow Pass, which is east of Silverton. The proposed highway would connect State Route 530 with State Route 92, completing a recreational and scenic highway loop along the South Fork and the Sauk Rivers in the Cascade Range. The proposal would involve reconstruction of an existing unimproved road to two lane paved surface. The total length is about 22.5 km (14 miles). The highway is considered necessary to accommodate recreational traffic and a developing tourism industry. The recreational loop is access to three wilderness areas, a Wild and Scenic river, a National Scenic Byway, hiking trails, camping facilities, and fishing opportunities. The road is seasonally open. Heavy snows close the road during most winters.

Alternatives under construction include: No action; road closure; build on existing alignment; construct an Elliott Creek bypass; and construct a single lane couplet around the Elliot Creek slide. Various lane widths will be analyzed with the build alternatives.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. These will also be sent to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. Public scoping meetings will be held in Granite Falls, Darrington, and a location between Lynwood and Everett. Public notices will be given on the dates, times, and places of all the meetings.

It is important that the full range of issues related to this proposed action be identified, all reasonable alternatives be considered, and significant impacts be thoroughly analyzed. To ensure this, comments and suggestions are invited from all interested parties. Comments,

suggestions, and/or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone number provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 11, 1994.

James N. Hall,

Division Engineer, Vancouver, Washington.

[FR Doc. 94-4027 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Entrance to Aspen, State Highway 82, Pitkin County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed transportation improvements in Pitkin County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald A. Sperl, Design/Environmental Coordinator, FHWA Colorado Division, 555 Zang Street, room 250, Lakewood, CO 80228, Telephone: (303) 969-6730, ext. 368.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation, Pitkin County, the City of Aspen, and Town of Snowmass Village, will prepare draft and final environmental impact statements for transportation improvements for the area of S.H. 82 known locally as the "Entrance To Aspen", including potential transit improvements to Snowmass Village. The proposed improvements involve the S.H. 82 corridor from about MP 38.80 (Tiehack Ski area) to MP 42.00 (7th and Main Street), a distance of approximately 3.20 miles.

Transportation improvements to the area are considered necessary to provide for the existing and future travel demand. Also, included in this proposal is a transit/multi-modal center located between Brush Creek and Aspen and fixed guideway alternatives.

Alternatives under consideration include: The Do-Nothing alternative; Improving the existing highway; Upgrading the highway with additional lanes in either the existing location or new alignments; fixed guideway; transit

enhancements and/or a combination of several modes/types.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held during the development of the draft and final EIS. In addition, a public hearing will be held after the draft EIS is issued for public comment. Public notices will give the time and place of the scheduled meetings and hearings. A formal scoping meeting will also be held to ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified. Comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Transportation Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: February 14, 1994.

Ronald A. Speral,
Design/Environmental Coordinator,
Lakewood.

[FR Doc. 94-4025 Filed 2-22-94; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Annual List of Nonconforming Vehicles Determined To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of nonconforming vehicles determined to be eligible for importation.

SUMMARY: This notice lists all vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that have been determined, as of December 31, 1993, to be eligible for importation into the United States.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION: Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act, (15 U.S.C. 1381 *et seq.*) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless the Secretary of Transportation has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified vehicle, a vehicle that does not conform to all applicable Federal motor vehicle safety standards may be admitted into the United States if the Secretary determines that the safety features of the vehicle comply with, or are capable of being modified to comply with, those standards based on destructive test data or such other evidence that the Secretary determines to be adequate.

Section 108(c)(3)(C)(i) of the Act, 15 U.S.C. 1397(c)(3)(C)(i), authorizes the Secretary of Transportation to make import eligibility determinations "(I) on the petition of any registered importer or any manufacturer, or (II) on the Secretary's own initiative." The Secretary's authority to make these determinations has been delegated to the Administrator of NHTSA under 49 CFR 1.50(a). The Administrator redelegated to the Associate Administrator for Enforcement the authority to grant or deny petitions for import eligibility determinations submitted by motor vehicle manufacturers and registered importers (49 CFR 501.8(g)(3)). Thus far, a number of import eligibility determinations have been made on the Administrator's own initiative, and the Associate Administrator has granted many petitions for such determinations submitted by registered importers.

Section 108(c)(3)(C)(iv) of the Act, 15 U.S.C. 1397(c)(3)(C)(iv), requires the

annual publication in the Federal Register of a list of all such determinations. That list is set forth in Annex A and is current as of December 31, 1993.

Each vehicle on the list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility determination must write that number on the Form HS-7 accompanying entry to indicate that the vehicle is eligible for importation. "VSA" eligibility numbers are assigned to all vehicles that are determined to be eligible for importation on the initiative of the Administrator. "VSP" eligibility numbers are assigned to vehicles that are determined to be eligible under section 108(c)(3)(C)(i)(I) of the Act, based on a petition from a manufacturer or registered importer which establishes that a substantially similar U.S.-certified vehicle exists. "VCP" eligibility numbers are assigned to vehicles that are determined to be eligible under section 108(c)(3)(C)(i)(II) of the Act, based on a petition from a manufacturer or registered importer which establishes that the vehicle has safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards. Vehicles for which eligibility determinations have been made are listed in Annex A alphabetically by make. Eligible models within each make are listed numerically by "VSA," "VSP," or "VCP" number.

Section 108(i) of the Act, 15 U.S.C. 1397(i), provides that "any motor vehicle that is 25 or more years old" is not subject to the Act's importation restrictions. Such vehicles may therefore be imported into the United States without regard to their compliance with applicable Federal motor vehicle safety standards. Since the importation of a vehicle more than 25 years old is not conditioned on the existence of an eligibility determination, NHTSA has amended its eligibility determinations so that they no longer apply to such vehicles.

Authority: 15 U.S.C. 1397(c)(3)(C)(iv); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 15, 1994.

William A. Boehly,
Associate Administrator for Enforcement.

ANNEX A.—VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA#

- 1 (a) All passenger cars less than 25 years old that were manufactured before September 1, 1989;
- (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, which are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;

ANNEX A.—VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS—Continued

- (c) All multipurpose passenger vehicles, trucks, and buses less than 25 years old that were manufactured before September 1, 1991;
 (d) All multipurpose passenger vehicles, trucks, and buses manufactured on and after September 1, 1991, by their original manufacturer to comply with the requirements of FMVSS No. 202 and 208 to which they would have been subject had they been manufactured for sale in the United States; and
 (e) All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

	Model type	Model year
Acura		
VSP No. 51	Legend	1988.
Alfa Romeo		
VSP No. 44	Spider	1972.
BMW		
VSA No.		
2	1600	1969 through 1971.
3	2002	1969 through 1976.
4	2000 and 2000A	1969.
5	2500 and 2500A	1969 through 1970.
6	2800 and 2800A	1969 through 1971.
7	2002A	1970 through 1976.
8	2800CS and 2800CSA	1970 through 1971.
9	2.8 and 2.8A Bavaria	1971.
10	2002Ti	1972 through 1974.
11	3.0 and 3.0A Bavaria	1972.
12	3.0CSi and 3.0CSiA	1972 through 1974.
13	3.0S and 3.0SA	1974.
14	3.0Si and 3.0SiA	1975.
15	530i and 530iA	1975 through 1978.
16	320, 320i, and 320iA	1976 through 1985.
17	630CSi 630CSiA	1977.
18	633CSi and 633CSiA	1977 through 1984.
19	733i and 733iA	1977 through 1984.
20	528i and 528iA	1979 through 1984.
21	528e and 528eA	1982 through 1988.
22	533i and 533iA	1983 through 1984.
23	318i and 318iA	1981 through 1989.
24	325e and 325eA	1984 through 1987.
25	535i and 535iA	1985 through 1989.
26	524tdA	1985 through 1986.
27	635, 635CSi, and 635CSiA	1979 through 1989.
28	735, 735i, and 735iA	1980 through 1989.
29	L7	1986 through 1987.
30	325, 325i, 325iA, and 325E	1985 through 1989.
31	325 is and 325isA	1987 through 1989.
32	M6	1987 through 1988.
33	325iX and 325iXA	1988 through 1989.
34	M5	1988.
35	M3	1988 through 1989.
66	316	1978 through 1982.
67	323i	1978 through 1985.
68	520 and 520i	1978 through 1983.
69	525 and 525i	1979 through 1982.
70	728 and 728i	1977 through 1985.
71	730, 730i, and 730iA	1978 through 1980.
72	732i	1980 through 1984.
73	745i	1980 through 1986.
78	All other models except those in the M1 and Z1 series	1969 through 1989.
BMW		
VSP No. 4	518i	1986.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

	Model type	Model year
5	525i	1989.
6	730iA	1988.
9	520iA	1989.
10	850i	1991.
14	728i	1986.
15	625CSi	1981.
24	730i	1991.
25	316	1986.
32	628CSi	1980.
41	750iL	1993.
46	518i	1991.
55	850i	1993.
BMW Motorcycle		
VSP No. 30	R75/6	1974.
Bristol Bus		
VCP No. 4	VRT Bus—Double Decker	1977.
Citroen		
VCP No. 1	XM	1990 through 1992.
Honda Motorcycle		
VSP No. 34	VFR750	1990.
Ferrari		
VSA No. 36	308 (all models)	1974 through 1985.
37	328 GTS	1985 through 1989.
37	328 (all other models)	1985 and 1988 through 1989.
38	GTO	1985.
39	Testarossa	1987 through 1989.
74	Mondial (all models)	1980 through 1989.
76	208, 208 Turbo (all models)	1974 through 1988.
Jaguar		
VSA No. 40	XJS	1980 through 1987.
41	XJ6	1970 through 1986.
Jaguar		
VSP No. 47	XJ6	1987.
Jaguar Daimler		
VSP No. 12	Limousine	1985.
Laverda Motorcycle		
VSP No. 37	1000	1975.
Mazda		
VSA No. 42	RX7	1978 through 1981.

	Model type	Model ID	Model year
Mercedes Benz			
VSA No.			
43	600	100.012	1969 through 1981.
43	600 Long 4dr	100.014	1969 through 1981.
43	600 Landauet	100.015	1969 through 1981.
43	600 Long 6dr	100.016	1969 through 1981.
44	280 SLC	107.022	1975 through 1981.
44	350 SLC	107.023	1972 through 1979.
44	450 SLC	107.024	1973 through 1989.
44	380 SLC	107.025	1981 through 1989.
44	500 SLC	107.026	1978 through 1981.
44	300 SL	107.041	1986 through 1988.
44	280 SL	107.042	1969 through 1985.
44	350 SL	107.043	1971 through 1978.
44	450 SL	107.044	1972 through 1989.
44	380 SL	107.045	1980 through 1989.
44	500 SL	107.046	1980 through 1989.
44	420 SL	107.047	1986.
44	560 SL	107.048	1986 through 1989.
45	280 S	108.016	1969 through 1972.
45	280 SE	108.018	1969 through 1972.
45	280 SEL	108.019	1969 through 1972.
45	280 SE (3.5)	108.057	1970 through 1973.
45	280 SEL (3.5)	108.058	1972 through 1973.
45	280 SE (4.5)	108.067	1970 through 1972.
45	280 SEL (4.5)	108.068	1972.
46	300 SEL	109.016	1969 through 1972.
46	300 SEL (6.3)	109.018	1969 through 1972.
46	300 SEL (4.5)	109.057	1972.
47	280S E Coupe	111.024	1969 through 1971.
47	280 SE Conv.	111.025	1969 through 1971.
47	280 SE 3.5 Cp	111.026	1971.
47	280 SE 3.5 Cv	111.026	1971.
48	230 SL	113.042	1969 through 1971.
48	250 SL	113.043	1969 through 1971.
48	280 SL	113.044	1969 through 1971.
49	230.6	114.015	1969 through 1976.
49	250	114.010	1969 through 1976.
49	250	114.011	1971 through 1976.
49	250 CE	114.022	1970 through 1976.
49	250 C	114.023	1970 through 1976.
49	280	114.060	1972 through 1976.
49	280 E	114.062	1972 through 1976.
49	280 CE	114.072	1972 through 1976.
49	280 C	114.073	1972 through 1976.
50	200	115.015	1976.
50	230.4	115.017	1974 through 1976.
50	220 D	115.110	1969 through 1976.
50	240 D (3.0)	115.114	1974 through 1976.
50	240 D	115.117	1974 through 1976.
51	280 S	116.020	1973 through 1980.
51	280 SE	116.024	1972 through 1988.
51	280 SEL	116.025	1972 through 1980.
51	350 SE	116.028	1973 through 1980.
51	350 SEL	116.029	1972 through 1980.
51	450 SE	116.032	1972 through 1980.
51	450 SEL	116.033	1972 through 1988.
51	450 SEL (6.9)	116.036	1972 through 1988.
52	200	123.020	1976 through 1980.
52	230	123.023	1976 through 1985.
52	250	123.026	1976 through 1985.
52	280	123.030	1976 through 1985.
52	280 E	123.033	1976 through 1985.
52	230 C	123.043	1978 through 1980.
52	280 C	123.050	1977 through 1980.
52	280 CE	123.053	1977 through 1985.
52	230 T	123.083	1977 through 1985.
52	280 TE	123.093	1977 through 1985.
52	200 D	123.120	1980 through 1982.
52	240 D	123.123	1977 through 1985.
52	300 D	123.130	1976 through 1985.
52	300 D	123.133	1977 through 1985.
52	300 CD	123.150	1978 through 1985.

	Model type	Model ID	Model year
52	240 TD	123.183	1977 through 1985.
52	300 TD	123.193	1977 through 1985.
52	200	123.220	1979 through 1985.
52	230 E	123.223	1977 through 1985.
52	230 CE	123.243	1980 through 1984.
52	230 TE	123.283	1977 through 1985.
53	280 S	126.021	1980 through 1983.
53	280 SE	126.022	1980 through 1985.
53	280 SEL	126.023	1980 through 1985.
53	300 SE	126.024	1985 through 1989.
53	300 SEL	126.025	1986 through 1989.
53	380 SE	126.032	1979 through 1989.
53	380 SEL	126.033	1980 through 1989.
53	420 SE	126.034	1985 through 1989.
53	420 SEL	126.035	1986 through 1989.
53	500 SE	126.036	1980 through 1986.
53	500 SEL	126.037	1980 through 1989.
53	560 SEL	126.039	1986 through 1989.
53	380 SE	126.043	1982 through 1989.
53	500 SEC	126.044	1981 through 1989.
53	560 SEC	126.045	1986 through 1989.
53	300 SD	126.120	1981 through 1989.
54	190	201.022	1984.
54	190 E (2.3)	201.024	1983 through 1989.
54	190 E	201.028	1986 through 1989.
54	190 E (2.6)	201.029	1986 through 1989.
54	190 E 2.3 16	201.034	1984 through 1989.
54	190 D (2.2)	201.122	1984 through 1989.
54	190 D	201.126	1984 through 1989.
55	200	124.020	1985.
55	230 E	124.023	1985 through 1987.
55	260 E	124.026	1985 through 1989.
55	300 E	124.030	1985 through 1989.
55	300 CE	124.050	1988 through 1989.
55	230 TE	124.083	1985.
55	300 TE	124.090	1986 through 1989.
55	300 D	124.130	1985 and 1986.
55	300 D Turbo	124.133	1985 through 1989.
55	300 TD Turbo	124.193	1986 through 1989.
77	All other models except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance."		1969 through 1989.

Mercedes Benz

VSP No.			
1	230 E	124.023	1988.
2	230 TE	124.083	1989.
3	200 TE	124.081	1989.
7	300SL	107.041	1989.
11	200E	124.021	1989.
17	200D	124.120	1986.
18	260SE	126.020	1986.
19	230E	124.023	1990.
20	230E	124.023	1989.
21	300SEL	126.025	1990.
22	190E	201.024	1990.
23	500SEL	129.066	1989.
26	500SE	140.050	1991.
27	600SEL	140.057	1992.
28	260SE	126.020	1989.
31	250C	114.021	1970.
33	500SL	129.066	1991.
35	500SE	126.036	1988.
36	300SEL	109.056	1970.
38	250C	114.021	1969.
40	300TE	124.090	1990.
45	190E	201.024	1991.
48	420SEL	126.035	1990.
50	500SE	140.050	1992.
54	300SL	129.006	1992.

	Model type	Model ID	Model year
Mercedes-Benz			
VCP No. 3	300GE	463.228	1993.
	Model type		Model year
Mitsubishi			
VSP No. 8	Galant VX		1989.
13	Galant SUP		1989.
Nissan			
VSA No. 75	Z and 280Z		1973 through 1981.
75	Fairlady and Fairlady Z		1975 through 1979.
Porsche			
VSA No.			
56	911 Coupe		1969 through 1989.
56	911 Targa		1969 through 1989.
56	911 Turbo		1976 through 1989.
56	911 Cabriolet		1984 through 1989.
56	911 Carrera		1972 through 1989.
57	912 Coupe		1969 through 1969.
57	912 Targa		1969 through 1969.
57	912 Karmann		1969 through 1969.
58	914		1970 through 1976.
59	924 Coupe		1976 through 1989.
59	924 Turbo Coupe		1979 through 1989.
59	924 S		1987 through 1989.
60	928 Coupe		1976 through 1989.
60	928 S Coupe		1983 through 1989.
60	928 S4		1979 through 1989.
60	928 GT		1979 through 1989.
61	944 Coupe		1982 through 1989.
61	944 Turbo Coupe		1985 through 1989.
61	944 S Coupe		1987 through 1989.
79	All other models except Model 959		1969 through 1989.
Porsche			
VSP No. 29	911 C4		1990.
Rolls Royce			
VSA No. 62	Silver Shadow		1970 through 1979.
Rolls Royce			
VSP No. 16	Bentley		1989.
Toyota			
VSA No.			
63	Camry		1987 through 1988.
64	Celica		1987 through 1988.
65	Corolla		1987 through 1988.
Toyota			
VSP No. 39	Camry		1989.

	Model type	Model year
Volkswagen		
VSA No. 42	Scirocco	1986.
Volkswagen		
VSP No. 49	911 "Beetle"	1969.
Volvo		
VSP No. 43	262C	1981.

[FR Doc. 94-3941 Filed 2-22-94; 8:45 am]
BILLING CODE 4910-69-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC-17; OTS No. 02811]

The Long Island Savings Bank, FSB, Melville, NY; Approval of Conversion Application

Notice is hereby given that on February 14, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Long Island Savings Bank, FSB, Melville, New York, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: February 16, 1994.
By the Office of Thrift Supervision,
Kimberly M. White,
Corporate Technician.
[FR Doc. 94-3973 Filed 2-22-94; 8:45 am]
BILLING CODE 6720-01-M

[AC-15; OTS No. 00013]

Perpetual Savings Bank, FSB, Cedar Rapids, IA; Approval of Conversion Application

Notice is hereby given that on February 10, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Perpetual Savings Bank, FSB, Cedar Rapids, Iowa, convert to the stock form

of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: February 16, 1994.
By the Office of Thrift Supervision,
Kimberly M. White,
Corporate Technician.

[FR Doc. 94-3971 Filed 2-22-94; 8:45 am]
BILLING CODE 6720-01-M

[AC-16; OTS No. 03384]

Princeton Federal Savings & Loan Association, Princeton, KY; Approval of Conversion Application

Notice is hereby given that on February 10, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Princeton Federal Savings and Loan Association, Princeton, Kentucky, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: February 16, 1994.
By the Office of Thrift Supervision,
Kimberly M. White,
Corporate Technician.
[FR Doc. 94-3972 Filed 2-22-94; 8:45 am]
BILLING CODE 6720-01-M

[AC-14; OTS No. 01386]

Southern Missouri Savings Bank, Poplar Bluff, MO; Approval of Conversion Application

Notice is hereby given that on February 10, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Southern Missouri Savings Bank, Poplar Bluff, Missouri; convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: February 16, 1994.
By the Office of Thrift Supervision,
Kimberly M. White,
Corporate Technician.

[FR Doc. 94-3970 Filed 2-22-94; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records—Means Test Verification Records—VA (89VA161)

AGENCY: Department of Veterans Affairs.
ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the Federal Register a notice of the existence and character of the systems of records. Accordingly, the Department of Veterans Affairs (VA) published a notice of its inventory of personal records on September 27, 1977 (42 FR 49726). Notice is hereby given that VA is adding a new system of

records entitled "Means Test Verification Records" (89VA161).

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the routine uses in this new system of records. All relevant materials received before March 25, 1994, will be considered. All written comments received will be available for public inspection in Room 170 of the address given below between Monday through Friday (except holidays) until April 4, 1994.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine uses are effective March 25, 1994.

ADDRESSES: Written comments concerning the proposed routine uses may be mailed to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Celia Winter, Program Analyst, Income Verification Match Program (161B/IVM), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535-7437.

SUPPLEMENTARY INFORMATION: Public Law 99-272, the Veterans Health Care Amendments of 1986, as amended by Public Law 100-322, established two categories of eligibility for VA health care: "mandatory and discretionary." In order to determine the category assignment of nonservice-connected veterans, new eligibility assessment procedures, including the means test, were developed. The means test is based on income information provided by the nonservice-connected veteran. It was developed to ensure that the most needy nonservice-connected veterans would be placed in the mandatory care category based on limited family income. The law provided VA no legislative authority to verify the self-reported income.

In November 1990, Public Law 101-508, the Omnibus Budget Reconciliation Act (OBRA), provided VA the authority to verify income data reported to VA by nonservice-connected veterans with income records obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Section 602, Public Law 102-568 extended VA's matching authority through September 1997. The law has three requirements for VA: (1) Notification to veterans that means test financial information report to VA is subject to verification with IRS and SSA records; (2) No steps may be taken to

terminate, deny, suspend, or reduce any benefit or service until appropriate steps have been taken to independently verify the information received; and (3) Development and implementation of a VA income verification matching program be funded from the VA Compensation and Pension appropriation.

The Income Verification Match (IVM) Center was developed to conduct and administer the computer matching of Veterans Health Administration income data with IRS and SSA income records. Due to stringent IRS security regulations and codes, the process of matching the income of the veteran will be accomplished through a stand-alone automated data processing program with verification activities centralized at the IVM Center. The IVM Center is located in Decatur, Georgia.

Matching agreements have been established between the Veterans Health Administration and the IRS and SSA for verifying income of nonservice-connected veterans for appropriate years. The IVM Program will adhere to require VA security and reporting requirements in accordance with Title 38, Code of Federal Regulations, and other Federal regulations, as well as 5 U.S.C. 552a, the Privacy Act, and 26 U.S.C. 6103, the Internal Revenue Code. This new system of records is being established for IVM records to identify the types of information being extracted and utilized for IVM and means tested verification, how the data will be used and to describe the limited access to this data.

Approved: February 8, 1994.

Jesse Brown,
Secretary of Veterans Affairs.

89VA161

SYSTEM NAME:

Means Test Verification Records—VA.

SYSTEM LOCATION:

All paper and electronic records are maintained at the Income Verification Match (IVM) Center, 1842 Clairmont Road, Decatur, Georgia 30033.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Nonservice-connected veterans who have applied for health care services under Title 38, United States Code, Chapter 17, and in certain cases, members of their immediate families.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical benefit application and eligibility information obtained from the "Patient Medical Record—VA" (24VA136) system of records.

Identifying information including name, address, date of birth, social security number, current eligibility category, family information including spouse and dependent(s) name, address, social security number; employment information on veteran and spouse including occupation, employer(s) name(s) and address(es); financial information including family income, assets, expenses, debts; and third-party health plan contract information including health insurance carrier name and address, policy number and time period covered by policy; facility location(s) where treatment is provided, type of treatment provided, i.e., inpatient or outpatient and length of stay or number of visits. Documents generated as a result of income verification by computer match with records from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) and during the notification, verification and due process periods including initial verification letters, income verification forms, income difference/final letters, non-receipt/final letters, final confirmation letters, confirmation/due process letters, non-receipt confirmation letters, clarification letters, and all subpoena documentation. All forms of individual correspondence generated during the process or provided to the IVM Center by match participants including, but not limited to, copies of death certificates, discharge certificates, DD 214, Notice of Separation, disability award letters, Internal Revenue Service documents (i.e., form 1040's, W-2's, etc.), State Welfare and Food Stamp applications, VA and other pension applications, VA forms 10-10, Application for Medical Benefits, and 10-10F, Financial Worksheet, workers compensation forms, various annual earnings statements as well as pay stubs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501(a); 5317 and 7304.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 26 U.S.C. 6103(p)(4), i.e., the taxpayer's identity, and the nature, source and amount of income, that information cannot be disclosed under a Routine Use until such information has been independently verified with the individual to whom it pertains pursuant to 5 U.S.C. 552a(p).

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person

acting for the member when the member or staff person requests the record on behalf of and at the written request of that individual.

2. Disclosure of IVM records, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by the Department of Veterans Affairs.

3. In the event that information in this system of records maintained by this agency to carry out its functions, indicates a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or a particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

4. Relevant information from this system of records may be disclosed as a routine use: In the course of presenting evidence to a court, magistrate or administrative tribunal, in matters of guardianship, inquests and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with Court required duties.

5. Any information in this system may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a veteran only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

6. Relevant information may be disclosed to attorneys, insurance companies, employers, third parties, liable or potentially liable under health plan contracts, and to courts, boards, or commissions, such disclosures may be made only to the extent necessary to aid the Department of Veterans Affairs in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

7. Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense

or prosecution of litigation involving the United States, and to Federal Agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

8. Disclosure may be made to NARA (National Archives and Records Administration) GSA (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. Information in this system of records, may be disclosed for the purposes identified below to a third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Department of Veterans Affairs. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) To assist the VA in the collection of costs of services provided individuals not entitled to such services; and (b) to initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtained or seek to obtain title 38 medical benefits. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

10. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

11. For computer matching program and ADP security review purposes, record information may be disclosed to teams from other source Federal agencies who are parties to computer matching agreements involving the information maintained in this system, but only to the extent that the information is necessary and relevant to the review.

12. The name and identifying information on a veteran and/or spouse may be provided to reported payers of earned and/or unearned income in order to verify the identifier provided, address, income paid, period of employment, and health insurance

information provided on the means test and to confirm income and demographic data provided by other Federal agencies during income verification computer matching.

13. Identifying information, including social security numbers, concerning veterans, their spouses, and the dependents of veterans may be disclosed to other Federal agencies for purposes of conducting computer matches to obtain valid identifying, demographic and income information to determine or verify eligibility of certain veterans who are receiving VA medical care under Title 38, United States Code.

14. The name and social security number of a veteran, spouse and dependents, and other identifying information as is reasonably necessary may be disclosed to the Social Security Administration, Department of Health and Human Services, for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records (or information contained in records) are maintained on paper documents, and/or in an automated imaging system database at the Income Verification Match (IVM) Center, 1842 Clairmont Road, Decatur, Georgia 30033.

RETRIEVABILITY:

IVM records are retrieved by the names and social security numbers or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to working spaces and record storage areas at the Income Verification Match (IVM) Center is restricted to IVM employees on a "need-to-know" basis. Strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle.

2. All means test data downloaded from DHCP (Decentralized Hospital Computer Program) files as well as all incoming Internal Revenue Service (IRS) and Social Security Administration (SSA) tapes are received directly by the IVM ADP Division. The IRS and SSA tapes are placed into the IVM vault until the data is required for matching, at which time it is loaded on the IVM Computer System. Once the tapes are read-in, they are returned to the vault. Federal tax data is not co-mingled with

or transcribed into data maintained on the IVM Computer System. The data will reside within its own area of the computer system. Federal tax data must be protected according to the provisions of section 6103(p) of the Internal Revenue Code (Title 26, U.S.C.). It is mandatory that IVM employees review the IRS security awareness tapes and VA computer security tapes on a yearly basis.

3. The IVM Computer System supplies security access levels for all areas within the IVM Software Module. Security access levels are maintained not only on the IRS and SSA data elements themselves, but on initial access to the system (log-on procedures), menu options available, automatic shut-down when the system has not had a response in a predetermined period of time, etc. Access to the computer system is controlled by access and verify codes assigned by the IVM ADP Security Officer. The entire procedure is outlined in the IVM ADP Security Policy.

4. The office space occupied by the IVM ADP Division is in a secured area with only one access door. The door has been equipped with a punch-combination lock and an electronic card entry system. The card entry system logs every entrance and exit to the IVM space. The entry system log is programmed to provide a screen display

of employees located in the IVM space as well as capturing entry and exit activity in a report format for any given period of time.

5. There are no field offices that will be receiving tax return information from IVM.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. After the data on each IRS and SSA tape has been validated as being a true copy of the original data, the tapes are held in the vault for thirty (30) days prior to destruction, either by degaussing or shredding. Any printed reports will be shredded prior to disposal.

SYSTEM MANAGERS(S) AND ADDRESS:

Official responsible for policies and procedures: Director, Administrative Services Office (161), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. Officials maintaining the system: Director, IVM Center, 1842 Clairmont Road, Decatur, Georgia 30033.

NOTIFICATION PROCEDURE

An individual who wishes to determine whether a record is being

maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the IVM Center. All inquiries must reasonably identify the records requested. Inquiries should include the individual's full name, social security number and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of IVM records may write to the IVM Center.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The patient, the patient's spouse, family members or accredited representative(s), and friends, employers and other payers of earned income, financial institutions and other payers of unearned income, other Federal Agencies, and the "Patient Medical Records—VA" (24 VA 136) system of records, Veterans Benefits Administration Target System (BINQ, HINQ, etc.).

[FR Doc. 94-3942 Filed 2-22-94; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 23, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

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.

Date: February 17, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94-4157 Filed 2-18-94; 2:14 pm]

BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: March 8, 1994, 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. Report to the Commission—Office of Equal Employment Opportunity.
3. Proposed Enforcement Guidance on *Harris v. Forklift Sys., Inc.*
4. Proposed Enforcement Guidance: Cases under the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. sec. 621 *et seq.*, Challenging Employment Actions Taken on the Basis of a Factor that may be Empirically Correlated with, but not Directly Tied to, Age.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the *Federal Register*, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663-7100 (voice) and (202) 663-4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

Dated: February 18, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94-4158 Filed 2-18-94; 2:15 pm]

BILLING CODE 6750-08-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, February 17, 1994.

PLACE: 11th Floor, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

1. *Secretary of Labor v. Prabhu Deshetty*, Docket No KENT 92-549. (Issues include whether the judge erred in finding that Mr. Deshetty knowingly authorized, ordered, or carried out a violation of 30 CFR 75.400 within the meaning of 30 U.S.C. § 820(c).)

It was determined by the Commission that this item be included on the agenda in closed session and that no earlier announcement of the addition of this matter to the previously scheduled meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94-4159 Filed 2-18-94; 2:16 pm]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, February 28, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding two Federal Reserve Banks' renovation projects.
2. Proposed upgrade of electrical distribution system within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. 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: February 18, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-4214 Filed 2-18-94; 3:28 pm]

BILLING CODE 6210-01-P

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 3:30 p.m., Monday, February 28, 1994.

PLACE: International Ballroom Center, Washington Hilton Hotel, 1919 Connecticut Avenue NW., Washington, DC 20009, (202) 483-3000.

STATUS: Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Proposed Rule: Amendments to Section 701.32, NCUA's Rules and Regulations, Nonmember Deposits.
3. Final Rule: Amendments to and Extension of Effective Date of Part 707, NCUA's Rules and Regulations, Truth in Savings.
4. Semiannual Agenda of Regulations.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94-4225 Filed 2-18-94; 3:47 pm]

BILLING CODE 7535-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1 p.m. on Monday, March 7, 1994, and at 8:30 a.m. on Tuesday, March 8, 1994, in Washington, DC. The March 7 meeting, at which the Board will discuss preparations for the rate case filing (See 59 FR 7300, February 14, 1994) is closed to the public.

The March 8 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

AGENDA

Monday Session

March 7—1 p.m. (Closed)

1. Consideration of Rate Case Filing. (Messrs. Riley, Porras, Heselton, Foucheaux and Meses. Elcano and Sonnenberg)

Tuesday Session

March 8—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 7-8, 1994.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Report on Reduction in Theft of Credit Cards. (Kenneth J. Hunter, Chief Postal Inspector)
4. Briefing on Flat Sorting Machines. (William J. Dowling, Vice President, Engineering)

5. Tentative Agenda for the April 4-5, 1994, meeting in Chicago, Illinois.

David F. Harris,

Secretary.

[FR Doc. 94-4150 Filed 2-18-94; 11:54 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 21, 1994.

An open meeting will be held on Wednesday, February 23, 1994, at 10 a.m., in Room 1C30. Closed meetings will be held on Wednesday, February 23, 1994, following the 10 a.m. open meeting and on Wednesday, February 23, 1994, at 4 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b (c)(4), (8), (9)(A) and (10) and 17 CFR 200.402 (a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, February 23, 1994, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by Albert Vincent O'Neal, branch manager of the Fort Worth, Texas office of Dean Witter Reynolds, Inc., from an administrative law judge's initial decision. For further information, contact Richard E. Connor at (202) 272-3981.

The subject matter of the closed meeting scheduled for Wednesday, February 23, 1994, following the 10:00 a.m. open meeting will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Wednesday, February 23, 1994, at 4:00 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matters regarding financial institutions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Ramsay (202) 272-2100.

Dated: February 17, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-4139 Filed 2-18-94; 11:08 am]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[SW H-FRL-4792-5]

Reportable Quantity Adjustments

Correction

In proposed rule document 93-25930 beginning on page 54836 in the issue of Friday, October 22, 1993, make the following corrections:

1. On page 54837, in the 2nd column, in the 1st partial paragraph, in the 16th line, "if" should read "is".
2. On the same page, in the third column, in the first full paragraph, in the second line, "expressed" should read "expressing".
3. On page 54839, in the second column, in the second full paragraph, in the seventh line, "'xylene' (mixed)", " should read "'xylene (mixed)", "

§ 302.4 [Corrected]

4. On page 54842, in Table 302.4, in the entry for Dimethylformamide, in the last column Pounds (kg), "(4.45)" should read "(4.54)".
5. On page 54843, in the first column Hazardous substance, the entry "Unlisted Hazardous Wastes Characteristics." should read "Unlisted Hazardous Wastes Characteristics:".
6. On page 54844, in the first column Hazardous substance, in the entry for K090, in the third line, "ferrochromium" should read "ferrochromiumsilon".
7. On page 54845, in appendix A to § 302.4, in the second column Hazardous substance, "o-Xylene" should appear beneath the entry for Benzene, o-dimethyl.
8. On page 54846, in table 302.4, "Antimony and Compounds" should read "ANTIMONY AND COMPOUNDS" in the following places:
 - a. In the first column Hazardous substance, in the first entry where it appears.

b. In the third column Regulatory synonyms, in the second entry where it appears.

9. On pages 54846, 54857, 54858, and 54861, "Polychlorinated Biphenyls" should read "POLYCHLORINATED BIPHENYLS" each place it appears.

10. On page 54847, "Arsenic and Compounds" should read "ARSENIC AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

11. On page 54848, "Beryllium and Compounds" should read "BERYLLIUM AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

12. On the same page, in the first column, "Beryllium and Compounds" should read "Beryllium Compounds" in the second entry where it appears.

13. On page 54849, "Cadmium and Compounds" should read "CADMIUM AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

14. On page 54850, in the first column, "Chromium and Compounds" should read "CHROMIUM AND COMPOUNDS".

15. On the same page, in the third column, "Chromium and Compounds" should read "Chromium Compounds".

16. On the same page, in the same column, "Chromium Compounds" should read "CHROMIUM AND COMPOUNDS".

17. On the same page, in the first and third columns, "Cyanides" should read "CYANIDES".

18. On the same page, in the first column, in the entry for Cyclohexane, in the second line, in the parenthetical expression, the asterisk should read "1", and "6" should be inserted before "β".

19. On page 54851, in the third column, the points should be commas in the following entries: 3rd, 8th, 9th, 12th, 13th, 14th, and 16th.

20. On the same page, in the same column, in the 15th entry, "Ethane," should read "Ethene,".

21. On the same page, in the same column, in the 17th entry, in the second

line, the bracket should be an open parenthesis.

22. On page 54852, in the entry for 1,3'-Dichloropropene, in the last column, "1000(45.4)" should read "100(45.4)".

23. On the same page, in the entry for 3,3'-Dimethoxybenzidine, in the third column, in the first line, the plus sign should be a prime mark.

24. On page 54853, in the entry for Ethylbenzene, in the last column, "1000(45.4)" should read "1000(454)".

25. On page 54854, in the entry for Heptachlor, in the third column, in the third line, insert a hyphen after "tetrahydro".

26. On the same page, in the entries for Hexachlorocyclohexane and Lindane, in the third column, in the first lines, "γ-BHC" should read "γ-BHC".

27. On the same page, "Lead and Compounds" should read "LEAD AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

28. On page 54855, in the entry for Lindane (all isomers), in the third column, in the fourth line, insert a closed parenthesis after "6β".

29. On the same page, "Mercury and Compounds" should read "MERCURY AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

30. On the same page, in the entry for Methane, bromo, in the third column, in the first line, "Bromomethane" was misspelled.

31. On the same page, in the entry for Methoxychlor, in the third column, in the second line, remove the point.

32. On page 54856, "Nickel and Compounds" should read "NICKEL AND COMPOUNDS" in the following places:

a. In the first column, in the first entry where it appears.

b. In the third column, in the second entry where it appears.

33. On page 54857, in the entry for Oxirane, in the third column, in the first line, remove the comma after "3" and insert a hyphen in its place.

34. On the same page, in the 1st column, in the 17th entry, in the 2nd line, "O-(4-nitrophenyl)" should read "O-(4-nitrophenyl)".

35. On page 54858, in the first column, in the third entry, remove the comma before "-dichloro-".

36. On the same page, in the entry for Quinone, in the third column, in the second line, "Cyclohexadiene" should read "Cyclohexadiene".

37. On the same page, in the first column, "Selenium and Compounds" should read "SELENIUM AND COMPOUNDS" in the first entry where it appears.

38. On page 54859, in the entry for Toxaphene, in the third column, in the first line, insert a hyphen after "octachloro".

39. On the same page, in the 1st column, in the 15th entry, "Trichloroethene" was misspelled.

40. On the same page, in the 3rd column, in the 17th entry, insert a comma after "Phenol".

BILLING CODE 1505-01-D

**ENVIRONMENTAL PROTECTION
AGENCY**

[OPPT-59331; FRL-4758-6]

**Certain Chemicals; Approval of a Test
Marketing Exemption**

Correction

In notice document 94-3293 appearing on page 6641 in the issue of Friday, February 11, 1994, make the following correction:

In the second column, under TME-94-4, beginning in the third line, "(insert date 15 days after date of publication in the Federal Register)." should read "February 28, 1994."

BILLING CODE 1505-01-D

federal register

Wednesday
February 23, 1994

Part II

Department of Commerce

International Trade Administration

**North American Free Trade Agreement:
Rules of Procedure for Article 1904
Binational Panel Review; Notice**

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1904 Binational Panel Reviews

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Rules of Procedure for NAFTA Article 1904 Binational Panel Reviews.

SUMMARY: Canada, Mexico, and the United States have negotiated the rules of procedure for Article 1904 binational panel reviews. These rules apply to binational panel proceedings conducted pursuant to Article 1904 of the North American Free Trade Agreement.

EFFECTIVE DATE: January 1, 1994, the date of the entry into force of the North American Free Trade Agreement ("Agreement"). These Rules of Procedure shall apply to all binational panel proceedings under the Agreement commenced on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0836, (202) 482-4618, or (202) 482-5031, respectively. For procedural matters involving cases under panel review, contact James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5438; fax: (202) 482-0148.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the North American Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada, Mexico, or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country.

Title IV of the North American Free Trade Agreement Implementation Act of 1993, Public Law No. 103-182, 107 Stat.

2057, amends United States law to implement Chapter Nineteen of the Agreement.

The *NAFTA Article 1904 Panel Rules* are intended to give effect to the panel review provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting, and completing panel reviews. These rules are the result of negotiations among Canada, Mexico, and the United States in compliance with the terms of the Agreement, and are derived in large part from the *Article 1904 Panel Rules* under the United States-Canada Free Trade Agreement.

North American Free Trade Agreement Rules of Procedure for Article 1904 Binational Panel Reviews

Content

Preamble

Rule

1. Short Title
2. Statement of General Intent
3. Definitions and Interpretation

Part I—General

6. Duration and Scope of Panel Review
8. Responsibilities of the Secretary
17. Internal Functioning of Panels
19. Computation of Time
21. Counsel of Record
22. Filing, Service and Communications
28. Pleadings and Simultaneous Translation of Panel Reviews in Canada
32. Costs

Part II—Commencement of Panel Review

33. Notice of Intent to Commence Judicial Review
34. Request for Panel Review
36. Joint Panel Reviews
39. Complaint
40. Notice of Appearance
41. Record for Review

Part III—Panels

42. Announcement of Panel
43. Violation of Code of Conduct

Part IV—Proprietary and Privileged Information

44. Filing or Service under Seal
46. Proprietary Information Access Orders
52. Privileged Information
54. Violations of Proprietary Information Access Applications or Orders

Part V—Written Proceedings

55. Form and Content of Pleadings
57. Filing of Briefs
58. Failure to File Briefs
59. Content of Briefs and Appendices
60. Appendix to the Briefs
61. Motions

Part VI—Oral Proceedings

65. Location
66. Pre-hearing Conference
67. Oral Argument
68. Subsequent Authorities
69. Oral Proceedings in Camera

Part VII—Decisions and Completions of Panel Reviews

70. Orders, Decisions and Terminations
73. Panel Review of Action on Remand
75. Re-examination of Orders and Decisions

Part VIII—Completion of Panel Review

81. Stays and Suspensions

Schedule—Procedural Forms

Preamble

The Parties,
Having regard to Chapter Nineteen of the North American Free Trade Agreement between Canada, the United Mexican States and the United States of America;

Acting pursuant to Article 1904.14 of the Agreement;

Adopt the following Rules of Procedure, which shall come into force on the same day as the Agreement enters into force and from that day shall govern all panel reviews conducted pursuant to Article 1904 of the Agreement.

Short Title

1. These rules may be cited as the *NAFTA Article 1904 Panel Rules*.

Statement of General Intent

2. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions of panels within 315 days after the commencement of the panel review. The purpose of these rules is to secure the just, speedy and inexpensive review of final determinations in accordance with the objectives and provisions of Article 1904. Where a procedural question arises that is not covered by these rules, a panel may adopt the procedure to be followed in the particular case before it by analogy to these rules or may refer for guidance to rules of procedure of a court that would otherwise have had jurisdiction in the importing country. In the event of any inconsistency between the provisions of these rules and the Agreement, the Agreement shall prevail.

Definitions and Interpretation

3. In these rules,
"Agreement" means the North American Free Trade Agreement;
"Code of Conduct" means the code of conduct established by the Parties pursuant to Article 1909 of the Agreement;
"complainant" means a Party or interested person who files a Complaint pursuant to rule 39;
"counsel" means

(a) with respect to a panel review of a final determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada,

(b) with respect to a panel review of a final determination made in Mexico, a person entitled to appear as counsel before the Tribunal Fiscal de la Federación, and

(c) with respect to a panel review of a final determination made in the United States, a person entitled to appear as counsel before a federal court in the United States;

"counsel of record" means a counsel referred to in subrule 21(1);

"Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise, or the successor thereto, and includes any person authorized to perform a power, duty or function of the Deputy Minister under the *Special Import Measures Act*, as amended;

"final determination" means, in the case of Canada, a definitive decision within the meaning of subsection 77.01(1) of the *Special Import Measures Act*, as amended;

"first Request for Panel Review" means

(a) where only one Request for Panel Review is filed for review of a final determination, that Request, and

(b) where more than one Request for Panel Review is filed for review of the same final determination, the Request that is filed first;

"government information" means

(a) with respect to a panel review of a final determination made in Canada, information

(i) the disclosure of which would be injurious to international relations or national defence or security,

(ii) that constitutes a confidence of the Queen's Privy Council for Canada, or

(iii) contained in government-to-government correspondence that is transmitted in confidence,

(b) with respect to a panel review of a final determination made in Mexico, information the disclosure of which is prohibited under the laws and regulations of Mexico, including

(i) data, statistics and documents referring to national security and strategic activities for scientific and technological development, and

(ii) information contained in government-to-government correspondence that is transmitted in confidence, and

(c) with respect to a panel review of a final determination made in the United States, information classified in accordance with Executive Order No. 12065 or its successor;

"interested person" means a person who, pursuant to the laws of the country

in which a final determination was made, would be entitled to appear and be represented in a judicial review of the final determination;

"investigating authority" means the competent investigating authority that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a Proprietary Information Access Order, any person authorized by the investigating authority;

"involved Secretariat" means the section of the Secretariat located in the country of an involved Party;

"legal holiday" means

(a) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the Section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part,

(b) With respect to the Mexican Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Constitution Day (February 5), Benito Juárez's Birthday (March 21), Labor Day (May 1), Battle of Puebla (May 5), Independence Day (September 16), Congressional Opening Day (November 1), Revolution Day (November 20), Transmission of the Federal Executive Branch (every six years on December 1), Christmas Day (December 25), any day designated as a statutory holiday by the Federal Laws or, in the case of Ordinary Elections, by the Local Electoral Laws and any day on which the offices of the Mexican Section of the Secretariat are officially closed in whole or in part, and

(c) with respect to the United States Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United

States located in the District of Columbia or the offices of the United States Section of the Secretariat are officially closed in whole or in part;

"Mexico" means the United Mexican States;

"official publication" means

(a) in the case of the Government of Canada, the *Canada Gazette*;

(b) in the case of the Government of Mexico, the *Diario Oficial de la Federación*, and

(c) in the case of the Government of United States, the *Federal Register*;

"panel" means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement for the purpose of reviewing a final determination;

"participant" means any of the following persons who files a Complaint pursuant to rule 39 or a Notice of Appearance pursuant to rule 40:

(a) a Party,

(b) an investigating authority, and

(c) an interested person;

"Party" means the Government of Canada, the Government of Mexico or the Government of the United States;

"person" means

(a) an individual,

(b) a Party,

(c) an investigating authority,

(d) a government of a province, state or other political subdivision of the country of a Party,

(e) a department, agency or body of a Party or of a government referred to in paragraph (d), or

(f) a partnership, corporation or association;

"pleading" means a Request for Panel Review, a Complaint, a Notice of Appearance, a Change of Service Address, a Notice of Motion, a Notice of Change of Counsel of Record, a brief or any other written submission filed by a participant;

"privileged information" means

(a) with respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived,

(b) with respect to a panel review of a final determination made in Mexico,

(i) information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico, or

(ii) internal communications between officials of the Secretaría de Comercio y Fomento Industrial in charge of antidumping and countervailing duty

investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination, and

(c) with respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States with respect to which the privilege has not been waived;

"proof of service" means

(a) with respect to a panel review of a final determination made in Canada or Mexico,

(i) an affidavit of service stating by whom the document was served, the date on which it was served, where it was served and the manner of service, or

(ii) an acknowledgement of service by counsel for a participant stating by whom the document was served, the date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel, and

(b) with respect to a panel review of a final determination made in the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service;

"proprietary information" means

(a) with respect to a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the *Special Import Measures Act*, as amended, or subsection 45(3) of the *Canadian International Trade Tribunal Act*, as amended, with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information,

(b) with respect to a panel review of a final determination made in Mexico, *información confidencial*, as defined under article 80 of the *Ley de Comercio Exterior* and its regulations, and

(c) with respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the *Tariff Act of 1930*, as amended, and any regulations made under that Act;

"Proprietary Information Access Application" means

(a) with respect to a panel review of a final determination made in Canada,

a disclosure undertaking in the prescribed form, which form

(i) in respect of a final determination by the Deputy Minister, is available from the Deputy Minister, and

(ii) in respect of a final determination by the Tribunal, is available from the Tribunal,

(b) with respect to a panel review of a final determination made in Mexico, a disclosure undertaking in the prescribed form, which form is available from the Secretaría de Comercio y Fomento Industrial, and

(c) with respect to a panel review of a final determination made in the United States, a Protective Order Application

(i) in respect of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce, and

(ii) in respect of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission;

"Proprietary Information Access Order" means

(a) in the case of Canada, a Disclosure Order issued by the Deputy Minister or the Tribunal pursuant to a Proprietary Information Access Application,

(b) in the case of Mexico, a Disclosure Order issued by the Secretaría de Comercio y Fomento Industrial pursuant to a Proprietary Information Access Application, and

(c) in the case of the United States, a Protective Order issued by the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission pursuant to a Proprietary Information Access Application;

"responsible Secretariat" means the section of the Secretariat located in the country in which the final determination under review was made;

"responsible Secretary" means the Secretary of the responsible Secretariat;

"Secretariat" means the Secretariat established pursuant to Article 2002 of the Agreement;

"Secretary" means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary;

"service address" means

(a) with respect to a Party, the address filed with the Secretariat as the service

address of the Party, including any facsimile number submitted with that address,

(b) with respect to a participant other than a Party, the address of the counsel of record for the person, including any facsimile number submitted with that address or, where the person is not represented by counsel, the address set out by the participant in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the participant may be served, including any facsimile number submitted with that address, or

(c) where a Change of Service Address has been filed by a Party or participant, the address set out as the new service address in that form, including any facsimile number submitted with that address;

"service list" means, with respect to a panel review,

(a) where the final determination was made in Canada, a list comprising the other involved Party and

(i) in the case of a final determination made by the Deputy Minister, persons named on the list maintained by the Deputy Minister who participated in the proceedings before the Deputy Minister and who were exporters or importers of goods of the country of the other involved Party or complainants referred to in section 34 of the *Special Import Measures Act*, as amended, and

(ii) in the case of a final determination made by the Tribunal, persons named on the list maintained by the Tribunal of parties in the proceedings before the Tribunal who were exporters or importers of goods of the country of the other involved Party, complainants referred to in section 31 of the *Special Import Measures Act*, as amended, or other domestic parties whose interest in the findings of the Tribunal is with respect to goods of the country of the other involved Party, and

(b) where the final determination was made in Mexico or the United States, the list, maintained by the investigating authority of persons who have been served in the proceedings leading to the final determination;

"Tribunal" means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf;

"United States" means the United States of America.

4. The definitions set forth in Article 1911 of the Agreement and Annex 1911 to Chapter Nineteen of the Agreement are hereby incorporated into these rules.

5. Where these rules require that notice be given, it shall be given in writing.

Part I—General*Duration and Scope of Panel Review*

6. A panel review commences on the day on which a first Request for Panel Review is filed with the Secretariat and terminates on the day on which a Notice of Completion of Panel Review is effective.

7. A panel review shall be limited to
(a) the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review; and
(b) procedural and substantive defenses raised in the panel review.

Responsibilities of the Secretary

8. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9:00 a.m. to 5:00 p.m. on each weekday other than

(a) in the case of the United States Section of the Secretariat, legal holidays of that Section;

(b) in the case of the Canadian Section of the Secretariat, legal holidays of that Section; and

(c) in the case of the Mexican Section of the Secretariat, legal holidays of that Section.

9. The responsible Secretary shall provide administrative support for each panel review and shall make the arrangements necessary for the oral proceedings and meetings of each panel, including, if required, interpreters to provide simultaneous translation.

10. (1) Each Secretary shall maintain a file for each panel review. Subject to subrules (3) and (4), the file shall be comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules, in the panel review.

(2) The file number assigned to a first Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.

(3) Where, after notification of the selection of a panel pursuant to rule 42, a document is filed that is not provided for in these rules or that is not in accordance with the rules, the responsible Secretary may refer the unauthorized filing to the chairperson of the Panel for instructions, provided such authority has been delegated by the Panel to its chairperson pursuant to rule 17.

(4) On a referral referred to in subrule (3), the chairperson may instruct the responsible Secretary to

(a) retain the document in the file, without prejudice to a motion to strike such document; or

(b) return the document to the person who filed the document, without prejudice to a motion for leave to file the document.

11. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed in the office of the responsible Secretary in a panel review and of all orders and decisions issued by the panel.

12. Where under these rules a responsible Secretary is required to publish a notice or other document in the official publications of the involved Parties, the responsible Secretary and the other involved Secretary shall cause the notice or other document to be published in the official publication of the country in which that section of the Secretariat is located.

13. (1) Each Secretary and every member of the staff of the Secretariat shall, before taking up duties, file a Proprietary Information Access Application with each of the Deputy Minister, the Tribunal, the Secretaria de Comercio y Fomento Industrial, the International Trade Administration of the United States Department of Commerce and the United States International Trade Commission.

(2) Where a Secretary or a member of the staff of the Secretariat files a Proprietary Information Access Application in accordance with subrule (1), the appropriate investigating authority shall issue to the Secretary or to the member a Proprietary Information Access Order.

14. (1) The responsible Secretary shall file with the investigating authority one original, and any additional copies required by the investigating authority, of every Proprietary Information Access Application and any amendments or modifications thereto, filed by a panelist, assistant to a panelist, court reporter, interpreter or translator pursuant to rule 47.

(2) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter, interpreter and translator, before taking up duties in a panel review, files with the responsible Secretariat a copy of a Proprietary Information Access Order.

15. Where a document containing proprietary information or privileged information is filed with the responsible Secretariat, each involved Secretary shall ensure that

(a) the document is stored, maintained, handled and distributed in accordance with the terms of any applicable Proprietary Information Access Order;

(b) the inner wrapper of the document is clearly marked to indicate that it contains proprietary information or privileged information; and

(c) access to the document is limited to officials of, and counsel for, the investigating authority whose final determination is under review and

(i) in the case of proprietary information, the person who submitted the proprietary information to the investigating authority or counsel for that person and any persons who have been granted access to the information under a Proprietary Information Access Order with respect to the document, and

(ii) in the case of privileged information filed in a panel review of a final determination made in the United States, persons with respect to whom the panel has ordered disclosure of the privileged information under rule 52, if the persons have filed with the responsible Secretariat a Proprietary Information Access Order with respect to the document.

16. (1) Each Secretary shall permit access by any person to the information in the file in a panel review that is not proprietary information or privileged information and shall provide copies of that information on request and payment of an appropriate fee.

(2) Each Secretary shall, in accordance with subrule 15(c) and the terms of the applicable Proprietary Information Access Order or order of the panel,

(a) permit access to proprietary information or privileged information in the file of a panel review; and

(b) on payment of an appropriate fee, provide a copy of the information referred to in subrule (a).

(3) No document filed in a panel review shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a panel.

Internal Functioning of Panels

17. (1) A panel may adopt its own internal procedures, not inconsistent with these rules, for routine administrative matters.

(2) A panel may delegate to its chairperson

(a) the authority to accept or reject filings in accordance with subrule 10(4); and

(b) the authority to grant motions consented to by all participants, other than a motion filed pursuant to rule 20 or 52, a motion for remand of a final determination or a motion that is inconsistent with an order or decision previously made by the panel.

(3) A decision of the chairperson referred to in subrule (2) shall be issued as an order of the panel.

(4) Subject to subrule 26(b), meetings of a panel may be conducted by means of a telephone conference call.

18. Only panelists may take part in the deliberations of a panel, which shall take place in private and remain secret. Staff of the involved Secretariats and assistants to panelists may be present by permission of the panel.

Computation of Time

19. (1) In computing any time period fixed in these rules or by an order or decision of a panel, the day from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

20. (1) A panel may extend any time period fixed in these rules if

(a) adherence to the time period would result in unfairness or prejudice to a participant or the breach of a general legal principle of the country in which the final determination was made;

(b) the time period is extended only to the extent necessary to avoid the unfairness, prejudice or breach;

(c) the decision to extend the time period is concurred in by four of the five panelists; and

(d) in fixing the extension, the panel takes into account the intent of the rules to secure just, speedy and inexpensive reviews of final determinations.

(2) A participant may request an extension of time by filing a Notice of Motion no later than the tenth day prior to the last day of the time period. Any response to the Notice of Motion shall be filed no later than seven days after the Notice of Motion is filed.

(3) A participant who fails to request an extension of time pursuant to subrule (2) may file a notice of motion for leave to file out of time, which shall include reasons why additional time is required and why the participant has failed to comply with the provisions of subrule (2).

(4) The panel will normally rule on such a motion before the last day of the time period which is the subject of the motion.

Counsel of Record

21. (1) A counsel who signs a document filed pursuant to these rules

on behalf of a participant shall be the counsel of record for the participant from the date of filing until a change is effected in accordance with subrule (2).

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants.

Filing, Service and Communications

22. (1) Subject to subrule 46(1), rule 47 and subrules 52(3) and 73(2)(a), no document is filed with the Secretariat until one original and eight copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) The responsible Secretariat shall accept, date and time stamp and place in the appropriate file every document submitted to the responsible Secretariat.

(3) Receipt, date and time stamping or placement in the file of a document by the responsible Secretariat does not constitute a waiver of any time period fixed for filing or an acknowledgement that the document has been filed in accordance with these rules.

23. The responsible Secretary shall be responsible for the service of

(a) Notices of Intent to Commence Judicial Review and Complaints on Each Party;

(b) Requests for Panel Review on the Parties, the Investigating authority and the persons listed on the service list; and

(c) Notices of Appearance, Proprietary Information Access Orders granted to panelists, assistants to panelists, court reporters, interpreter or translators and any amendments or modifications thereto or notices of revocation thereof, decisions and orders of a panel, Notices of Final Panel Action and Notices of Completion of Panel Review on the participants.

24. (1) Subject to subrules (4) and (5), all documents filed by a participant, other than the administrative record, any supplementary remand record and any document required by rule 23 to be served by the responsible Secretary, shall be served by the participant on the counsel of record of each of the other participants, or where a participant is not represented by counsel, on the participant.

(2) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(3) Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate

of service shall be the day on which the document is consigned to the expedited delivery courier or expedited mail services.

(4) A document containing proprietary information or privileged information shall be filed and served under seal in accordance with rule 44, and shall be served only on

(a) the investigating authority; and
(b) participants who have been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel.

(5) A complainant shall serve a Complaint on the investigating authority and on all persons listed on the service list.

25. Subject to subrule 26(a), a document may be served by

(a) delivering a copy of the document to the service address of the participant;

(b) sending a copy of the document to the service address of the participant by facsimile transmission or by expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or

(c) personal service on the participant.

26. Where proprietary information or privileged information is disclosed in a panel review to a person pursuant to a Proprietary Information Access Order, the person shall not

(a) file, serve or otherwise communicate the proprietary information or privileged information by facsimile transmission; or

(b) communicate the proprietary information or privileged information by telephone.

27. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority.

Pleadings and Simultaneous Translation of Panel Reviews in Canada

28. Rules 29 to 31 apply with respect to a panel review of a final determination made in Canada.

29. Either English or French may be used by any person or panelist in any document or oral proceeding.

30. (1) Subject to subrule (2), any order or decision including the reasons therefor, issued by a panel shall be made available simultaneously in both English and French where

(a) in the opinion of the panel, the order or decision is in respect of a question of law of general public interest or importance; or

(b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where

(a) an order or decision issued by a panel is not required by subrule (1) to be made available simultaneously in English and French, or

(b) an order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the panel is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant, the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

31. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of oral proceedings in a panel review, the request shall be made as early as possible in the panel review and preferably at the time of filing a Complaint or Notice of Appearance.

(3) Where the chairperson of a panel is of the opinion that there is a public interest in the panel review, the chairperson may direct the responsible Secretary to arrange for simultaneous translation of any of the oral proceedings in the panel review.

Costs

32. Each participant shall bear the costs of, and those incidental to, its own participation in a panel review.

Part II—Commencement of Panel Review**Notice of Intent to Commence Judicial Review**

33. (1) Where an interested person intends to commence judicial review of a final determination, the interested person shall

(a) where the final determination was made in Canada, publish a notice to that effect in the *Canada Gazette* and serve a Notice of Intent to Commence Judicial Review on both involved Secretaries and on all persons listed on the service list; and

(b) where the final determination was made in Mexico or the United States, within 20 days after the date referred to in subrule (3) (b) or (c), serve a Notice of Intent to Commence Judicial Review on

(i) both involved Secretaries,
(ii) the investigating authority, and
(iii) all persons listed on the service list.

(2) Where the final determination referred to in subrule (1) was made in Canada, the Secretary of the Canadian Section of the Secretariat shall serve a copy of the Notice of Intent to Commence Judicial Review on the investigating authority.

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) shall include the following information (model form provided in the Schedule):

(a) the information set out in subrules 55(1) (c) to (f);

(b) the title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority and, if the final determination was published in an official publication, the appropriate citation, including the date of publication; and

(c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication.

Request for Panel Review

34. (1) A Request for Panel Review shall be made in accordance with the requirements of

(a) section 77.011 or 96.21 of the *Special Import Measures Act*, as amended, and any regulations made thereunder;

(b) section 516A of the *Tariff Act of 1930*, as amended, and any regulations made thereunder;

(c) section 404 of the United States *North American Free Trade Agreement Implementation Act* and any regulations made thereunder; or

(d) articles 97 and 98 of the *Ley de Comercio Exterior* and its regulations.

(2) A Request for Panel Review shall contain the following information (model form provided in the Schedule):

(a) the information set out in subrule 55(1);

(b) the title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority and, if the final determination was published in an official publication, the appropriate citation;

(c) the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication;

(d) where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect; and

(e) the service list, as defined in rule 3.

35. (1) On receipt of a first Request for Panel Review, the responsible Secretary shall

(a) forthwith forward a copy of the Request to the other involved Secretary;

(b) forthwith inform the other involved Secretary of the Secretariat file number; and

(c) serve a copy of the first Request for Panel Review on the persons listed on the service list together with a statement setting out the date on which the Request was filed and stating that

(i) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review.

(ii) a Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review, and

(iii) the panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

(2) On the filing of a first Request for Panel Review, the responsible Secretary shall forthwith publish a notice of that Request in the official publications of the involved Parties, stating that a Request for Panel Review has been received and specifying the date on which the Request was filed, the final determination for which panel review is requested and the information set out in subrule (1)(c).

Joint Panel Reviews

36. (1) Subject to rule 37, where

(a) a panel is established to review a final determination made under paragraph 41(1)(a) of the *Special Import Measures Act*, as amended, with respect to particular goods of the United States or Mexico and a Request for Panel

Review of a final determination made under subsection 43(1) of that Act with respect to those goods is filed, or

(b) a panel is established to review a final determination made under section 705(a) or 735(a) of the *Tariff Act of 1930*, as amended, with respect to particular goods of Canada or Mexico and a Request for Panel Review of a final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed,

within 10 days after that Request is filed, a participant in the former panel review, the investigating authority in the latter panel review or an interested person listed in the service list of the latter panel review may file a motion in the former panel review requesting that both final determinations be reviewed jointly by one panel.

(2) Any participant in the former panel review, the investigating authority in the latter panel review or an interested person listed in the service list of the latter panel review who certifies an intention to become a participant in the latter panel review may, within 10 days after a motion is filed under subrule (1), file an objection to the motion, in which case the motion shall be deemed to be denied and separate panel reviews shall be held.

37. (1) Where a panel is established to review a final determination made under paragraph 41(1)(a) of the *Special Import Measures Act*, as amended, that applies with respect to particular goods of the United States or Mexico and a Request for Panel Review of a negative final determination made under subsection 43(1) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

(2) Where a panel is established to review a final determination made under section 705(a) or 735(a) of the *Tariff Act of 1930*, as amended, that applies with respect to particular goods of Canada or Mexico and a Request for Panel Review of a negative final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

38. (1) Subject to subrules (2) and (3), where final determinations are reviewed jointly pursuant to rule 36 or 37, the time periods fixed under these rules for the review of the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended, shall apply to the joint review, commencing with the date fixed for filing briefs pursuant to rule 57.

(2) Unless otherwise ordered by a panel as a result of a motion under subrule (3), where final determinations are reviewed jointly pursuant to rule 37, the panel shall issue its decision with respect to the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended, and where the panel remands the final determination to the investigating authority and the Determination on Remand is affirmative, the panel shall thereafter issue its decision with respect to the final determination made under paragraph 41(1)(a) of the *Special Import Measures Act*, as amended, or section 705(a) or 735(a) of the *Tariff Act of 1930*, as amended.

(3) Where the final determinations are reviewed jointly pursuant to rule 36 or 37, any participant may, unilaterally or with the consent of the other participants, request by motion that time periods, other than the time periods referred to in subrule (1), be fixed for the filing of pleadings, oral proceedings, decisions and other matters.

(4) A Notice of Motion pursuant to subrule (3) shall be filed no later than 10 days after the date fixed for filing Notices of Appearance in the review of the final determination made under subsection 43(1) of the *Special Import Measures Act*, as amended, or section 705(b) or 735(b) of the *Tariff Act of 1930*, as amended.

(5) Unless otherwise ordered by a panel, where the panel has not issued a ruling on a motion filed pursuant to subrule (3) within 30 days after the filing of the Notice of Motion, the motion shall be deemed denied.

Complaint

39. (1) Subject to subrule (3), any interested person who intends to make allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority, with respect to a final determination, shall file with the responsible Secretariat, within 30 days after the filing of a first Request for Panel Review of the final determination, a Complaint, together with proof of service on the investigating authority and on all persons listed on the service list.

(2) Every Complaint referred to in subrule (1) shall contain the following information (model form provided in the Schedule):

(a) the information set out in subrule 55(1);

(b) the precise nature of the Complaint, including the applicable standard of review and the allegations of

errors of fact or law, including challenges to the jurisdiction of the investigating authority;

(c) a statement describing the interested person's entitlement to file a Complaint under this rule; and

(d) where the final determination was made in Canada, a statement as to whether the complainant

(i) intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) requests simultaneous translation of any oral proceedings.

(3) Only an interested person who would otherwise be entitled to commence proceedings for judicial review of the final determination may file a Complaint.

(4) Subject to subrule (5), an amended Complaint shall be filed no later than 5 days before the expiration of the time period for filing a Notice of Appearance pursuant to rule 40.

(5) An amended Complaint may, with leave of the panel, be filed after the time limit set out in subrule (4) but no later than 20 days before the expiration of the time period for filing briefs pursuant to subrule 57(1).

(6) Leave to file an amended Complaint may be requested of the panel by the filing of a Notice of Motion for leave to file an amended Complaint accompanied by the proposed amended Complaint.

(7) Where the panel does not grant a motion referred to in subrule (6) within the time period for filing briefs pursuant to subrule 57(1), the motion shall be deemed to be denied.

Notice of Appearance

40. (1) Within 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other interested person who proposes to participate in the panel review and who has not filed a Complaint in the panel review shall file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in the Schedule):

(a) the information set out in subrule 55(1);

(b) a statement as to the basis for the person's claim of entitlement to file a Notice of Appearance under this rule;

(c) in the case of a Notice of Appearance filed by the investigating authority, any admissions with respect to the allegations set out in the Complaints;

(d) a statement as to whether appearance is made

(i) in support of some or all of the allegations set out in a Complaint under subrule 39(2)(b),

(ii) in opposition to some or all of the allegations set out in a Complaint under subrule 39(2)(b), or

(iii) in support of some of the allegations set out in a Complaint under subrule 39(2)(b) and in opposition to some of the allegations set out in a Complaint under subrule 39(2)(b); and

(e) where the final determination was made in Canada, a statement as to whether the person filing the Notice of Appearance

(i) intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Any complainant who intends to appear in opposition to allegations set out in a Complaint under subrule 39(2)(b) shall file a Notice of Appearance containing the statements referred to in subrules (1)(b) and (1)(d) (ii) or (iii).

Record for Review

41. (1) The investigating authority whose final determination is under review shall, within 15 days after the expiration of the time period fixed for filing a Notice of Appearance, file with the responsible Secretariat

(a) nine copies of the final determination, including reasons for the final determination;

(b) two copies of an Index comprised of a descriptive list of all items contained in the administrative record, together with proof of service of the Index on all participants; and

(c) subject to subrules (3), (4) and (5), two copies of the administrative record.

(2) An Index referred to in subrule (1) shall, where applicable, identify those items that contain proprietary information, privileged information or government information by a statement to that effect.

(3) Where a document containing proprietary information is filed, it shall be filed under seal in accordance with rule 44.

(4) No privileged information shall be filed with the responsible Secretariat unless the investigating authority waives the privilege and voluntarily files the information or the information is filed pursuant to an order of a panel.

(5) No government information shall be filed with the responsible Secretariat unless the investigating authority, after having reviewed the government information and, where applicable, after having pursued appropriate review procedures, determines that the information may be disclosed.

Part III—Panels

Announcement of Panel

42. On the completion of the selection of a panel, the responsible Secretary shall notify the participants and the other involved Secretary of the names of the panelists.

Violation of Code of Conduct

43. Where a participant believes that a panelist or an assistant to a panelist is in violation of the Code of Conduct, the participant shall forthwith notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other involved Secretary and the involved Parties of the allegations.

Part IV—Proprietary Information and Privileged Information

Filing or Service Under Seal

44. (1) Where, under these rules, a document containing proprietary information or privileged information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this rule and, where the document is a pleading, in accordance with rule 56.

(2) A document filed or served under seal shall be

(a) bound separately from all other documents;

(b) clearly marked

(i) with respect to a panel review of a final determination made in Canada,

(A) in the case of a document containing proprietary information, "Proprietary", "Confidential", "De nature exclusive" or "Confidentiel", and

(B) in the case of a document containing privileged information, "Privileged" or "Protégé",

(ii) with respect to a panel review of a final determination made in Mexico,

(A) in the case of a document containing proprietary information, "Confidential", and

(B) in the case of a document containing privileged information, "Privilegiada", and

(iii) with respect to a panel review of a final determination made in the United States,

(A) in the case of a document containing proprietary information, "Proprietary", and

(B) in the case of a document containing privileged information, "Privileged"; and

(c) contained in an opaque inner wrapper and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall indicate

(a) that proprietary information or privileged information is enclosed, as the case may be; and

(b) the Secretariat file number of the panel review.

45. Filing or service of proprietary information or privileged information with the Secretariat does not constitute a waiver of the designation of the information as proprietary information or privileged information.

Proprietary Information Access Orders

46. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who wishes disclosure of proprietary information in a panel review shall file a Proprietary Information Access Application with respect to the proprietary information as follows:

(a) with the responsible Secretariat, four copies; and

(b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Proprietary Information Access Application referred to in subrule (1) shall be served

(a) where the Proprietary Information Access Application is filed before the expiration of the time period fixed for filing a Notice of Appearance in the panel review, on the persons listed in the service list; and

(b) in any other case, on all participants other than the investigating authority, in accordance with subrule 24(1).

47. (1) Every panelist, assistant to a panelist, court reporter, interpreter and translator shall, before taking up duties in a panel review, provide to the responsible Secretary a Proprietary Information Access Application.

(2) A panelist, assistant to a panelist, court reporter, interpreter or translator who amends or modifies a Proprietary Information Access Application shall provide the responsible Secretariat with a copy of the amendment or modification.

(3) Where the investigating authority receives, pursuant to subrule 14(1), a Proprietary Information Access Application or an amendment or modification thereto, the investigating authority shall issue a Proprietary Information Access Order, amendment or modification accordingly.

48. The investigating authority shall, within 30 days after a Proprietary Information Access Application is filed in accordance with subrule 46(1), serve on the person who filed the Proprietary Information Access Application

(a) a Proprietary Information Access Order; or

(b) a notification in writing setting out the reasons why a Proprietary Information Access Order is not issued.

49. (1) Where

(a) an investigating authority refuses to issue a Proprietary Information Access Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record, or

(b) an investigating authority issues a Proprietary Information Access Order with terms unacceptable to the counsel of record, the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the panel review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the panel decides that a Proprietary Information Access Order should be issued or that the terms of a Proprietary Information Access Order should be modified or amended, the panel shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the panel may issue such orders as are just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

50. (1) Where a Proprietary Information Access Order is issued to a person in a panel review, the person shall file with the responsible Secretariat a copy of the Proprietary Information Access Order.

(2) Where a Proprietary Information Access Order is revoked, amended or modified by the investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment or modification.

51. Where a Proprietary Information Access Order is issued to a person, the person is entitled

- (a) to access to the document; and
- (b) where the person is a counsel of record, to a copy of the document containing the proprietary information, on payment of an appropriate fee, and to service of pleadings containing the proprietary information.

Privileged Information

52. (1) A Notice of Motion for disclosure of a document in the administrative record identified as

containing privileged information shall set out

(a) the reasons why disclosure of the document is necessary to the case of the participant filing the Notice of Motion; and

(b) a statement of any point of law or legal authority relied on, together with a concise argument in support of disclosure.

(2) Within 10 days after a Notice of Motion referred to in subrule (1) is filed, the investigating authority shall, if it intends to respond, file the following in response:

(a) an affidavit of an official of the investigating authority stating that, since the filing of the Notice of Motion, the official has examined the document and has determined that disclosure of the document would constitute disclosure of privileged information; and

(b) a statement of any point of law or legal authority relied on, together with a concise argument in support of non-disclosure.

(3) After having reviewed the Notice of Motion referred to in subrule (1) and any response filed under subrule (2), the panel may order

(a) that the document shall not be disclosed; or

(b) that the investigating authority file two copies of the document under seal with the responsible Secretariat.

(4) Where the panel has issued an order pursuant to subrule (3)(b), the panel shall select two panelists, one of whom shall be a lawyer who is a citizen of the country of one involved Party and the other of whom shall be a lawyer who is a citizen of the country of the other involved Party.

(5) The two panelists selected under subrule (4) shall

(a) examine the document *in camera*; and

(b) communicate their decision, if any, to the panel.

(6) The decision referred to in subrule (5)(b) shall be issued as an order of the panel.

(7) Where the two panelists selected under subrule (4) fail to come to a decision, the panel shall

(a) examine the document *in camera*; and

(b) issue an order with respect to the disclosure of the document.

(8) Where an order referred to in subrule (6) or (7) is to the effect that the document shall not be disclosed, the responsible Secretary shall return all copies of the document to the investigating authority by service under seal.

53. In a panel review of a final determination made in the United

States, where, pursuant to rule 52, disclosure of a document is granted,

(a) the panel shall limit disclosure to (i) persons who must have access in order to permit effective representation in the panel review,

(ii) persons, such as the Secretariat staff, court reporters, interpreters and translators, who must have access for administrative purposes in order to permit effective functioning of the panel, and

(iii) members of an Extraordinary Challenge Committee and their assistants who may need access pursuant to the *NAFTA Extraordinary Challenge Committee Rules*;

(b) the panel shall issue an order identifying by name and by title or position the persons who are entitled to access and shall allow for future access by new counsel of record and by members of an Extraordinary Challenge Committee and, as necessary, their assistants; and

(c) the investigating authority shall issue a Proprietary Information Access Order with respect to that document in accordance with the order of the panel.

Violations of Proprietary Information Access Applications or Orders

54. Where a person alleges that the terms of a Proprietary Information Access Application or of a Proprietary Information Access Order have been violated, the panel shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.034 of the *Special Import Measures Act*, as amended, section 777(f) of the *Tariff Act of 1930*, as amended, or article 93 of the *Ley de Comercio Exterior*.

Part V—Written Proceedings

Form and Content of Pleadings

55. (1) Every pleading filed in a panel review shall contain the following information:

(a) the title of, and any Secretariat file number assigned for, the panel review;

(b) a brief descriptive title of the pleading;

(c) the name of the Party, investigating authority or interested person filing the document;

(d) the name of counsel of record for the Party, investigating authority or interested person;

(e) the service address, as defined in rule 3; and

(f) the telephone number of the counsel of record referred to in subrule (d) or, where an interested person is not represented by counsel, the telephone number of the interested person.

(2) Every pleading filed in a panel review shall be on paper 8½ x 11 inches (216 millimetres by 279 millimeters) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimetres) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form. Briefs and appendices shall be securely bound along the left-hand margin.

(3) Every pleading filed on behalf of a participant in a panel review shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

56. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the proprietary information shall be filed under seal and

(i) with respect to a panel review of a final determination made in Canada, shall be labelled "Proprietary", "Confidential", "Confidentiel" or "De nature exclusive", with the top of each page that contains proprietary information marked with the word "Proprietary", "Confidential", "Confidentiel" or "De nature exclusive" and with the proprietary information enclosed in brackets,

(ii) with respect to a panel review of a final determination made in Mexico, shall be labelled "Confidential", with the top of each page that contains proprietary information marked with the word "Confidential" and with the proprietary information enclosed in brackets, and

(iii) with respect to a panel review of a final determination made in the United States, shall be labelled "Proprietary",

with the top of each page that contains proprietary information marked with the word "Proprietary" and with the proprietary information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing proprietary information shall be filed and

(i) with respect to a panel review of a final determination made in Canada, shall be labelled "Non-Proprietary", "Non-Confidential", "Non confidentiel" or "De nature non exclusive",

(ii) with respect to a panel review of a final determination made in Mexico, shall be labelled "No-confidential", and

(iii) with respect to a panel review of a final determination made in the United States, shall be labelled "Non-Proprietary", with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the privileged information shall be filed under seal and

(i) with respect to a panel review of a final determination made in Canada, shall be labelled "Privileged" or "Protégé", with the top of each page that contains privileged information marked with the word "Privileged" or "Protégé" and with the privileged information enclosed in brackets,

(ii) with respect to a panel review of a final determination made in Mexico, shall be labelled "Privilegiada", with the top of each page that contains privileged information marked with the word "Privilegiada", and with the privileged information enclosed in brackets, and

(iii) with respect to a panel review of a final determination made in the United States, shall be labelled "Privileged", with the top of each page that contains privileged information marked with the word "Privileged" and with the privileged information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing privileged information shall be filed and

(i) with respect to a panel review of a final determination made in Canada, shall be labelled "Non-Privileged" or "Non protégé",

(ii) with respect to a panel review of a final determination made in Mexico, shall be labelled "No-privilegiada", and

(iii) with respect to a panel review of a final determination made in the United States, shall be labelled "Non-Privileged",

with each page from which privileged information has been deleted marked to indicate the location from which the privileged information was deleted.

Filing of Briefs

57. (1) Subject to subrule 38(1), every participant who has filed a Complaint under rule 39 or a Notice of Appearance with a statement under subrule 40(1)(d)

(i) or (iii) shall file a brief, setting forth grounds and arguments supporting allegations of the Complaint no later than 60 days after the expiration of the time period fixed, under subrule 41(1), for filing the administrative record.

(2) Every participant who has filed a Notice of Appearance with a statement under subrule 40(1)(d) (ii) or (iii) shall file a brief setting forth grounds and arguments opposing allegations of a Complaint no later than 60 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) Every participant who has filed a brief pursuant to subrule (1) may file a brief replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2) no later than 15 days after the expiration of the time period for filing of briefs referred to in subrule (2). Reply briefs shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) An appendix containing authorities cited in all briefs filed under any of subrules (1) to (3) shall be filed with the responsible Secretariat within 10 days after the last day on which a brief under subrule (3) may be filed.

(5) Any number of participants may join in a single brief and any participant may adopt by reference any part of the brief of another participant.

(6) A participant may file a brief without appearing to present oral argument.

(7) Where a panel review of a final determination made by an investigating authority of the United States with respect to certain goods involves issues that may relate to the final determination of the other investigating authority with respect to those goods, the latter investigating authority may file an *amicus curiae* brief in the panel review in accordance with subrule (2).

Failure to File Briefs

58. (1) In respect of a panel review of a final determination made in the United States or Canada, where a participant fails to file a brief within the time period fixed and no motion pursuant to rule 20 is pending, on a motion of another participant, the panel may order that the participant who fails to file a brief is not entitled

(a) to present oral argument;

(b) to service of any further pleadings, orders or decisions in the panel review; or

(c) to further notice of the proceedings in the panel review.

(2) Where

(a) no brief is filed by any complainant or by any participant in support of any of the complainants

within the time periods established pursuant to these rules, and

(b) no motion pursuant to rule 20 is pending, the panel may, on its own motion or pursuant to the motion of a participant, issue an order to show cause why the panel review should not be dismissed.

(3) If, pursuant to an order under subrule (2), good cause is not shown, the panel shall issue an order dismissing the panel review.

(4) Where no brief is filed by an investigating authority, or by an interested person in support of the investigating authority, within the time period fixed in subrule 57(2), a panel may issue a decision referred to in rule 72.

Content of Briefs and Appendices

59. (1) Every brief filed pursuant to subrule 57 (1) or (2) shall contain information, in the following order, divided into five parts:

Part I:

- (a) A table of contents; and
- (b) A table of authorities cited:

The table of authorities shall contain references to all treaties, statutes and regulations cited, any cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to except documents from the administrative record. The table of authorities shall refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied on.

Part II: A statement of the case:

(a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 57(1), this Part shall contain a concise statement of the relevant facts;

(b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 57(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to the statement of facts set out in the briefs referred to in paragraph (a), including a concise statement of other facts relevant to its case; and

(c) in all briefs, references to evidence in the administrative record shall be made by page and, where practicable, by line.

Part III: A statement of the issues:

(a) in the brief of a complainant or of a participant filing a brief pursuant to subrule 57(1), this Part shall contain a concise statement of the issues; and

(b) in the brief of an investigating authority or of a participant filing a brief pursuant to subrule 57(2), this Part shall contain a concise statement of the position of the investigating authority or

the participant with respect to each issue relevant to its case.

Part IV: Argument:

This Part shall consist of the argument setting out concisely the points of law relating to the issues, with applicable citations to authorities and the administrative record

Part V: Relief:

This part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) A reply brief filed pursuant to rule 57(3) shall include a table of contents and a table of authorities, indicating those principally relied upon in the argument.

Appendix to the Briefs

60. (1) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to in the briefs except documents from the administrative record.

(2) The appendix required under subrule 57(4) shall be compiled by a participant who filed a brief under subrule 57(1) and who was so designated by all the participants who filed a brief. Each participant who filed a brief under subrule 57(2) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in any other brief filed under subrule 57(1). Each participant who filed a brief under subrule 57(3) shall provide the designated participant with a copy of each authority on which it primarily relied in its brief that was not primarily relied on in briefs filed pursuant to subrule 57 (1) or (2).

(3) The costs for compiling the appendix shall be borne equally by all participants who file briefs.

Motions

61. (1) A motion shall be made by Notice of Motion in writing (model form provided in the Schedule) unless the circumstances make it unnecessary or impracticable.

(2) Every Notice of Motion, and any affidavit in support thereof, shall be accompanied by a proposed order of the panel (model form provided in the Schedule) and shall be filed with the responsible Secretariat, together with proof of service on all participants.

(3) Every Notice of Motion shall contain the following information:

(a) the title of the panel review, the Secretariat file number for that panel

review and a brief descriptive title indicating the purpose of the motion;

(b) a statement of the precise relief requested;

(c) a statement of the grounds to be argued, including a reference to any rule, point of law or legal authority to be relied on, together with a concise argument in support of the motion; and

(d) where necessary, references to evidence in the administrative record identified by page and, where practicable, by line.

(4) The pendency of any motion in a panel review shall not alter any time period fixed in these rules or by an order or decision of the panel.

(5) A Notice of Motion to which all participants consent shall be entitled a Consent Motion.

62. Subject to subrules 20(2) and 76(5), unless the panel otherwise orders, a participant may file a response to a Notice of Motion within 10 days after the Notice of Motion is filed.

63. (1) A panel may dispose of a motion based upon the pleadings filed pertaining to the motion.

(2) The panel may hear oral argument or, subject to subrule 26(b), direct that a motion be heard by means of a telephone conference call with the participants.

(3) A panel may deny a motion before responses to the Notice of Motion have been filed.

64. Where a panel chooses to hear oral argument or, pursuant to subrule 63(2), directs that a motion be heard by means of a telephone conference call with the participants, the responsible Secretary shall, at the direction of the chairperson, fix a date, time and place for the hearing of the motion and shall notify all participants of the same.

Part VI—Oral Proceedings

Location

65. Oral proceedings in a panel review shall take place at the office of the responsible Secretariat or at such other location as the responsible Secretary may arrange.

Pre-hearing Conference

66. (1) A panel may hold a pre-hearing conference, in which case the responsible Secretary shall give notice of the conference to all participants.

(2) A participant may request that the panel hold a pre-hearing conference by filing with the responsible Secretariat a written request setting out the matters that the participant proposes to raise at the conference.

(3) The purpose of a pre-hearing conference shall be to facilitate the expeditious advancement of the panel review by addressing such matters as

(a) the clarification and simplification of the issues;

(b) the procedure to be followed at the hearing of oral argument; and

(c) any outstanding motions.

(4) Subject to subrule 26(b), a pre-hearing conference may be conducted by means of a telephone conference call.

(5) Following a pre-hearing conference, the panel shall promptly issue an order setting out its rulings with respect to the matters considered at the conference.

Oral Argument

67. (1) A panel shall commence the hearing of oral argument no later than 30 days after the expiration of the time period fixed under subrule 57(3) for filing reply briefs. At the direction of the panel, the responsible Secretary shall notify all participants of the date, time and place for the oral argument.

(2) Oral argument shall be subject to the time constraints set by the panel and shall, unless the panel otherwise orders, be presented in the following order:

(a) the complainants and any participant who filed a brief in support of the allegations set out in a Complaint or partly in support of the allegations set out in a Complaint and partly in opposition to the allegations set out in a Complaint;

(b) the investigating authority and any participant who filed a brief in opposition to the allegations set out in a Complaint, other than a participant referred to in subrule (a); and

(c) argument in reply, at the discretion of the panel.

(3) If a participant fails to appear at oral argument, the panel may hear argument on behalf of the participants who are present. If no participant appears, the panel may decide the case on the basis of briefs.

(4) Oral argument on behalf of a participant on a motion or at a hearing shall be conducted by the counsel of record for that participant or, where the participant is an individual appearing *pro se*, by the participant.

(5) Oral argument shall be limited to the issues in dispute.

Subsequent Authorities

68. (1) A participant who has filed a brief may bring to the attention of the panel,

(a) at any time before the conclusion of oral argument, an authority that is relevant to the panel review;

(b) at any time after the conclusion of oral argument and before the panel has issued its decision,

(i) an authority that was reported subsequent to the conclusion of oral argument, or

(ii) with the leave of the panel, an authority that is relevant to the panel review and that came to the attention of counsel of record after the conclusion of oral argument, by filing with the responsible Secretariat a written request, setting out the citation of the decision or judgment, the page reference of the brief of the participant to which the decision or judgment relates and a concise statement, of no more than one page in length, of the relevance of the decision or judgment.

(2) A request referred to in subrule (1) shall be filed as soon as possible after the issuance of the decision or judgment by the court.

(3) Where a request referred to in subrule (1) is filed with the responsible Secretariat, any other participant may, within five days after the date on which the request was filed, file a concise statement, of no more than one page in length, in response.

Oral Proceedings in Camera

69. During that part of oral proceedings in which proprietary information or privileged information is presented, a panel shall not permit any person other than the following persons to be present:

(a) the person presenting the proprietary information or privileged information;

(b) a person who has been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel;

(c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and

(d) officials of, and counsel for, the investigating authority.

Part VII—Decisions and Completions of Panel Reviews

Orders, Decisions and Terminations

70. The responsible Secretary shall cause notice of every decision of a panel issued pursuant to rule 72 to be published in the official publications of the involved Parties.

71. (1) Where a Notice of Motion requesting dismissal of a panel review is filed by a participant, the panel may issue an order dismissing the panel review.

(2) Where a Notice of Motion requesting termination of a panel review is filed by a participant and is consented to by all the participants, and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

72. A panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of the panelists, in accordance with Article 1904.8 of the Agreement. The decision will normally be released by noon on the date of issuance.

Panel Review of Action on Remand

73. (1) An investigating authority shall give notice of the action taken pursuant to a remand of the panel by filing with the responsible Secretariat a Determination on Remand within the time specified by the panel.

(2) If, on remand, the investigating authority has supplemented the administrative record,

(a) the investigating authority shall file with the responsible Secretariat an Index listing each item in the supplementary remand record, and a copy of each non-privileged item listed in that Index, within five days after the date on which the investigating authority filed the Determination on Remand with the panel;

(b) any participant who intends to challenge the Determination on Remand shall file a written submission with respect to the Determination on Remand within 20 days after the date on which the investigating authority filed the Index and supplementary remand record; and

(c) any response to the written submissions referred to in subrule (b) shall be filed by the investigating authority, and by any participant supporting the investigating authority, within 20 days after the last day on which written submissions in opposition to the Determination on Remand may be filed.

(3) If, on remand, the investigating authority has not supplemented the record,

(a) any participant who intends to challenge the Determination on Remand shall file a written submission within 20 days after the date on which the investigating authority filed the Determination on Remand with the panel; and

(b) any response to the written submissions referred to in subrule (a) shall be filed by the investigating authority, and by any participant filing in support of the investigating authority, within 20 days after the last day on which such written submissions may be filed.

(4) In the case of a panel review of a final determination made in Mexico, where a participant who fails to file a brief under rule 57 files a written submission pursuant to subrule (2) or (3), the submission shall be disregarded by the panel.

(5) If no written submissions are filed under subrule (2)(b) or (3)(a) within the time periods established by these rules, and if no motion pursuant to rule 20 is pending, the panel shall, within 10 days after the later of the due date for such written submissions and the date of the denial of a motion pursuant to rule 20, issue an order affirming the investigating authority's Determination on Remand.

(6) Where a Determination on Remand is challenged, the panel shall issue a written decision pursuant to rule 72, either affirming the Determination on Remand or remanding it to the investigating authority, no later than 90 days after the Determination on Remand is filed.

74. In setting the date by which a Determination on Remand shall be due from the investigating authority, the panel shall take into account, among other factors,

(a) the date that any Determination on Remand with respect to the same goods is due from the other investigating authority; and

(b) the effect the Determination on Remand from the other investigating authority might have on the deliberations of the investigating authority with respect to the making of a final Determination on Remand.

Re-examination of Orders and Decisions

75. A clerical error in an order or decision of a panel, or an error in an order or decision of a panel arising from any accidental oversight, inaccuracy or omission, may be corrected by the panel at any time during the panel review.

76. (1) A participant may, within 10 days after a panel issues its decision, file a Notice of Motion requesting that the panel re-examine its decision for the purpose of correcting an accidental oversight, inaccuracy or omission, which shall set

(a) the oversight, inaccuracy or omission with respect to which the request is made;

(b) the relief requested; and

(c) if ascertainable, a statement as to whether other participants consent to the motion.

(2) The grounds for a motion referred to in subrule (1) shall be limited to one or both of the following grounds:

(a) that the decision does not accord with the reasons therefor; or

(b) that some matter has been accidentally overlooked, stated inaccurately or omitted by the panel.

(3) No Notice of Motion referred to in subrule (1) shall set out any argument already made in the panel review.

(4) There shall be no oral argument in support of a motion referred to in subrule (1).

(5) Except as the panel may otherwise order under subrule (6)(b), no participant shall file a response to a Notice of Motion filed pursuant to subrule (1).

(6) Within seven days after the filing of a Notice of Motion under subrule (1), the panel shall

(a) issue a decision ruling on the motion; or

(b) issue an order identifying further action to be taken concerning the motion.

(7) A decision or order under subrule (6) may be made with the concurrence of any three panelists.

Part VIII—Completion of Panel Review

77. (1) Subject to subrule (2), when a panel issues:

(a) an order dismissing a panel review under subrule 58(3) or 71(1),

(b) a decision under rule 72 or subrule 73(6) that is the final action in the panel review, or

(c) an order under subrule 73(5), the panel shall direct the responsible Secretary to issue a Notice of Final Panel Action (model form provided in the Schedule) on the eleventh day thereafter.

(2) Where a motion is filed pursuant to subrule 76(1) regarding a decision referred to in subrule (1)(b), the responsible Secretary shall issue the Notice of Final Panel Action on the day on which the panel

(a) issues a ruling finally disposing of the motion; or

(b) directs the responsible Secretary to issue the Notice of Final Panel Action, the issuance of which shall constitute a denial of the motion.

78. If no Request for an Extraordinary Challenge Committee is filed, the responsible Secretary shall publish a Notice of Completion of Panel Review in the official publications of the involved Parties, effective.

(a) on the day on which a panel is terminated pursuant to subrule 71(2); or

(b) in any other case, on the 31st day following the date on which the responsible Secretary issues a Notice of Final Panel Action.

79. Where a Request for an Extraordinary Challenge Committee has been filed, the responsible Secretary shall publish a Notice of Completion of Panel Review in the official publications of the involved Parties, effective on the day after the day referred to in rule 64 or subrule 65(a) of the *NAFTA Extraordinary Challenge Committee Rules*.

80. Panelists are discharged from their duties on the day on which a Notice of

Completion of Panel Review is effective, or on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to subrule 65(b) of the *NAFTA Extraordinary Challenge Committee Rules*.

Stays and Suspensions

81. Where a panelist becomes unable to fulfill panel duties, is disqualified or dies, panel proceedings and the running of time periods shall be suspended, pending the appointment of a substitute panelist in accordance with the procedures set out in Annex 1901.2 to Chapter Nineteen of the Agreement.

82. Where a panelist is disqualified, dies or otherwise becomes unable to fulfill panel duties, after the oral argument, the chairperson may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute panelist.

83. (1) A Party may make a request, pursuant to Article 1905.11(a)(ii) of the Agreement, that an ongoing panel review be stayed by filing the request with the responsible Secretariat.

(2) A Party who files a request under subrule (1) shall forthwith give written notice of the request to the other involved Party and to the other involved Secretariat.

(3) On receipt of a request under subrule (1), the responsible Secretary shall

(a) immediately give written notice of the stay of the panel review to all participants in the panel review; and
(b) publish a notice of the stay of the panel review in the official publications of the involved Parties.

84. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 1905.1 of the Agreement, the responsible Secretary for panel reviews referred to in Article 1905.11(a)(i) of the Agreement shall

(a) immediately give notice in writing to all participants in those reviews; and
(b) publish a notice of the affirmative finding in the official publications of the involved Parties.

85. (1) A Party who intends to suspend the operation of Article 1904 of the Agreement pursuant to Article 1905.8 or 1905.9 of the Agreement shall endeavour to give written notice of that intention to the other involved Party and to the involved Secretaries at least five days prior to the suspension.

(2) On receipt of a notice under subrule (1), the involved Secretaries shall publish a notice of the suspension in the official publications of the involved Parties.

Schedule—Procedural Forms

Forms (1) through (7) follow.

Form (1)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade
Agreement

In the matter of: _____

(Title of Final Determination)

*Notice of Intent to Commence Judicial
Review*

Pursuant to Article 1904 of the North
American Free-Trade Agreement, notice is
hereby served that

(interested person filing notice)
intends to commence judicial review in the

(name of the court)
of the final determination referenced below.
The following information is provided
pursuant to Rule 33 of the *NAFTA Article
1904 Panel Rules*:

1. _____
(The name of the interested person filing
this notice)
2. _____
(The name of counsel for the interested
person, if any)
3. _____

(The service address, as defined by Rule 3
of the *NAFTA Article 1904 Panel Rules*,
including facsimile number, if any)
4. _____
(The telephone number of counsel for the
interested person or the telephone number
of the interested person, if not represented
by counsel)
5. _____
(The title of the final determination for
which notice of intent to commence
judicial review is served)
6. _____
(The investigating authority that issued the
final determination)
7. _____
(The file number of the investigating
authority)
8. (a) _____
(The citation and date of publication of
the final determination in the *Federal
Register, Canada Gazette* or *Diario
Oficial de la Federaci3n*); or
(b) _____
(If the final determination was not
published, the date notice of the final
determination was received by the other
Party)

Date _____

Signature of Counsel (or interested
person, if not represented by counsel)

Form (2)

Article 1904 Binational Panel Review
Pursuant to the North American Free-Trade
Agreement

In the matter of: _____

(Title of Panel Review)

Secretariat File No. _____

Request for Panel Review

Pursuant to Article 1904 of the North
American Free-Trade Agreement, panel
review is hereby requested of the final
determination referenced below. The
following information is provided pursuant
to Rule 34 of the *NAFTA Article 1904 Panel
Rules*:

1. _____
(The name of the Party or the interested
person filing this request for panel review)
2. _____
(The name of counsel for the Party or the
interested person, if any)
3. _____

(The service address, as defined by Rule 3
of the *NAFTA Article 1904 Panel Rules*,
including facsimile number, if any)
4. _____
(The telephone number of counsel for the
Party or the interested person or the
telephone number of the interested person,
if not represented by counsel)
5. _____
(The title of the final determination for
which panel review is requested)
6. _____
(The investigating authority that issued the
final determination)
7. _____
(The file number of the investigating
authority)
8. (a) _____
(The citation and date of publication of
the final determination in the *Federal
Register, Canada Gazette* or *Diario
Oficial de la Federaci3n*); or
(b) _____
(If the final determination was not
published, the date notice of the final
determination was received by the other
Party)
9. Yes _____ No _____ Non-Applicable

(Where a Notice of Intent to Commence
Judicial Review has been served, is the sole
reason for requesting review of the final
determination to require review by a
panel?)

10. The Service List, as defined by Rule 3 of
the *NAFTA Article 1904 Panel Rules*, is
attached.

Date _____

Signature of Counsel (or interested
person, if not represented by counsel)

Form (3)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade
Agreement

In the matter of: _____

(Title of Panel Review)

Secretariat File No. _____

Complaint

1. _____

(The name of the interested person filing
the complaint)

2. _____
(The name of counsel for the interested
person, if any)
3. _____

(The service address, as defined by Rule 3
of the *NAFTA Article 1904 Panel Rules*,
including facsimile number, if any)

4. _____
(The telephone number of counsel for the
interested person or telephone number of
the interested person, if not represented by
counsel)
5. Statement of the Precise Nature of the
Complaint (See Rule 39 of the *NAFTA
Article 1904 Panel Rules*)
A. The Applicable Standard of Review
B. Allegations of Errors of Fact or Law
C. Challenges to the Jurisdiction of the
Investigating Authority
6. Statement of the Interested Person's
Entitlement to File a Complaint under Rule
39 of the *NAFTA Article 1904 Panel Rules*
7. For Panel Reviews of Determinations Made
in Canada:
(a) Complainant intends to use the
specified language in pleadings and oral
proceedings (Specify one)
_____ English _____ French
(b) Complainant requests simultaneous
translation of oral proceedings (Specify one)
_____ Yes _____ No

Date _____

Signature of Counsel (or interested
person, if not represented by counsel)

Form (4)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade
Agreement

In the matter of: _____

(Title of Panel Review)

Secretariat File No. _____

Notice of Appearance

1. _____
(The name of the investigating authority or
the interested person filing this notice of
appearance)
2. _____
(The name of counsel for the investigating
authority or the interested person, if any)
3. _____

(The service address, as defined by Rule 3
of the *NAFTA Article 1904 Panel Rules*,
including facsimile number, if any)

4. _____
(The telephone number of counsel for the
investigating authority or the interested
person or the telephone number of the
interested person, if not represented by
counsel)

5. This Notice of Appearance is made:
_____ in support of some or all of the
allegations set out in a Complaint;
_____ in opposition to some or all of the
allegations set out in a Complaint; or

_____ in support of some of the allegations set out in a Complaint and in opposition to some of the allegations set out in a Complaint.

6. Statement as to the basis for the interested person's entitlement to file a Notice of Appearance under rule 40 of the *NAFTA Article 1904 Panel Rules*

7. For Notices of Appearance Filed by the Investigating Authority
Statement by the Investigating Authority regarding any admissions with respect to the allegations set out in the Complaints

8. For Panel Reviews of Determinations Made in Canada:

(a) I intend to use the specified language in pleadings and oral proceedings (Specify one)

_____ English _____ French

(b) I request simultaneous translation of oral proceedings (Specify one)

_____ Yes _____ No

Date _____

Signature of Counsel (or interested person, if not represented by counsel)

Form (5)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade Agreement

In the matter of: _____

(Title of Panel Review)

Secretariat File No. _____

Notice of Motion

(descriptive title indicating the purpose of the motion)

1. _____
(The name of the investigating authority or the interested person filing this notice of motion)

2. _____
(The name of counsel for the investigating authority or the interested person, if any)

3. _____
(The service address, as defined by Rule 3 of the *NAFTA Article 1904 Panel Rules*, including facsimile number, if any)

4. _____
(The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. Statement of the precise relief requested

6. Statement of the grounds to be argued, including references to any rule, point of law, or legal authority to be relied on

7. Arguments in support of the motion, including references to evidence in the administrative record by page and, where practicable, by line

8. Draft order attached (see Rule 61 and Form (6) of the *NAFTA Article 1904 Panel Rules*)

Date _____

Signature of Counsel (or interested person, if not represented by counsel)

Form (6)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade Agreement

In the matter of: _____

(Title of Panel Review)

Secretariat File No. _____

Order

Upon consideration of the motion for _____
(relief requested)

filed on behalf of _____

and upon all _____
(participant filing motion)
other papers and proceedings herein, it is hereby Ordered that the motion is

Issue Date _____

Panelist name _____

Form (7)

Article 1904 Binational Panel Review
Pursuant to the North American Free Trade Agreement

In the matter of: _____

(Title of Panel Review)

Secretariat File No. _____

Notice of Final Panel Action

Under the direction of the panel, pursuant to rule 77 of the *NAFTA Article 1904 Panel Rules*, Notice is hereby given that the panel has taken its final action in the above-referenced matter.

This Notice is effective on _____

Issue Date _____

Signature of the Responsible

Secretary _____

Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94-3928 Filed 2-22-94; 8:45 am]

BILLING CODE 3515-GT-P

Federal Register

Wednesday
February 23, 1994

Part III

Department of Commerce

International Trade Administration

North American Free Trade Agreement:
Rules of Procedure for Article 1904
Extraordinary Challenge Committees;
Notice

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1904 Extraordinary Challenge Committees

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Rules of Procedure for NAFTA Article 1904 Extraordinary Challenge Committees.

SUMMARY: Canada, Mexico, and the United States have negotiated the rules of procedure for Article 1904 extraordinary challenge committee proceedings. These rules apply to extraordinary challenges conducted pursuant to Article 1904 of the North American Free Trade Agreement.

EFFECTIVE DATE: January 1, 1994, the date of the entry into force of the North American Free Trade Agreement ("Agreement"). These Rules of Procedure shall apply to all extraordinary challenge committee proceedings under the Agreement commenced on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0836, (202) 482-4618, or (202) 482-5031, respectively. For procedural matters involving extraordinary challenge committee proceedings, contact James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5438; fax: (202) 482-0148.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the North American Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada, Mexico, or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the

antidumping or countervailing duty law of the importing country.

In instances in which one of the Parties to the Agreement alleges, pursuant to Article 1904.13 of the Agreement, that (a)(i) a member of a panel materially violated the rules of conduct, (ii) the panel seriously departed from a fundamental rule of procedure, or (iii) the panel manifestly exceeded its powers, authority or jurisdiction, and that (b) any of the actions set out in (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process, that Party may request formation of an extraordinary challenge committee ("ECC"). Extraordinary challenge committee review is therefore not a routine appeal. Rather, as the name suggests, Canada, Mexico, or the United States may have recourse to an ECC only in extraordinary cases.

Title IV of the North American Free Trade Agreement Implementation Act of 1993, Public Law No. 103-182, 107 Stat. 2057, amends United States law to implement Chapter Nineteen of the Agreement.

The *NAFTA Extraordinary Challenge Committee Rules* are intended to give effect to the ECC provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting, and completing extraordinary challenge proceedings. These rules are the result of negotiations among Canada, Mexico, and the United States in compliance with the terms of the Agreement, and are derived in large part from the *Extraordinary Challenge Committee Rules* under the United States-Canada Free Trade Agreement.

North American Free Trade Agreement Rules of Procedure for Article 1904 Extraordinary Challenge Committees

Contents

Preamble

Rule

1. Short Title
2. Statement of General Intent
3. Interpretation

Part I—General

8. Internal Functioning of Committees
10. Computation of Time
12. Counsel of Record
13. Costs
14. Proprietary Information and Privileged Information
22. Violation of Code of Conduct
23. Pleadings and Simultaneous Translation of Extraordinary Challenge Proceedings in Canada

Part II—Written Proceedings

28. Filing, Service and Communications
36. Form and Content of Pleadings

37. Requests for an Extraordinary Challenge Committee

40. Notices of Appearance

42. Filing and Content of Briefs and Appendices

44. Motions

Part III—Conduct of Oral Proceedings

48. Oral Proceedings in Camera

Part IV—Responsibilities of the Secretary

Part V—Orders and Decisions

Part VI—Completion of Extraordinary Challenges

Preamble

The Parties,

Having regard to Chapter Nineteen of the North American Free Trade Agreement between Canada, the United Mexican States and the United States of America;

Acting pursuant to paragraph 2 of Annex 1904.13 to Chapter Nineteen of the Agreement;

Adopted the Rules of Procedure, which shall come into force on the same day as the Agreement enters into force and from that day shall govern all extraordinary challenge committee proceedings conducted pursuant to Article 1904 of the Agreement.

Short Title

1. These rules may be cited as the *NAFTA Extraordinary Challenge Committee Rules*.

Statement of General Intent

2. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to extraordinary challenges conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions within 90 days after the establishment of the committee. Where a procedural question arises that is not covered by these rules, a committee may adopt an appropriate procedure that is not inconsistent with the Agreement. In the event of any inconsistency between the provisions of these Rules and the Agreement, the Agreement shall prevail.

Interpretation

3. In these rules,

"Agreement" means the North American Free Trade Agreement;

"Code of Conduct" means the code of conduct established by the Parties pursuant to Article 1909 of the Agreement;

"committee" means an extraordinary challenge committee established pursuant to Annex 1904.13 to Chapter Nineteen of the Agreement;

"counsel" means

(a) with respect to an extraordinary challenge of a panel review of a final

determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada,

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, a person entitled to appear as counsel before the Tribunal Fiscal de la Federación, and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, a person entitled to appear as counsel before a federal court in the United States;

"counsel of record" means a counsel referred to in subrule 12(1);

"Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise, or the successor thereto, and includes any person authorized to perform a power, duty or function of the Deputy Minister under the *Special Import Measures Act*, as amended;

"final determination" means, in the case of Canada, a definitive decision within the meaning of subsection 77.01(1) of the *Special Import Measures Act*, as amended;

"investigating authority" means the competent investigating authority that issued the final determination that was the subject of the panel review to which an extraordinary challenge relates and includes, in respect of the issuance, amendment, modification or revocation of a Proprietary Information Access Order, any person authorized by the investigating authority;

"involved Secretariat" means the section of the Secretariat located in the country of an involved Party;

"legal holiday" means

(a) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the Section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part,

(b) with respect to the Mexican Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Constitution Day (February 5), Benito Juárez's Birthday (March 21), Labor Day (May 1), Battle of Puebla (May 5), Independence Day (September 16), Congressional Opening Day (November 1), Revolution Day

(November 20), Transmission of the Federal Executive Branch (every six years on December 1), Christmas Day (December 25), any day designated as a statutory holiday by the Federal Laws or, in the case of Ordinary Elections, by the Local Electoral Laws and any day on which the offices of the Mexican Section of the Secretariat are officially closed in whole or in part, and

(c) with respect to the United States Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), President's Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any other day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia or the offices of the United States Section of the Secretariat are officially closed in whole or in part;

"Mexico" means the United Mexican States;

"official publication" means

(a) in the case of the Government of Canada, the *Canada Gazette*,

(b) in the case of the Government of Mexico, the *Diario Oficial de la Federación*, and

(c) in the case of the Government of the United States, the *Federal Register*;

"panel" means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement, the decision of which is the subject of an extraordinary challenge;

"participant" means a Party who files a Request for an Extraordinary Challenge Committee or any of the following persons who files a Notice of Appearance pursuant to these rules:

(a) the other involved Party,

(b) a person who participated in the panel review that is the subject of the extraordinary challenge, and

(c) a panelist against whom an allegation referred to in Article 1904.13(a)(i) of the Agreement is made;

"Party" means the Government of Canada, the Government of Mexico or the Government of the United States;

"person" means

(a) an individual,

(b) a Party,

(c) an investigating authority,

(d) a government of a province, state or other political subdivision of the country of a Party,

(e) a department, agency or body of a Party or of a government referred to in paragraph (d), or

(f) a partnership, corporation or association;

"personal information" means, with respect to an extraordinary challenge proceeding in which an allegation is made that a member of the panel was guilty of gross misconduct, bias or a serious conflict of interest or otherwise materially violated the rules of conduct, the information referred to in subrule 39(2) and rule 41;

"pleading" means a Request for an Extraordinary Challenge Committee, a Notice of Appearance, a Change of Service Address, a Notice of Change of Counsel of Record, a Notice of Motion, a brief or any other written submission filed by a participant;

"privileged information" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, with respect to which the privilege has not been waived,

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico,

(i) information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico, or

(ii) internal communications between officials of the Secretaria de Comercio y Fomento Industrial in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination, and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived;

"proof of service" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada or Mexico,

(i) an affidavit of service stating the name of the person who served the document, the date on which it was

served, where it was served and the manner of service, or

(ii) a written acknowledgement of service by counsel for a participant stating the name of the person who served the document, the date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel, and

(b) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, a certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service;

"proprietary information" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the *Special Import Measures Act*, as amended, or subsection 45(3) of the *Canadian International Trade Tribunal Act*, as amended, and with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information,

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, *informacion confidencial*, as defined under article 80 of the *Ley de Comercio Exterior* and its regulations, and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the *Tariff Act of 1930*, as amended, and any regulations made under that Act;

"Proprietary Information Access Application" means

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, a disclosure undertaking in the prescribed form, which form

(i) in respect of a final determination by the Deputy Minister, is available from the Deputy Minister, and

(ii) in respect of a final determination by the Tribunal, is available from the Tribunal,

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, a disclosure undertaking in the prescribed form, which form is available from the Secretaría de Comercio y Fomento Industrial, and

(c) with respect to an extraordinary challenge of a panel review of a final

determination made in the United States, a Protective Order Application

(i) in respect of a final determination by the International Trade Administration of the United States Department of Commerce, in a form prescribed by, and available from, the International Trade Administration of the United States Department of Commerce, and

(ii) in respect of a final determination by the United States International Trade Commission, in a form prescribed by, and available from, the United States International Trade Commission;

"Proprietary Information Access Order" means

(a) in the case of Canada, a Disclosure Order issued by the Deputy Minister or the Tribunal pursuant to a Proprietary Information Access Application, and

(b) in the case of Mexico, a Disclosure Order issued by the Secretaría de Comercio y Fomento Industrial pursuant to a Proprietary Information Access Application, and

(c) in the case of the United States, a Protective Order issued by the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission pursuant to a Proprietary Information Access Application;

"responsible Secretariat" means, with respect to an extraordinary challenge of a panel review, the section of the Secretariat located in the country in which the final determination reviewed by the panel was made;

"responsible Secretary" means the Secretary of the responsible Secretariat;

"Secretariat" means the Secretariat established pursuant to Article 2002 of the Agreement;

"Secretary" means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary;

"service address" means

(a) with respect to a Party or panelist, the address filed with the Secretariat as the service address of the Party or panelist, including any facsimile number submitted with that address,

(b) with respect to a participant other than a Party or panelist, the service address of the participant in the panel review, or

(c) where a Change of Service Address has been filed by a Party, panelist or participant, the address set out as the new service address of the participant in that form, including any facsimile number submitted with that address;

"Tribunal" means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf;

"United States" means the United States of America.

4. The definitions set forth in Article 1911 of the Agreement and Annex 1911 to Chapter 19 of the Agreement are hereby incorporated into these rules.

Part I—General

5. An extraordinary challenge proceeding commences on the day on which a Request for an Extraordinary Challenge Committee is filed with the Secretariat and terminates on the day on which a Notice of Completion of Extraordinary Challenge is effective.

6. The general legal principles of the country in which a final determination was made apply in an extraordinary challenge of the decision of a panel with respect to the final determination.

7. A committee may review any part of the record of the panel review relevant to the extraordinary challenge.

Internal Functioning of Committees

8. (1) For routine administrative matters governing its own internal functioning, a committee may adopt procedures not inconsistent with these rules or the Agreement.

(2) Subject to subrule 34(b), meetings of a committee may be conducted by means of a telephone conference call.

9. Only committee members may take part in the deliberations of a committee, which shall take place in private and remain secret. Staff of the involved Secretariats and assistants to committee members may be present by permission of the committee.

Computation of Time

10. (1) In computing any time period fixed in these rules or by an order or decision of a committee, the day from which the time period begins to run shall be excluded and, subject to subrules (2) and (3), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these rules or by an order or decision of a committee, any legal holiday that falls within the time period shall be excluded from the computation.

11. A committee may extend any time period fixed in these rules if

(a) the extension is made in the interests of fairness and justice; and

(b) in fixing the extension, the committee takes into account the intent of the rules to secure just, speedy and inexpensive final resolutions of challenges to decisions of panels.

Counsel of Record

12. (1) Subject to subrule (2), the counsel of record for a participant in an extraordinary challenge proceeding shall be

(a) the counsel for the participant in the panel review; or

(b) in the case of a Party who was not a participant in the panel review or of a panelist, the counsel who signs any document filed on behalf of the Party or panelist in the extraordinary challenge proceeding.

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and other participants.

Costs

13. Each participant shall bear the costs of, and incidental to, its own participation in an extraordinary challenge proceeding.

Proprietary Information and Privileged Information

14. (1) Where proprietary information has been filed in a panel review that is the subject of an extraordinary challenge proceeding, every member of a committee, assistant to a committee member, court reporter, interpreter and translator shall provide the responsible Secretariat with a Proprietary Information Access Application.

(2) Upon receipt of a Proprietary Information Access Application, the responsible Secretary shall file with the appropriate investigating authority the Proprietary Information Access Application and any additional copies of those documents required by the investigating authority.

(3) The investigating authority shall issue the Proprietary Information Access Order and provide the responsible Secretariat with the original and any additional copies of those documents required by the responsible Secretariat.

(4) Upon receipt of a Proprietary Information Access Order, the responsible Secretary shall transmit the original Proprietary Information Access Order to the appropriate member of a committee, assistant to a committee member, court reporter, interpreter or translator.

15. (1) A member of a committee, assistant to a committee member, court reporter, interpreter or translator who amends or modifies a Proprietary Information Access Application shall provide a copy of the amendment or modification to the responsible Secretariat.

(2) Upon receipt of an amendment or modification to a Proprietary Information Access Application, the responsible Secretary shall file with the appropriate investigating authority that document and any additional copies of that document required by the investigating authority.

(3) Upon receipt of an amendment or modification to a Proprietary Information Access Application, the investigating authority shall, as appropriate, amend, modify or revoke the Proprietary Information Access Order and provide the responsible Secretariat with the original of the amendment, modification or notice of revocation and any additional copies of the document required by the responsible Secretariat.

(4) Upon receipt of an amendment or modification to a Proprietary Information Access Order or a notice of revocation, the responsible Secretary shall transmit the amendment, modification or notice of revocation to the appropriate member of a committee, assistant to a committee member, court reporter, interpreter or translator.

16. The responsible Secretary shall serve Proprietary Information Access Orders granted to members of a committee, assistants to committee members, court reporters, interpreters or translators, and any amendments or modifications thereto or notices of revocation thereof, on all participants other than the investigating authority.

17. (1) A counsel of record, or a professional retained by, or under the control or direction of, a counsel of record, who has not been issued a Proprietary Information Access Order in the panel review or in these proceedings and who wishes disclosure of proprietary information in the file of an extraordinary challenge proceeding, shall file a Proprietary Information Access Application, as follows:

(a) with the responsible Secretariat, four copies; and

(b) with the investigating authority, one original and any additional copies that the investigating authority requires.

(2) A Proprietary Information Access Application referred to in subrule (1) shall be served on all participants.

(3) The investigating authority shall, within 10 days after a Proprietary Information Access Application is filed with it in accordance with subrule (1),

serve on the person who filed the Proprietary Information Access Application

(a) a Proprietary Information Access Order; or

(b) a notification in writing setting out the reasons why a Proprietary Information Access Order is not issued.

18. (1) Where

(a) an investigating authority refuses to issue a Proprietary Information Access Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record, or

(b) an investigating authority issues a Proprietary Information Access Order with terms unacceptable to a counsel of record,

the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the committee review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the committee decides that a Proprietary Information Access Order should be issued or that the terms of a Proprietary Information Access Order should be amended or modified, the committee shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the committee may issue such orders as are just in the circumstances, including an order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings.

19. (1) Where a Proprietary Information Access Order is issued to a person in an extraordinary challenge proceeding, the person shall file with the responsible Secretariat a copy of the Proprietary Information Access Order.

(2) Where a Proprietary Information Access Order is revoked, amended or modified by an investigating authority, the investigating authority shall provide to the responsible Secretariat and to all participants a copy of the Notice of Revocation, amendment or modification.

20. In an extraordinary challenge proceeding that commences with a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a)(i) of the Agreement, personal information shall be kept confidential

(a) where a Notice of Motion is filed pursuant to subrule 41(1)(c),

(i) until the committee makes an order referred to in subrule 45(1)(a), or

(ii) where the committee makes an order referred to in subrule 45(1)(b), indefinitely, unless otherwise ordered by the committee; and

(b) in any other case, until the day after the expiration of the time period fixed, pursuant to rule 41, for filing a Notice of Motion referred to in subrule 41(1)(c).

21. Where a person alleges that the terms of a Proprietary Information Access Application or Proprietary Information Access Order have been violated, the committee shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.034 of the *Special Import Measures Act*, as amended, section 777(f) of the *Tariff Act of 1930*, as amended, or article 93 of the *Ley de Comercio Exterior*.

Violation of Code of Conduct

22. Where a participant believes that a committee member or an assistant to a committee member is in violation of the Code of Conduct, the participant shall forthwith notify the responsible Secretary in writing of the alleged violation. The responsible Secretary shall promptly notify the other involved Secretary and the involved Parties of the allegations.

Pleadings and Simultaneous Translation of Extraordinary Challenge Proceedings in Canada

23. Rules 24 to 26 apply with respect to an extraordinary challenge of a panel review of a final determination made in Canada.

24. Either English or French may be used by any person, panelist or member of a committee in any document or oral proceeding.

25. (1) Subject to subrule (2), any order or decision including the reasons therefor, issued by a committee shall be made available simultaneously in both English and French where

(a) in the opinion of the committee, the order or decision is in respect of a question of law of general public interest or importance; or

(b) the proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where

(a) an order or decision issued by a committee is not required by subrule (1) to be made available simultaneously in English and French, or

(b) an order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the committee is of the opinion that to make the order or

decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant, the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

26. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of an extraordinary challenge proceeding, the request shall be made as early as possible in the proceedings.

(3) Where a committee is of the opinion that there is a public interest in the extraordinary challenge proceedings, the committee may direct the responsible Secretary to arrange for simultaneous translation of the oral proceedings, if any.

Part II—Written Proceedings

27. Where these rules require that notice be given, it shall be given in writing.

Filing, Service and Communications

28. (1) No document is filed with the Secretariat until one original and five copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) The responsible Secretariat shall accept, date and time stamp and place in the appropriate file every document submitted to the responsible Secretariat.

(3) Receipt, date and time stamping or placement in the file of a document by the responsible Secretariat does not constitute a waiver of any time period fixed for filing or an acknowledgement that the document has been filed in accordance with these rules.

29. (1) All documents filed by a participant, other than documents required by rule 58 to be served by the responsible Secretary and documents referred to in subrule 38(2), rule 39, subrule 40(2)(a) and rule 41 shall be served by the participant on the counsel of record of each of the other participants or, where another

participant is not represented by counsel, on the other participant.

(2) Subject to subrule 34(a), a document may be served by

(a) delivering a copy of the document to the service address of the participant;

(b) sending a copy of the document to the service address of the participant by facsimile transmission or by expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or

(c) personal service on the participant.

(3) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(4) Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier or expedited mail service.

30. (1) Where, under these rules, a document containing proprietary information, privileged information or personal information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this rule and, where applicable, in accordance with rule 32.

(2) A document filed or served under seal shall be

(a) bound separately from all other documents;

(b) clearly marked
(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada,

(A) in the case of a document containing proprietary information, "Proprietary", "Confidential", "De nature exclusive" or "Confidentiel", and

(B) in the case of a document containing privileged information, "Privileged" or "Protégé", and

(C) in the case of a document containing personal information, "Personal Information" or "Renseignements personnels",

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico,

(A) in the case of a document containing proprietary information, "Confidential",

(B) in the case of a document containing privileged information, "Privilegiada", and

(C) in the case of a document containing personal information, "Información Personal", and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States,

(A) in the case of a document containing proprietary information, "Proprietary", and

(B) in the case of a document containing privileged information, "Privileged", and

(C) in the case of a document containing personal information, "Personal Information"; and

(c) contained in an opaque inner wrapper and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall indicate

(a) that proprietary information, privileged information or personal information is enclosed, as the case may be; and

(b) the Secretariat file number of the extraordinary challenge proceeding.

31. Filing or service of proprietary information, privileged information or personal information with the Secretariat does not constitute a waiver of the designation of the information as proprietary information, privileged information or personal information.

32. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the proprietary information shall be filed under seal and

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Proprietary", "Confidential", "Confidentiel" or "De nature exclusive", with the top of each page that contains proprietary information marked with the word "Proprietary", "Confidential", "Confidentiel" or "De nature exclusive" and with the proprietary information enclosed in brackets,

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "Confidencial", with the top of each page that contains proprietary information marked with the word "confidencial" and with the proprietary information enclosed in brackets, and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Proprietary", with the top of each page that contains proprietary information marked with the word "Proprietary" and with the proprietary information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing proprietary information shall be filed and

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Non-Proprietary", "Non-Confidential", "Non confidentiel" or "De nature non exclusive",

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "Non-confidencial", and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Non-Proprietary", with each page from which proprietary information has been deleted marked to indicate the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two sets of the pleading in the following manner:

(a) one set containing the privileged information shall be filed under seal and

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Privileged" or "Protégé", with the top of each that contains privileged information marked with the word "Privileged" or "Protégé" and with the privileged information enclosed in brackets,

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "Privilegiada", with the top of each page that contains privileged information marked with the word "Privilegiada" and with the privileged information enclosed in brackets, and

(iii) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Privileged", with the top of each page that contains privileged information marked with the word "Privileged" and with the privileged information enclosed in brackets; and

(b) no later than one day following the day on which the set of pleadings referred to in subrule (a) is filed, another set not containing privileged information shall be filed and

(i) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Non-Privileged" or "Non-protégé",

(ii) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "No-privilegiada", and

(iii) with respect to an extraordinary challenge of a panel review of a final

determination made in the United States, shall be labelled "Non-Privileged", with each page from which privileged information has been deleted marked to indicate the location from which the privileged information was deleted.

(3) Where a participant files a pleading that contains personal information, the pleading shall be filed under seal and

(a) with respect to an extraordinary challenge of a panel review of a final determination made in Canada, shall be labelled "Personal Information" or "Renseignements personnels", with the top of each page that contains personal information marked with the words "Personal Information" or "Renseignements personnels" and with the personal information enclosed in brackets;

(b) with respect to an extraordinary challenge of a panel review of a final determination made in Mexico, shall be labelled "Información Personal", with the top of each page that contains personal information marked with the words "Información Personal" and with the personal information enclosed in brackets; and

(c) with respect to an extraordinary challenge of a panel review of a final determination made in the United States, shall be labelled "Personal Information", with the top of each page that contains personal information marked with the words "Personal Information" and with the personal information enclosed in brackets.

33. (1) Subject to subrule (2), a document containing proprietary or privileged information shall be filed under seal in accordance with rule 30 and shall be served only on the investigating authority and on those participants who have been granted access to the information under a Proprietary Information Access Order.

(2) Where all proprietary information contained in a document was submitted to the investigating authority by one participant, the document shall be served on that participant even if that participant has not been granted access to proprietary information under a Proprietary Information Access Order.

(3) A document containing personal information shall be filed under seal in accordance with rule 30 and shall be served only on persons or participants who have been granted access to the information under an order of the committee.

34. Where proprietary information, privileged information or personal information is disclosed to a person in an extraordinary challenge proceeding, the person shall not

(a) file, serve or otherwise communicate the information by facsimile transmission; or

(b) communicate the information by telephone.

35. Service on an investigating authority does not constitute service on a Party and service on a Party does not constitute service on an investigating authority.

Form and Content of Pleadings

36. (1) Every pleading filed in an extraordinary challenge proceeding shall contain the following information:

(a) the title of, and any Secretariat file number assigned for, the extraordinary challenge proceeding;

(b) a brief descriptive title of the pleading;

(c) the name of the participant filing the pleading;

(d) the name of counsel of record for the participant;

(e) the service address, as defined in rule 3; and

(f) the telephone number of the counsel of record of the participant or, where the participant is not represented by counsel, the telephone number of the participant.

(2) Every pleading filed in an extraordinary challenge proceeding shall be on paper 8½ × 11 inches (216 millimetres by 279 millimetres) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimetres) on the left-hand side with double spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form. Briefs and appendices shall be securely bound along the left-hand margin.

(3) Every pleading filed on behalf of a participant in an extraordinary challenge proceeding shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

Requests for an Extraordinary Challenge Committee

37. (1) Where a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(ii) or (iii) of the Agreement, the Party shall file the Request (model form available from the Secretariat) within 30 days after the issuance, pursuant to rule 77 of the *NAFTA Article 1904 Panel Rules*, of the Notice

of Final Panel Action in the panel review that is the subject of the Request.

(2) Where a Party, in its discretion, files with the responsible Secretary a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(i) of the Agreement, the Party shall file the Request (model form available from the Secretariat)

(a) within 30 days after the issuance, pursuant to rule 77 of the *NAFTA Article 1904 Panel Rules*, of the Notice of Final Panel Action in the panel review that is the subject of the Request; or

(b) subject to subrule (3), where the Party gained knowledge of the action of the panelist giving rise to the allegation more than 30 days after the panel issued a Notice of Final Panel Action, no more than 30 days after gaining knowledge of the action of the panelist.

(3) No Request for an Extraordinary Challenge Committee referred to in subrule (2) may be filed if two years or more have elapsed since the effective date of the Notice of Completion of Panel Review.

(4) Notwithstanding subrules (1) to (3), the running of the time periods referred to in this section

(a) shall be suspended in the circumstances set out in Article 1905.11 of the Agreement; and

(b) where suspended under subrule (a), shall be resumed in the circumstances set out in Articles 1905.12 and 1905.13 of the Agreement.

38. (1) Subject to subrule (2), every Request for an Extraordinary Challenge Committee shall be in writing and shall

(a) include a concise statement of the allegations relied on, together with a concise statement of how the actions alleged have materially affected the panel's decision and the way in which the integrity of the panel review process is threatened;

(b) contain the name of the Party in the panel review, name of counsel, service address and telephone number; and

(c) where the panel decision was made in Canada, state whether the Party filing the Request for an Extraordinary Challenge Committee

(i) intends to use English or French in pleadings and oral proceedings before the committee, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Where a Request for an Extraordinary Challenge Committee contains an allegation referred to in Article 1904.13(a)(i) of the Agreement, the identity of the panelist against whom such an allegation is made shall be revealed only in a confidential annex filed together with the Request and shall

be disclosed only in accordance with rule 60.

39. (1) Every Request for an Extraordinary Challenge Committee (model form available from the Secretariat) shall be accompanied by

(a) those items of the record of the panel review relevant to the allegations contained in the Request; and

(b) an Index of the items referred to in subrule (a).

(2) Where a Request contains an allegation referred to in Article 1904.13(a)(i) of the Agreement, the Request shall be accompanied by, in addition to the requirements of subrule (1),

(a) any other material relevant to the allegations contained in the Request; and

(b) if the Request is filed more than 30 days after the panel issued a Notice of Final Panel Action pursuant to rule 77 of the *NAFTA Article 1904 Panel Rules*, an affidavit certifying that the Party gained knowledge of the action of the panelist giving rise to the allegation no more than 30 days preceding the filing of the Request.

Notices of Appearance

40. (1) Within 10 days after the Request for an Extraordinary Challenge Committee is filed, a Party or participant in the panel review who proposes to participate in the extraordinary challenge proceeding shall file with the responsible Secretariat a Notice of Appearance (model form available from the Secretariat) containing the following information:

(a) the name of the Party or participant, name of counsel, service address and telephone number;

(b) a statement as to whether appearance is made

(i) in support of the Request, or

(ii) in opposition to the Request; and

(c) where the extraordinary challenge is in respect of a panel review of a final determination made in Canada, a statement as to whether the person filing the Notice of Appearance

(i) intends to use English or French in pleadings and oral proceedings before the committee, and

(ii) requests simultaneous translation of any oral proceedings.

(2) Where a Party or participant referred to in subrule (1) proposes to rely on a document in the record of the panel review that is not specified in the Index filed with the Request for an Extraordinary Challenge Committee, the Party or participant shall file, with the Notice of Appearance,

(a) the document; and

(b) a statement identifying the document and requesting its inclusion in the extraordinary challenge record.

(3) On receipt of a document referred to in subrule (2), the responsible Secretary shall include the document in the extraordinary challenge record.

41. (1) Within 10 days after a Request for an Extraordinary Challenge Committee referred to in Article 1904.13(a)(i) of the Agreement is filed, a panelist against whom an allegation contained in the Request is made and who proposes to participate in the extraordinary challenge proceeding

(a) shall file a Notice of Appearance; (b) may file, under seal, documents to be included in the extraordinary challenge record relevant to the panelist's defense against the allegation; and

(c) may file an *ex parte* motion requesting that the extraordinary challenge proceeding be conducted *in camera*.

(2) Where a committee issues an order pursuant to subrule 45(1)(a), a panelist who filed documents described in subrule (1)(b) may, within five days after issuance of the order, withdraw any of those documents.

(3) Where a panelist withdraws documents pursuant to subrule (2), the committee shall not consider those documents.

Filing and Content of Briefs and Appendices

42. (1) The Party who has filed the Request for an Extraordinary Challenge Committee and every participant who has filed a Notice of Appearance under subrule 40(1)(b)(i) shall file a brief, setting forth grounds and arguments in support of the Request, no later than 21 days after the Request for an Extraordinary Challenge Committee is filed.

(2) Every participant who has filed a Notice of Appearance under subrule 40(1)(b)(ii) shall file a brief, setting forth grounds and arguments in opposition to the Request for an Extraordinary Challenge Committee, no later than 21 days after the expiration of the time period for filing of briefs referred to in subrule (1).

(3) The Party who has filed the Request for an Extraordinary Challenge Committee and every participant who has filed a Notice of Appearance under subrule 40(1)(b)(i) may file a brief, replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2), no later than 10 days after the expiration of the time period for filing of briefs referred to in subrule (2). Reply briefs shall be limited to rebuttal

of matters raised in the briefs filed pursuant to subrule (2).

(4) Every brief filed under this rule shall be in the form required by rule 43.

(5) Appendices shall be filed with the briefs.

43. (1) Briefs shall contain information, in the following order, divided into five parts:

Part I:

- (a) A table of contents; and
- (b) A table of authorities cited:

The table of authorities shall contain references to all treaties, statutes and regulations cited, any cases primarily relied on in the briefs, set out alphabetically, and all other documents referred to except documents from the administrative record. The table of authorities shall refer to the page(s) of the brief where each authority is cited and mark, with an asterisk in the margin, those authorities primarily relied on.

Part II: A statement of the case:

This part shall contain a concise statement of the relevant facts with references to the panel record by page and, where applicable, by line.

Part III: A statement of the issues:

(a) In the brief of the Party who files the Request for an Extraordinary Challenge Committee, this part shall contain a concise statement of the issues.

(b) In the brief of any other participant, this part shall contain a concise statement of the position of the participant with respect to the issues.

Part IV: Argument:

This part shall consist of the argument, setting out concisely the points of law relating to the issues, with applicable citations to authorities and the panel record.

Part V: Relief:

This part shall consist of a concise statement precisely identifying the relief requested.

(2) Paragraphs in Parts I to V of a brief may be numbered consecutively.

(3) Authorities referred to in the briefs shall be included in an appendix, which shall be organized as follows: a table of contents, copies of all treaty and statutory references, references to regulations, cases primarily relied on in the briefs, set out alphabetically, all documents relied on from the panel record and all other materials relied on.

Motions

44. (1) Motions, other than motions referred to in subrule 41(1)(c), may be considered at the discretion of the committee.

(2) A committee may dispose of a motion based upon the pleadings filed on the motion.

(3) A committee may hear oral argument in person or, subject to subrule 34(b), direct that a motion be heard by means of a telephone conference call with the participants.

Part III—Conduct of Oral Proceedings

45. (1) The order of a committee on a motion referred to in subrule 41(1)(c) shall set out

- (a) that the proceedings shall not be held *in camera*; or
- (b) that the proceedings shall be held *in camera* and

(i) that all the participants shall keep confidential all information received with respect to the extraordinary challenge proceeding and shall use the information solely for the purposes of the proceeding, and

(ii) which documents containing personal information the responsible Secretary shall serve under seal and on whom the documents shall be served.

(2) The responsible Secretary shall not serve any documents containing personal information until the time period for withdrawal of any documents pursuant to subrule 41(2) has expired.

46. A committee may decide the procedures to be followed in the extraordinary challenge proceeding and may, for that purpose, hold a pre-hearing conference to determine such matters as the presentation of evidence and of oral argument.

47. The decision as to whether oral argument will be heard shall be in the discretion of the committee.

Oral Proceedings in Camera

48. During that part of oral proceedings in which proprietary information or privileged information is presented, a committee shall not permit any person other than the following persons to be present:

(a) the person presenting the proprietary information or privileged information;

(b) a person who has been granted access to the proprietary information or privileged information under a Proprietary Information Access Order or an order of the panel or committee;

(c) in the case of privileged information, a person as to whom the confidentiality of the privileged information has been waived; and

(d) officials of, and counsel for, the investigating authority.

Part IV—Responsibilities of the Secretary

49. The normal business hours of the Secretariat, during which the offices of the Secretariat shall be open to the public, shall be from 9 a.m. to 5 p.m. on each weekday other than

(a) in the case of the Canadian Section of the Secretariat, legal holidays of that Section;

(b) in the case of the Mexican Section of the Secretariat, legal holidays of that Section; and

(c) in the case of the United States Section of the Secretariat, legal holidays of that Section.

50. On the completion of the selection of the members of a committee, the responsible Secretary shall notify the participants and the other involved Secretary of the names of the members of the committee.

51. The responsible Secretary shall provide administrative support for each extraordinary challenge proceeding and shall make the arrangements necessary for meetings and any oral proceedings, including, if required, interpreters to provide simultaneous translation.

52. Each involved Secretary shall maintain a file for each extraordinary challenge, comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules.

53. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed with the responsible Secretary and of all orders and decisions issued by a committee.

54. Where under these rules a notice or other document is required to be published, the responsible Secretary and the other involved Secretary shall each cause the document to be published in the official publication of the country in which that section of the Secretariat is located.

55. (1) Where a document containing proprietary information or privileged information is filed with the involved Secretariats, each involved Secretary shall ensure that

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of an applicable Proprietary Information Access Order;

(b) the inner wrapper of the document is clearly marked to indicate that it contains proprietary information or privileged information; and

(c) access to the document is limited to

(i) in the case of proprietary information, officials of, and counsel for, the investigating authority, the person who submitted the proprietary information to the investigating authority and counsel of record for that person, and any persons who have been granted access to the information under a Proprietary Information Access Order, and

(ii) in the case of privileged information relied upon in an

extraordinary challenge of a decision of a panel with respect to a final determination made in the United States, committee members and their assistants and persons with respect to whom the panel ordered disclosure of the privileged information under rule 52 of the *NAFTA Article 1904 Panel Rules*, if those persons have filed with the responsible Secretariat a Proprietary Information Access Order with respect to the document.

(2) Where a document containing personal information is filed with the involved Secretariats, each involved Secretary shall ensure that

(a) the document is stored, maintained, handled, and distributed in accordance with the terms of any applicable Proprietary Information Access Order;

(b) the inner wrapper of the document is clearly marked to indicate that it contains personal information; and

(c) access to the document is limited to persons granted access to the information pursuant to subrule 45(1)(b).

56. No document filed in an extraordinary challenge proceeding shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a committee.

57. (1) Each involved Secretary shall permit access by any person to information in the file of an extraordinary challenge proceeding that is not proprietary information, privileged information or personal information.

(2) Each involved Secretary shall, in accordance with the terms of any applicable Proprietary Information Access Order or order of a panel or committee, permit access to proprietary information, privileged information or personal information in the file of an extraordinary challenge proceeding.

(3) Each involved Secretary shall, on request and on payment of the prescribed fee, provide copies of information in the file of an extraordinary challenge proceeding to any person who has been given access to that information.

58. (1) Where a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a) (ii) or (iii) of the Agreement is filed with the responsible Secretariat, the responsible Secretary shall, upon receipt thereof,

(a) forward a copy of the Request and Index to the other involved Secretary; and

(b) serve a copy of the Request and Index on the other involved Party and on the participants in the panel review,

together with a statement setting out the date on which the Request was filed and stating that all briefs of

(i) the Party who has filed the Request and of every participant who files a Notice of Appearance in support of the Request shall be filed no later than 21 days after the date of filing of the Request,

(ii) every participant who files a Notice of Appearance in opposition to the Request shall be filed no later than 21 days after the expiration of the time period, referred to in subrule (i), for filing of briefs, and

(iii) the Party who has filed the Request and of every participant who files a brief under subrule (i) in reply to the grounds and arguments set forth in the briefs filed pursuant to subrule (ii) shall be filed no later than 10 days after the expiration of the time period, referred to in subrule (ii), for filing of briefs.

(2) Where a Request for an Extraordinary Challenge Committee pursuant to Article 1904.13(a)(i) of the Agreement is filed, the responsible Secretary shall, upon receipt thereof,

(a) forward a copy of the Request, Index and annex to the other involved Secretary; and

(b) serve a copy of the Request, Index and annex on the other involved Party, on the panelist against whom the allegation contained in the Request is made and on the participants in the panel review, together with a statement setting out the date on which the Request was filed and stating that all briefs of

(i) the Party who has filed the Request and of every participant who files a Notice of Appearance in support of the Request shall be filed no later than 21 days after the date of filing of the Request,

(ii) every participant who files a Notice of Appearance in opposition to the Request shall be filed no later than 21 days after the expiration of the time period, referred to in subrule (i), for filing of briefs, and

(iii) the Party who has filed the Request and of every participant who files a brief under subrule (i) in reply to the grounds and arguments set forth in the briefs filed pursuant to subrule (ii) shall be filed no later than 10 days after the expiration of the time period, referred to in subrule (ii), for filing of briefs.

(3) The responsible Secretary shall serve orders and decisions of a committee and Notices of Completion of Extraordinary Challenge on the participants.

(4) Where the decision of a committee referred to in subrule (3) relates to a

panel review of a final determination made in Canada, the decision shall be served by registered mail.

59. The responsible Secretary shall cause notice of a final decision of a committee issued pursuant to rule 63, and any order that the committee directs the Secretary to publish, to be published in the official publications of the involved Parties.

60. Where the time period fixed, pursuant to rule 41, for filing an *ex parte* motion referred to in subrule 41(1)(c) has expired, the responsible Secretary shall serve on all participants (a) where no motion is filed pursuant to that subrule, the documents referred to in rules 39 and 41;

(b) where the committee issues an order referred to in subrule 45(1)(a), the documents referred to in rules 39 and 41 in accordance with any order of the committee; and

(c) where the committee issues an order referred to in subrule 45(1)(b), the documents referred to in rules 39 and 41, in accordance with subrule 45(1)(b)(ii) and any order made by the committee.

Part V—Orders and Decisions

61. All orders and decisions of a committee shall be made by a majority of the votes of all members of the committee.

62. (1) Where a Notice of Motion requesting dismissal of an extraordinary challenge proceeding is filed by a participant, the committee may issue an order dismissing the proceeding.

(2) Where the motion referred to in subrule (1) is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting dismissal, the extraordinary challenge proceeding is terminated.

63. (1) A final decision of a committee shall

- (a) affirm the decision of the panel;
- (b) vacate the decision of the panel; or

(c) remand the decision of the panel to the panel for action not inconsistent with the final decision of the committee.

(2) Every final decision of a committee shall be issued in writing with reasons, together with any dissenting or concurring opinions of the members of the committee.

(3) Subrule (2) shall not be construed as prohibiting the oral delivery of the decision of a committee.

Part VI—Completion of Extraordinary Challenges

64. Where all participants consent to the termination of the proceeding pursuant to rule 62, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which the requirements of rule 62 have been met.

65. Where a committee issues its final decision, the responsible Secretary shall cause to be published in the official publications of the involved Parties a Notice of Completion of Extraordinary Challenge, effective on the day after the day on which

(a) the committee affirms the decision of the panel;

(b) the committee vacates the decision of the panel; or

(c) where the committee remands the decision of the panel, the day the responsible Secretary gives notice to the committee that the panel has given notice that it has taken action not inconsistent with the committee's decision.

66. The members of the committee are discharged from their duties on the day on which a Notice of Completion of Extraordinary Challenge is effective.

67. (1) A Party may make a request, pursuant to Article 1905.11(a)(ii) of the Agreement, that an ongoing extraordinary challenge proceeding be stayed by filing the request with the responsible Secretariat.

(2) A Party who files a request under subrule (1) shall forthwith give written notice of the request to the other involved Party and to the other involved Secretariat.

(3) On receipt of a request under subrule (1), the responsible Secretary shall

(a) immediately give written notice of the stay of the extraordinary challenge proceedings to all participants in the extraordinary challenge proceedings; and

(b) publish a notice of the stay of the extraordinary challenge proceedings in the official publications of the involved Parties.

68. On receipt of a report containing an affirmative finding with respect to a ground specified in Article 1905.1 of the Agreement, the responsible Secretary for extraordinary challenge proceedings referred to in Article 1905.11(a)(i) of the Agreement shall

(a) immediately give notice in writing to all participants in those proceedings; and

(b) publish a notice of the affirmative finding in the official publications of the involved Parties.

69. (1) A Party who intends to suspend the operation of Article 1904 of the Agreement pursuant to Article 1905.8 or 1905.9 of the Agreement shall endeavour to give written notice of that intention to the other involved Party and to the involved Secretaries at least five days prior to the suspension.

(2) On receipt of a notice under subrule (1), the involved Secretaries shall publish a notice of the suspension in the official publications of the involved Parties.

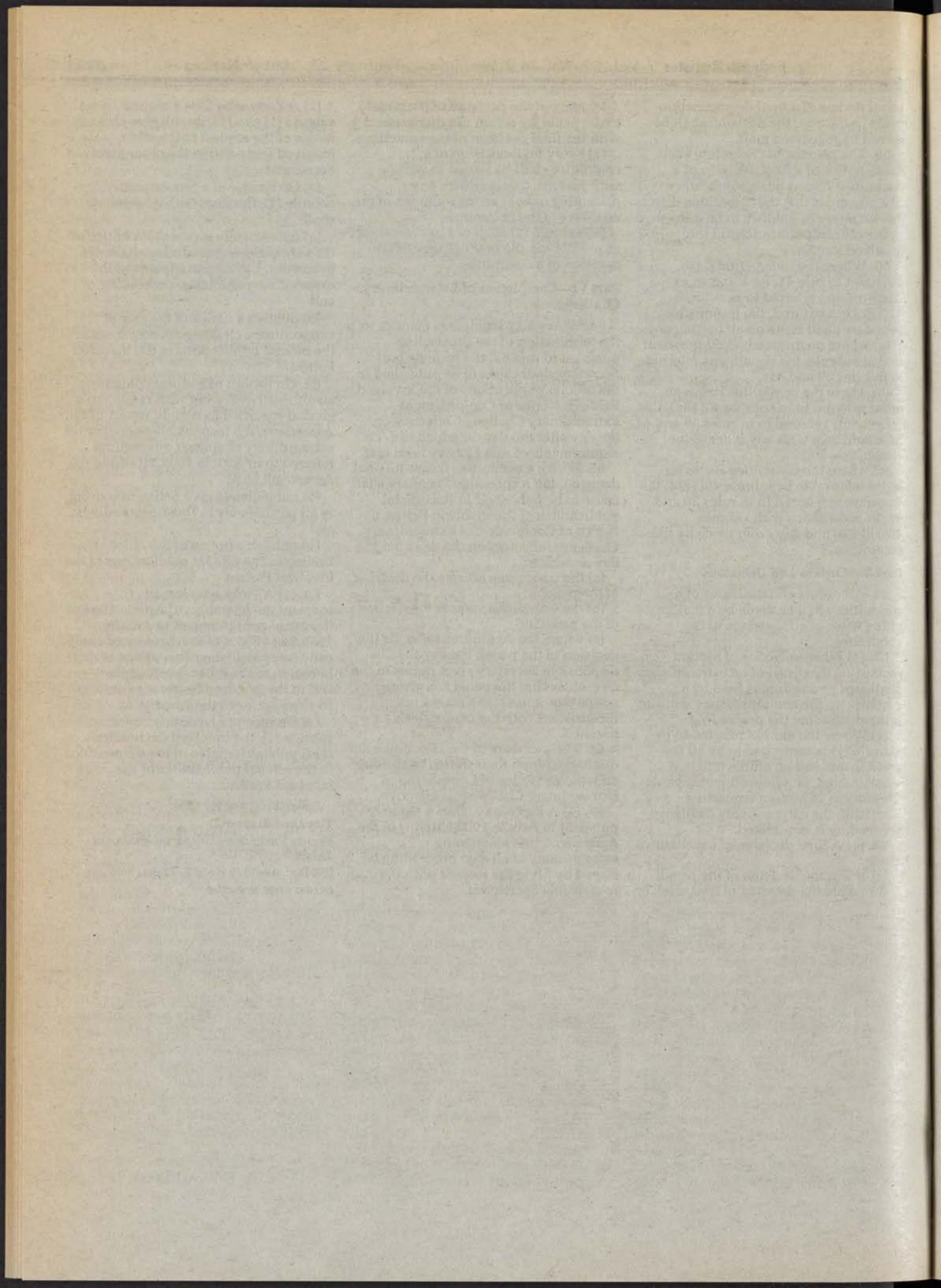
Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94-3929 Filed 2-22-94; 8:45 am]

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Federal Register

Wednesday
February 23, 1994

Part IV

**Department of
Commerce**

International Trade Administration

North American Free Trade Agreement:
Rules of Procedure for Article 1905
Special Committees; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Rules of Procedure for Article 1905 Special Committees

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Rules of Procedure for NAFTA Article 1905 Special Committees.

SUMMARY: Canada, Mexico, and the United States have negotiated the rules of procedure for Article 1905 Special Committees. These rules apply to special committee proceedings conducted pursuant to Article 1905 of the Agreement, unless the involved Parties otherwise agree.

EFFECTIVE DATE: January 1, 1994, the date of the entry into force of the North American Free Trade Agreement ("Agreement"). These Rules of Procedure shall apply to all special committee proceedings commenced on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, Stacy J. Ettinger, Attorney-Advisor, or Terrence J. McCartin, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0836, (202) 482-4618, or (202) 482-5031, respectively. For procedural matters involving cases under panel review, contact James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5438; fax: (202) 482-0148.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the North American Free Trade Agreement ("Agreement") establishes a mechanism for replacing judicial review of final antidumping and countervailing duty determinations involving imports from Canada, Mexico, or the United States with review by independent binational panels. If requested, these panels will expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country.

In instances in which one of the Parties to the Agreement alleges, pursuant to Article 1905.1 of the

Agreement, that the application of another Party's domestic law (a) has prevented the establishment of a panel; (b) has prevented a panel from rendering a final decision; (c) has prevented the implementation of a panel's decision or denied it binding force and effect; or (d) has resulted in a failure to provide opportunity for proper review of a final determination by a panel or a court of competent jurisdiction, that Party may request the establishment of a special committee.

Title IV of the North American Free Trade Agreement Implementation Act of 1993, Public Law No. 103-182, 107 Stat. 2057, amends United States law to implement Chapter Nineteen of the Agreement.

The Article 1905 Special Committee Rules are intended to give effect to the special committee provisions of Chapter Nineteen of the Agreement by setting forth the procedures for commencing, conducting, and completing special committee proceedings. These rules are the result of negotiations among Canada, Mexico, and the United States in compliance with the terms of the Agreement.

North American Free Trade Agreement Rules of Procedure for Article 1905 Special Committees

Contents

Rule

1. Short Title
2. Statement of General Intent
3. Interpretation
4. Operation of the Special Committee
 11. Service of Documents
 12. Written Submissions
 18. Hearings
 23. Language of Proceedings
 25. Special Committee Deliberations
 26. Reports
 30. Reconvening of Special Committee
 36. Completion of Special Committee Proceedings
 38. Confidentiality
 40. Ex Parte Contacts
 41. Extension and Computation of Time
 43. Responsibilities of the Responsible Secretary
 45. Death or Incapacity

The Parties

Having regard to Chapter Nineteen of the North American Free Trade Agreement between Canada, the United Mexican States and the United States of America;

Acting pursuant to Article 1905.6 of the Agreement;

Adopt the following Rules of Procedure, which shall come into force on the same day as the Agreement enters into force and from that day shall govern all special committee proceedings conducted pursuant to Article 1905 of the Agreement.

Short Title

1. These rules may be cited as the *Article 1905 Special Committee Rules*.

Statement of General Intent

2. These rules shall apply to special committee proceedings conducted pursuant to Article 1905 of the Agreement, unless the involved Parties otherwise agree. Where a procedural question arises that is not covered by these rules, a special committee may adopt an appropriate procedure that is not inconsistent with the Agreement. In the event of any inconsistency between the provisions of these rules and the Agreement, the Agreement shall prevail.

Interpretation

3. In these rules, "Agreement" means the North American Free Trade Agreement; "Complaining Party" means a Party who requests, pursuant to Article 1905.2 of the Agreement, that a special committee be established; "involved Secretariat" means the responsible Secretariat or the section of the Secretariat located in the country of the other involved Party; "legal holiday" means

(a) with respect to the Canadian Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day, Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the section is located and any day on which the offices of the Canadian Section of the Secretariat are officially closed in whole or in part,

(b) with respect to the Mexican Section of the Secretariat, every Saturday and Sunday, New Year's Day (January 1), Constitution Day (February 5), Benito Juárez's Birthday (March 21), Labor Day (May 1), Battle of Puebla (May 5), Independence Day (September 16), Congressional Opening Day (November 1), Revolution Day (November 20), Transmission of the Federal Executive Branch (every six years on December 1), Christmas Day (December 25), any day designated as a statutory holiday by the Federal Laws or, in the case of Ordinary Elections, by the Local Electoral Laws and any day on which the offices of the Mexican Section of the Secretariat are officially closed in whole or in part, and

(c) with respect to the United States Section of the Secretariat, every

Saturday and Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States and any day on which the offices of the Government of the United States located in the District of Columbia or the offices of the United States Section of the Secretariat are officially closed in whole or in part; "Mexico" means the United Mexican States;

"official publication" means
(a) in the case of the Government of Canada, the *Canada Gazette*,
(b) in the case of the Government of Mexico, the *Diario Oficial de la Federación*, and
(c) in the case of the Government of the United States, the *Federal Register*;

"Party" means the Government of Canada, the Government of Mexico or the Government of the United States;
"Responding Party" means the Party against whom an allegation is made under Article 1905.1 of the Agreement;
"responsible Secretariat" means the section of the Secretariat of the Responding Party;

"responsible Secretary" means the Secretary of the responsible Secretariat;
"Secretariat" means the Secretariat established pursuant to Article 2002 of the Agreement;

"Secretary" means the Secretary of the United States Section of the Secretariat, the Secretary of the Mexican Section of the Secretariat or the Secretary of the Canadian Section of the Secretariat and includes any person authorized to act on behalf of that Secretary;

"special committee" means a special committee established pursuant to Article 1905 of the Agreement;
"United States" means the United States of America.

Operation of the Special Committee

4. (1) Subject to subrule (2), unless the involved Parties otherwise agree, special committee meetings shall take place at the offices of the responsible Secretariat or at such alternative location as the committee members may agree.

(2) A special committee may conduct meetings or exchange information by any means, including by means of a telephone conference call or facsimile or computer transmission.

5. The members of a special committee shall select from among themselves a chairperson, who shall preside over all meetings and hearings of the special committee.

6. The chairperson of the special committee shall fix the date and time of its meetings in consultation with other special committee members and the responsible Secretary.

7. All reports, findings, determinations and decisions of a special committee shall be made or issued by a majority vote of all members of the special committee.

8. A special committee proceeding commences on the day on which a request for a special committee is filed with the responsible Secretariat and terminates on the day on which a notice of completion of the special committee proceeding is issued pursuant to rule 36.

9. (1) A special committee may adopt internal procedures of its own, not inconsistent with these rules, for routine administrative matters.

(2) A special committee may delegate to its chairperson the authority to make decisions regarding internal procedures or routine administrative matters.

10. The terms of reference of a special committee shall be limited to
(a) making a finding as to whether any allegations set out in Article 1905.1 of the Agreement made by the Complaining Party regarding the application of the Responding Party's domestic law are substantiated;

(b) determining whether a suspension of benefits by the Complaining Party pursuant to Article 1905.8(b) of the Agreement is manifestly excessive; and

(c) determining whether the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding.

Service of Documents

11. A document to be filed by an involved Party with the responsible Secretariat shall

(a) be served on the other involved Party by express courier, overnight mail or by any other means agreed upon by the involved Parties; and

(b) when filed, be accompanied by a proof of service certifying that the document has been served on the other involved Party, indicating the manner, date and time of service.

Written Submissions

12. All written submissions and responses filed with a responsible Secretariat shall be accompanied by four copies thereof.

13. (1) A request for the establishment of a special committee under Article

1905.2 of the Agreement shall be made by filing the request with the responsible Secretariat.

(2) On the filing of a request under subrule (1), the responsible Secretary and the other involved Secretary shall cause a notice of the filing of the request to be published in the official publications of the countries in which their sections of the Secretariat are located.

14. The written initial submission of a Complaining Party shall be filed with the responsible Secretariat no later than 10 days after the date on which the last member of the special committee is appointed.

15. A written response by the Responding Party shall be filed with the responsible Secretariat no later than 20 days after the filing of the initial submission of the Complaining Party.

16. A special committee may allow each involved Party the opportunity to make an equal number of further written submissions, within such time as may be fixed by the special committee, having regard to the time limits fixed by Annex 1905.6 to Chapter Nineteen of the Agreement.

17. The responsible Secretary shall forward to the other involved Secretary a copy of all documents filed with the responsible Secretariat and of all reports, findings, determinations and decisions issued by the special committee.

Hearings

18. (1) At least one hearing shall be held before the special committee presents its initial report.

(2) The date and time of hearings shall be fixed by the special committee in consultation with the involved Parties and the responsible Secretary.

(3) A verbatim transcript shall be taken of all hearings.

19. Unless the involved Parties otherwise agree, special committee hearings shall take place at the offices of the responsible Secretariat.

20. (1) All special committee members must be present during hearings.

(2) No later than five days before the date of a hearing, each involved Party shall deliver to the responsible Secretariat and to the other involved Party a list of the names of the persons who will present oral arguments at the hearing on behalf of that Party and of other representatives or advisers of the Party who will be attending the hearing.

21. Oral proceedings shall be conducted in the following order, ensuring that each involved Party is given equal time:

(a) the argument of the Complaining Party;

- (b) the argument of the Responding Party;
- (c) a reply of the Complaining Party; and
- (d) a counter-reply of the Responding Party.

22. At the request of an involved Party or at the initiative of the special committee, with the agreement of both involved Parties and subject to such terms and conditions as both involved Parties may agree upon, the special committee may call upon any person to provide information concerning the matter in dispute.

Language of Proceedings

23. Written and oral proceedings may be in either English, French or Spanish, or in any combination thereof.

24. Unless the involved Parties otherwise agree, the reports, findings, determinations and decisions of a special committee shall be issued in an official language of the Responding Party and, if necessary, shall be promptly translated into an official language of the other involved Party.

Special Committee Deliberations

25. (1) The deliberations of a special committee shall take place in private and remain confidential.

(2) Only special committee members may take part in the deliberations of a special committee.

(3) Staff of the involved Secretariats, assistants to the special committee members and any necessary support staff may be present during deliberations of a special committee by permission of the special committee.

Reports

26. In accordance with paragraph (b) of Annex 1905.6 to Chapter Nineteen of the Agreement, a special committee shall prepare and present to the involved Parties an initial report, wherever practicable, within 60 days after the appointment of the last member of the special committee.

27. The involved Parties may comment in writing or, at the request of the special committee, orally, on an initial report of a special committee within 14 days after the initial report is presented.

28. An initial report of a special committee shall be kept confidential.

29. (1) A special committee shall issue a final report, together with any separate opinions rendered by individual committee members, within 30 days after the presentation of its initial report.

(2) Any separate opinions rendered by individual special committee members shall be anonymous.

(3) On the issuance of a final report under subrule (1), the responsible Secretary shall immediately forward copies of the report to the involved Parties.

(4) Unless the involved Parties otherwise agree,

(a) within 10 days after the final report is forwarded to the involved Parties, the involved Secretaries shall cause a notice that a final report has been issued by a special committee to be published in the official publications of the involved Parties, indicating that copies of the report and of any separate opinions by individual members or written views of either involved Party are available to the public at the offices of the responsible Secretariat; and

(b) the responsible Secretariat shall make available to the public copies of the final report of a special committee, together with any separate opinions by individual members and any written views that either involved Party may wish to be published.

Reconvening of Special Committee

30. Where a special committee has made an affirmative finding with respect to grounds specified in Article 1905.1 of the Agreement, a Responding Party may request that the special committee be reconvened by filing a request with the responsible Secretariat

(a) where the Responding Party is requesting that the special committee determine whether the Responding Party has corrected a problem with respect to which the special committee has made an affirmative finding, at any time after the affirmative finding was made; or

(b) where the Responding Party is requesting that the special committee determine whether a suspension of benefits by the Complaining Party under Article 1905.8 of the Agreement is manifestly excessive, at any time after the suspension was made.

31. (1) Where a request referred to in subrule 30(a) is filed before the fortieth day of the 60-day consultation period referred to in Article 1905.8 of the Agreement, the special committee shall endeavour to present a report containing its determination to the involved Parties before the sixtieth day of that period, and may for that purpose make such orders as to filing of written submissions and responses and the holding of a hearing as the special committee considers necessary under the circumstances.

(2) Rules 32 to 34 apply with respect to requests referred to in subrule 30(a) that are filed on or after the fortieth day of the 60-day consultation period

referred to in Article 1905.8 and to requests referred to in subrule 30(b).

32. (1) At the time of filing a request pursuant to rule 30, the Responding Party shall file a written submission in support of the request.

(2) A Complaining Party shall file a written response to a submission referred to in subrule (1) within 20 days after that submission is filed.

33. (1) At the time of filing a request pursuant to rule 30 or a written response pursuant to subrule 32(2), an involved Party may request an opportunity to present oral argument in support of its request or response.

(2) Where an involved Party requests an opportunity to present oral argument pursuant to subrule (1), the special committee may hold a hearing, at which both involved Parties shall be granted an equal opportunity to present oral argument.

34. The special committee shall, within 45 days of the filing of a request pursuant to rule 30, present to the involved Parties a written report containing its determination pursuant to Article 1905.10 of the Agreement.

35. Subrules 29 (2) to (4) apply, with such modifications as are necessary, to reports referred to in subrule 31(1) and rule 34.

Completion of Special Committee Proceedings

36. (1) On completion of a special committee proceeding, as determined by the special committee in consultation with the involved Parties, the special committee shall request the responsible Secretary to issue a notice of completion of the proceeding.

(2) A notice referred to in subrule (1) is effective the day after it is issued.

(3) The responsible Secretary shall cause a notice issued under subrule (1) to be published in the official publications of the involved Parties.

37. The members of a special committee are discharged from their duties on the day on which a notice of completion of the special committee proceeding is effective.

Confidentiality

38. All written submissions to, and communications with, a special committee and all documents filed with the involved Secretariats shall be kept confidential.

39. (1) All hearings of a special committee, and all transcripts thereof, shall be kept confidential.

(2) It is the responsibility of each involved Party to ensure that the persons attending oral proceedings of a special committee on its behalf maintain the confidentiality of the proceedings.

Ex Parte Contacts

40. (1) No special committee or member of a special committee shall meet or contact one involved Party in the absence of the other involved Party.

(2) No special committee member shall discuss a matter before the special committee with the involved Parties in the absence of other special committee members.

Extension and Computation of Time

41. A time period fixed by these rules may be extended with the consent of both involved Parties or by a decision of a special committee.

42. (1) In computing any time period fixed in or under these rules, the day or date from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any

other legal holidays of the responsible Secretariat immediately following that day shall be excluded from the computation.

(3) In computing any time period of five days or less fixed in these rules or by a decision of a special committee, any legal holiday that falls within the time period shall be excluded from the computation.

Responsibilities of the Responsible Secretary

43. The responsible Secretary shall provide administrative support for each special committee proceeding and shall make the arrangements necessary for the hearings and meetings of the special committee, including the provision of court reporters and, if required, interpreters to provide simultaneous translation.

44. The responsible Secretary shall maintain a file for each special committee proceeding, comprised of the original or a copy of all documents filed, whether or not filed in accordance with

these rules, in the special committee proceeding.

Death or Incapacity

45. Where a special committee member is disqualified, dies or otherwise becomes unable to fulfil special committee duties,

(a) special committee proceedings and computations of time shall be suspended, pending the appointment of a substitute member; and

(b) where the disability, disqualification or death occurs after oral argument has begun, the chairperson may order that the matter be reheard, on such terms as are appropriate, after selection of a substitute member.

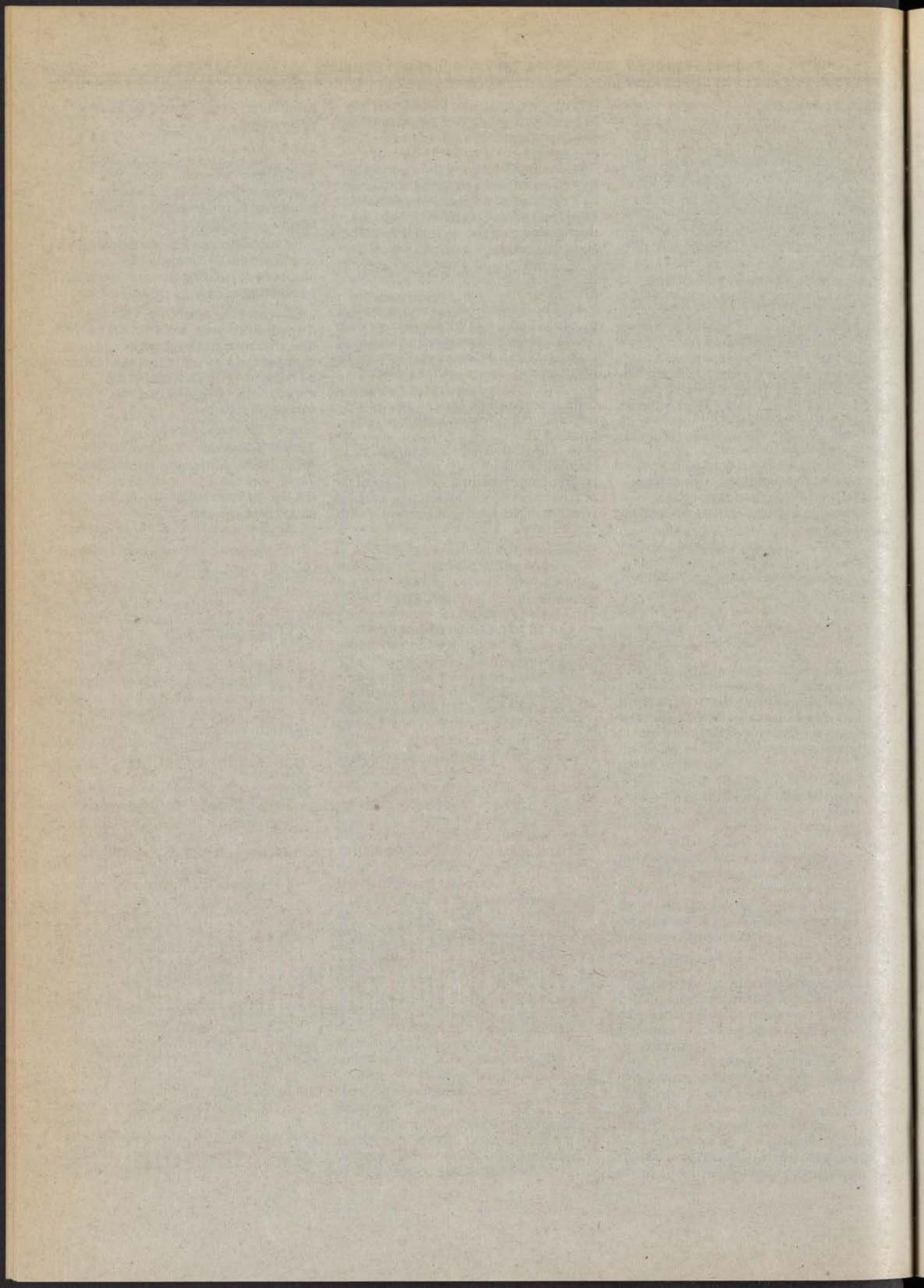
Dated: February 10, 1994.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 94-3931 Filed 2-22-94; 8:45 am]

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Federal Register

Wednesday
February 23, 1994

Part V

**Department of
Commerce**

International Trade Administration

**North American Free Trade Agreement:
Code of Conduct for Proceedings Under
Chapters Nineteen and Twenty; Notice**

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement: Code of Conduct for Proceedings Under Chapters Nineteen and Twenty

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Code of Conduct for Proceedings Under NAFTA Chapters Nineteen and Twenty.

SUMMARY: Canada, Mexico, and the United States have negotiated a Code of Conduct for proceedings under Chapters Nineteen and Twenty of the North American Free Trade Agreement ("Agreement"). The Code applies to members of panels established pursuant to Article 1903, 1904 or 2008, including Article 2008 panels established pursuant to Article 1414, and to members of committees established pursuant to Article 1905 or Annex 1904.13 of the Agreement. In addition, the Code establishes disclosure obligations for members of rosters established pursuant to Article 1414 or 2009 or Annex 1901.2 or 1904.13 of the Agreement and for individuals not on a roster who are under consideration for appointment to a panel or committee.

EFFECTIVE DATE: January 1, 1994, the date of entry into force of the North American Free Trade Agreement.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-5438; fax: (202) 482-0148.

SUPPLEMENTARY INFORMATION: To ensure the integrity and impartiality of proceedings conducted pursuant to Articles 1903, 1904, 1905, and 2008 of the North American Free Trade Agreement ("Agreement"), which entered into force on January 1, 1994, Canada, Mexico, and the United States have negotiated a Code of Conduct pursuant to Articles 1909 and 2009 of the Agreement. The Code of Conduct governs the conduct of members of panels established pursuant to Article 1903, 1904 or 2008, including Article 2008 panels established pursuant to Article 1414, and to members of committees established pursuant to Article 1905 or Annex 1904.13 of the Agreement. In addition, the Code of Conduct establishes disclosure obligations for members of rosters

established pursuant to Article 1414 or 2009 or Annex 1901.2 or 1904.13 of the Agreement and for individuals not on a roster who are under consideration for appointment to a panel or committee. It is based on the Code of Conduct existing under the United States-Canada Free Trade Agreement, with certain changes made to better ensure the integrity and impartiality of the proceedings under the Agreement.

Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20 of the North American Free Trade Agreement

Preamble

Whereas the Parties place prime importance on the integrity and impartiality of proceedings conducted pursuant to Chapters 19 and 20 of the North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, this Code of Conduct is hereby established to ensure that these principles are respected.

Interpretation

- A. In this Code of Conduct, "Agreement" means the North American Free Trade Agreement; "assistant" means a person who, under the terms of appointment of a member, conducts research or provides support for the member; "candidate" means
- (a) an individual whose name appears on a roster or list established under Article 1414, Annex 1901.2 or 1904.13 or Article 2009,
- (b) an individual who is under consideration for appointment as a member of a panel pursuant to Annex 1901.2 or Article 1903, 1904 or 2011, or
- (c) an individual who is under consideration for appointment as a member of a committee pursuant to Annex 1904.13 or Article 1905;
- "member" means
- (a) a member of a panel constituted pursuant to Annex 1901.2 or Article 1414, 1903, 1904, 2008 or 2011,
- (b) a member of an extraordinary challenge committee constituted pursuant to Annex 1904.13, or
- (c) a member of a special committee constituted pursuant to Article 1905;
- "participant" has the meaning assigned in the Rules of Procedure for Article 1904 Binational Panel Reviews;
- "Party" means a Party to the Agreement;
- "proceeding", unless otherwise specified, means
- (a) a panel review under Article 1903 or 1904,

- (b) an extraordinary challenge proceeding under Annex 1904.13,
- (c) a special committee proceeding under Article 1905,
- (d) a panel proceeding under Chapter 20, or
- (e) a proceeding in a dispute arising under Chapter 11 or 14 to which Chapter 20 applies;
- "Secretariat" means the Secretariat established pursuant to Article 2002; and

"staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

B. Any reference made in this Code of Conduct to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of the Agreement.

I. Responsibilities to the Process

Every candidate, member and former member shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

II. Disclosure Obligations

[Introductory Note:

The governing principle of this Code of Conduct is that a candidate or member must disclose the existence of any interest, relationship or matter that is likely to affect the candidate's or member's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias. An appearance of impropriety or an apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or member's ability to carry out the duties with integrity, impartiality and competence is impaired.

These disclosure obligations, however, should not be interpreted so that the burden of detailed disclosure makes it impractical for persons in the legal or business community to serve as members, thereby depriving the Parties and participants of the services of those who might be best qualified to serve as members. Thus, candidates and members should not be called upon to disclose interests, relationships or matters whose bearing on their role in the proceeding would be trivial.

Throughout the proceeding, candidates and members have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.

This Code of Conduct does not determine whether or under what

circumstances the Parties will disqualify a candidate or member from being appointed to, or serving as a member of, a panel or committee on the basis of disclosures made.)

A. A candidate shall disclose any interest, relationship or matter that is likely to affect the candidate's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

The candidate shall disclose such interests, relationships and matters by completing an Initial Disclosure Statement provided by the Secretariat and sending it to the Secretariat.

Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:

(1) any financial interest of the candidate

(a) in the proceeding or in its outcome, and

(b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

(2) any financial interest of the candidate's employer, partner, business associate or family member

(a) in the proceeding or in its outcome, and

(b) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

(3) any past or existing financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member; and

(4) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same goods.

B. A member in an Article 1904 proceeding shall, after receiving the complaint, disclose any interests, advocacy or representation referred to in paragraph A (1)(b) or (2)(b) or subsection (4) by completing a Supplementary Disclosure Statement provided by the Secretariat and sending it to the Secretariat for consideration by the appropriate Parties.

C. Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests,

relationships or matters referred to in section A and shall disclose them. The obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

The member shall disclose such interests, relationships and matters by communicating them in writing to the Secretariat for consideration by the appropriate Parties.

III. The Performance of Duties By Candidates and Members

A. A candidate who accepts an appointment as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the proceeding.

B. A member shall ensure that the Secretariat can, at all reasonable times, contact the member in order to conduct panel or committee business.

C. A member shall carry out all duties fairly and diligently.

D. A member shall comply with the provisions of Chapter 19 or 20 and the applicable rules.

E. A member shall not deny other members the opportunity to participate in all aspects of the proceeding.

F. A member shall consider only those issues raised in the proceeding and necessary to a decision and shall not delegate the duty to decide to any other person, except as provided in the applicable rules.

G. A member shall take all reasonable steps to ensure that the member's assistant and staff comply with Parts I, II and VI of this Code of Conduct.

H. A member shall not engage in *ex parte* contacts concerning the proceeding.

I. A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the Secretariat or is necessary to ascertain whether that candidate or member has violated or may violate the Code.

IV. Independence and Impartiality of Members

A. A member shall be independent and impartial. A member shall act in a fair manner and shall avoid creating an appearance of impropriety or an apprehension of bias.

B. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

C. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any

way interfere, or appear to interfere, with the proper performance of the member's duties.

D. A member shall not use the member's position on the panel or committee to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.

E. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgment.

F. A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.

V. Duties in Certain Situations

A. For a period of one year after the completion of an Article 1904 proceeding, a former member shall not personally advise or represent any participant in the proceeding with regard to antidumping or countervailing duty matters.

B. In the case of an Article 1904 proceeding, a member or a former member shall not represent a participant in an administrative proceeding, a domestic court proceeding or another Article 1904 proceeding involving the same goods.

C. A former member shall avoid actions that may create the appearance that the member was biased in carrying out the member's duties or would benefit from the decision of the panel or committee.

VI. Maintenance of Confidentiality

A. A member or former member shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another.

B. A member shall not disclose a declaratory opinion under Article 1903 or a panel or extraordinary challenge committee order or decision under Article 1904 prior to its issuance by the panel or committee.

C. A member shall not disclose a special committee report or decision under Article 1905 prior to its public release by the Secretariat. A member or

former member shall not at any time disclose which members are associated with majority or minority opinions in an Article 1905 proceeding.

D. A member shall not disclose a panel report issued under Chapter 20 prior to its publication by the Commission. A member or former member shall not at any time disclose which members are associated with

majority or minority opinions in a proceeding under Chapter 20.

E. A member or former member shall not at any time disclose the deliberations of a panel or committee, or any member's view, except as required by law.

VII. Responsibilities of Assistants and Staff

Parts I (Responsibilities to the Process), II (Disclosure Obligations) and

VI (Maintenance of Confidentiality) of this Code of Conduct apply also to assistants and staff.

Dated: February 10, 1994.

Timothy J. Hauser,
Deputy Under Secretary for International Trade.

[FR Doc. 94-3930 Filed 2-22-94; 8:45 am]

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Federal Register

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February 23 1994

Part VI

Environmental Protection Agency

40 CFR Part 300
National Priorities List for Uncontrolled
Hazardous Waste Sites; Rule

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 300
[FRL-4839-6]
**National Priorities List for Uncontrolled
Hazardous Waste Sites**
AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

This rule adds 1 new site, ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, to the General Superfund Section. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action results in an NPL of 1,191 sites, 1,068 of them in the General Superfund Section and 123 of them in the Federal Facilities Section. An additional 96 sites are proposed, 66 in the General Superfund Section and 30 in the Federal Facilities Section. Final and proposed sites now total 1,288.

EFFECTIVE DATE: The effective date for this amendment is March 25, 1994. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question. EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see "Information Available to the Public" in Section I of

the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC metropolitan area.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Purpose and Implementation of the NPL
- III. Contents of This Final Rule
- IV. Executive Order 12866
- V. Regulatory Flexibility Act Analysis

I. Introduction
Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99-499, stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action * * * and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national

priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List ("NPL").

CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites."

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above

28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

EPA determines that the release poses a significant threat to public health.

- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 14, 1992 (57 FR 47180).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 58 sites from the General Superfund Section of the NPL, most recently Charlevoix Municipal Well, Charlevoix, Michigan (58 FR 63531, December 2, 1993) and Mowbray Engineering Company, Greenville, Alabama (58 FR 69238, December 30, 1993).

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

- (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

- (2) EPA has determined that the response action should be limited to measures that do not involve

construction (e.g., institutional controls); or

- (3) The site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 57 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 167 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of January 1994, the CCL consists of 224 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of January 1994, EPA had conducted 603 removal actions at NPL sites, and 1,755 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Correction

EPA inadvertently left one site off of the appendix B list in the previous final rule (57 FR 47180, October 14, 1992). This site is Foote Mineral Co., East Whiteland Township, PA, which belongs in the General Superfund Section of the NPL. Alternately, one site was included in the previous appendix B list which did not belong. This site is Broward County—21st Manor Dump in Fort Lauderdale, FL, which has been proposed to the NPL but a final decision has not yet been made.

Action In This Rule

This final rule adds 1 site, ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, to the General Superfund Section, for a total of 1,068 sites in that section. The Federal Facility Section includes 123 sites. Therefore, there are now 1,191 sites on the NPL. An additional 96 sites have been proposed, 66 in the General Superfund Section and 30 in the Federal Facilities Section, and are awaiting final Agency action. Final and proposed sites now total 1,288. These numbers reflect that two sites have been voluntarily withdrawn from the NPL by EPA:

Hevi-Duty Electric Co., Goldsboro, NC
Hexcel Corporation, Livermore, CA

These numbers also reflect the removal of one site from the NPL by the District of Columbia Court of Appeals:

Tex-Tin Corp., Texas City, TX

Information Available to the Public

The Headquarters and Region 6 public dockets for the NPL contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are

available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 6 Docket for hours.

Addresses for the Headquarters and Region 6 dockets follow:

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, 5201 Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/260-3046
Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740

The Headquarters docket for this rule contains HRS score sheets for the final site; a Documentation Record for the site describing the information used to compute the score; pertinent information regarding statutory requirements or EPA listing policies that affect the site; a list of documents referenced in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—February 1994." The Region 6 docket for this rule contains all information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 6 docket.

Interested parties may view documents, by appointment only, in the Headquarters or Region 6 Docket or copies may be requested from the Headquarters or Region 6 Docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign

liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment (PA), is a low-cost review of existing information to determine if the site poses a threat to the public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA generally will perform a more extensive study called the Site Inspection (SI). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites that warrant placement on the NPL and further study. To date EPA has completed approximately 35,000 PAs and approximately 17,000 SIs.

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL; although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites.

Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40

CFR 300.415(b)(2) (55 FR 8842, March 8, 1990).

EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, to proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although it is a factor that is considered, the ranking of sites by HRS scores does not by itself determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(a)(2), 55 FR 8845). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant environmental risk and sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it already was underway. In addition, certain sites are based on other criteria.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study ("RI/FS") that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990). The RI/FS takes into account the amount of contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40

CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990).

After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup already is underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the Federal Register for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund-financed response action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The Agency's position is that the NPL does not describe releases in precise geographical terms, and that it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue; that is, the NPL site would include all releases evaluated as part of

that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, see 48 FR 40663 (September 8, 1983)).

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally known, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be defined, and in any event are independent of the NPL listing. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96-848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, based on information known at that time. For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has

spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process * * *. [T]he NPL serves as a guide to EPA and does not determine liability or the need for response. (49 FR 37081 (September 21, 1984)).

See also *City of Stoughton, Wisc. v. U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

Certainly EPA could have permitted further comment or conducted further testing (on proposed NPL sites). Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." *Eagle-Picher [Industries v. EPA]* II, 759 F. 2d [921.] at 932 (D.C. Cir. 1985)).

III. Contents of This Final Rule

This final rule adds 1 site to the General Superfund Section of the NPL. This site is ALCOA (Point Comfort)/Lavaca Bay in Point Comfort, Texas, which was proposed to the NPL in Proposal #15 (58 FR 34018, June 23, 1993) based on an HRS score of 28.50 or greater. The group number identified for this site based on its score is 4/5. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Public Comments

EPA reviewed all comments received on this site. The formal comment period ended on August 23, 1993.

EPA has carefully considered public comments submitted and has made certain modifications in response to those comments. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—February 1994."

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the

known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

Economic Impacts

The costs of cleanup actions that may be taken at any site are not directly attributable to placement on the NPL. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NPL. EPA believes that the kinds of economic effects associated with this revision generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding 1 site to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the site included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches.

Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by Section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1993) cost estimates available; the estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site ¹
RI/FS	1,350,000
Remedial design	1,260,000
Remedial action	21,960,000
Net present value of O&M ² ...	3,770,000

¹ 1993 U.S. Dollars.

² Assumes cost of O&M over 30 years, \$400,000 for the first year and 10% discount rate.

³ Includes State cost-share.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to the State of Texas associated with today's final rule arise from the

required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to Texas of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately \$2.78 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the ALCOA (Point Comfort/Lavaca Bay) site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately \$2.3 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NPL are aggregations of efforts on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL

could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IV. Executive Order 12866

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 12316 (46 FR 42237, August 20, 1981). No changes were made in response to OMB.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule revises the NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that the listing of the sites in this NPL rule could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions,

including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: February 15, 1994.

Elliott P. Laws,
Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Appendix B to part 300 is revised to read as follows:

Appendix B—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994

State	Site name	City/county	Notes
AK	Alaska Battery Enterprises	Fairbanks N Star Borough	C
AK	Arctic Surplus	Fairbanks	
AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh	
AL	Interstate Lead Co. (ILCO)	Leeds	
AL	Olin Corp. (McIntosh Plant)	McIntosh	
AL	Perdido Ground Water Contamination	Perdido	C
AL	Redwing Carriers, Inc. (Saraland)	Saraland	
AL	Stauffer Chemical Co. (Cold Creek Plant)	Bucks	
AL	Stauffer Chemical Co. (LeMoyne Plant)	Axis	
AL	T.H. Agriculture & Nutrition (Montgomery)	Montgomery	
AL	Triana/Tennessee River	Limestone/Morgan	C
AR	Arkwood, Inc	Omaha	
AR	Frit Industries	Walnut Ridge	
AR	Gurley Pit	Edmondson	
AR	Industrial Waste Control	Fort Smith	C
AR	Jacksonville Municipal Landfill	Jacksonville	
AR	Mid-South Wood Products	Mena	C
AR	Midland Products	Ola/Birta	C
AR	Monroe Auto Equipment (Paragould Pit)	Paragould	
AR	Popile, Inc	El Dorado	
AR	Rogers Road Municipal Landfill	Jacksonville	
AR	South 8th Street Landfill	West Memphis	
AR	Vertac, Inc	Jacksonville	
AZ	Apache Powder Co	St. David	
AZ	Hassayampa Landfill	Hassayampa	
AZ	Indian Bend Wash Area	Scottsdale/Tempe/Phoenix	
AZ	Litchfield Airport Area	Goodyear/Avondale	
AZ	Motorola, Inc. (52nd Street Plant)	Phoenix	
AZ	Nineteenth Avenue Landfill	Phoenix	
AZ	Tucson International Airport Area	Tucson	
CA	Advanced Micro Devices, Inc	Sunnyvale	C
CA	Advanced Micro Devices, Inc. (Bldg. 915)	Sunnyvale	C
CA	Aerojet General Corp	Rancho Cordova	
CA	Applied Materials	Santa Clara	C
CA	Atlas Asbestos Mine	Fresno County	
CA	Beckman Instruments (Porterville Plant)	Porterville	C
CA	Brown & Bryant, Inc. (Arvin Plant)	Arvin	
CA	CTS Printex, Inc	Mountain View	C
CA	Celtor Chemical Works	Hoopa	C
CA	Coalinga Asbestos Mine	Coalinga	
CA	Coast Wood Preserving	Ukiah	
CA	Crazy Horse Sanitary Landfill	Salinas	
CA	Del Norte Pesticide Storage	Crescent City	C
CA	Fairchild Semiconductor Corp (Mt View)	Mountain View	
CA	Fairchild Semiconductor Corp (S San Jose)	South San Jose	C
CA	Firestone Tire&Rubber Co. (Salinas Plant)	Salinas	C
CA	Fresno Municipal Sanitary Landfill	Fresno	
CA	Hewlett-Packard (620-640 Page Mill Road)	Palo Alto	
CA	Industrial Waste Processing	Fresno	
CA	Intel Corp. (Mountain View Plant)	Mountain View	
CA	Intel Corp. (Santa Clara III)	Santa Clara	C
CA	Intel Magnetics	Santa Clara	C
CA	Intersil Inc./Siemens Components	Cupertino	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
CA	Iron Mountain Mine	Redding	
CA	J.H. Baxter & Co	Weed	
CA	Jasco Chemical Corp	Mountain View	
CA	Koppers Co., Inc. (Oroville Plant)	Oroville	
CA	Liquid Gold Oil Corp	Richmond	
CA	Lorentz Barrel & Drum Co	San Jose	
CA	Louisiana-Pacific Corp	Oroville	
CA	MGM Brakes	Cloverdale	
CA	McColl	Fullerton	
CA	McComick & Baxter Creosoting Co	Stockton	
CA	Modesto Ground Water Contamination	Modesto	
CA	Monolithic Memories	Sunnyvale	
CA	Montrose Chemical Corp	Torrance	
CA	National Semiconductor Corp	Santa Clara	
CA	Newmark Ground Water Contamination	San Bernardino	
CA	Operating Industries, Inc., Landfill	Monterey Park	
CA	Pacific Coast Pipe Lines	Fillmore	
CA	Purity Oil Sales, Inc	Malaga	
CA	Ralph Gray Trucking Co	Westminster	
CA	Raytheon Corp	Mountain View	
CA	San Fernando Valley (Area 1)	Los Angeles	
CA	San Fernando Valley (Area 2)	Los Angeles/Glendale	
CA	San Fernando Valley (Area 3)	Glendale	
CA	San Fernando Valley (Area 4)	Los Angeles	
CA	San Gabriel Valley (Area 1)	El Monte	
CA	San Gabriel Valley (Area 2)	Baldwin Park Area	
CA	San Gabriel Valley (Area 3)	Alhambra	
CA	San Gabriel Valley (Area 4)	La Puente	
CA	Selma Treating Co	Selma	
CA	Sola Optical USA, Inc	Petaluma	C
CA	South Bay Asbestos Area	Alviso	
CA	Southern California Edison Co (Visalia)	Visalia	
CA	Spectra-Physics, Inc	Mountain View	C
CA	Stringfellow	Glen Avon Heights	S
CA	Sulphur Bank Mercury Mine	Clear Lake	
CA	Synertek, Inc. (Building 1)	Santa Clara	C
CA	T.H. Agriculture & Nutrition Co	Fresno	
CA	TRW Microwave, Inc (Building 825)	Sunnyvale	C
CA	Teledyne Semiconductor	Mountain View	C
CA	United Heckathorn Co	Richmond	
CA	Valley Wood Preserving, Inc	Turlock	
CA	Waste Disposal, Inc	Santa Fe Springs	
CA	Watkins-Johnson Co. (Stewart Division)	Scotts Valley	
CA	Western Pacific Railroad Co	Oroville	
CA	Westinghouse Electric Corp. (Sunnyvale)	Sunnyvale	
CO	Broderick Wood Products	Denver	
CO	California Gulch	Leadville	
CO	Central City-Clear Creek	Idaho Springs	
CO	Chemical Sales Co	Denver	
CO	Denver Radium Site	Denver	
CO	Eagle Mine	Minturn/Redcliff	
CO	Lincoln Park	Canon City	
CO	Lowry Landfill	Arapahoe County	
CO	Marshall Landfill	Boulder County	C,S
CO	Sand Creek Industrial	Commerce City	
CO	Smuggler Mountain	Pitkin County	
CO	Uravan Uranium Project (Union Carbide)	Uravan	
CT	Barkhamsted-New Hartford Landfill	Barkhamsted	
CT	Beacon Heights Landfill	Beacon Falls	
CT	Cheshire Ground Water Contamination	Cheshire	
CT	Durham Meadows	Durham	
CT	Gallup's Quarry	Plainfield	
CT	Kellogg-Deering Well Field	Norwalk	
CT	Laurel Park, Inc	Naugatuck Borough	S
CT	Linemaster Switch Corp	Woodstock	
CT	Nutmeg Valley Road	Wolcott	
CT	Old Southington Landfill	Southington	
CT	Precision Plating Corp	Vernon	
CT	Revere Textile Prints Corp	Sterling	C
CT	Solvents Recovery Service New England	Southington	
CT	Yaworski Waste Lagoon	Canterbury	
DE	Army Creek Landfill	New Castle County	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
DE	Chem-Solv, Inc	Cheswold	
DE	Coker's Sanitation Service Landfills	Kent County	C
DE	Delaware City PVC Plant	Delaware City	
DE	Delaware Sand & Gravel Landfill	New Castle County	
DE	Dover Gas Light Co	Dover	
DE	E.I. Du Pont de Nemours (Newport Landfill)	Newport	
DE	Halby Chemical Co	New Castle	
DE	Harvey & Knott Drum, Inc	Kirkwood	
DE	Koppers Co., Inc. (Newport Plant)	Newport	
DE	NCR Corp. (Millsboro Plant)	Millsboro	
DE	New Castle Spill	New Castle County	C
DE	Sealand Limited	Mount Pleasant	C
DE	Standard Chlorine of Delaware, Inc	Delaware City	
DE	Sussex County Landfill No. 5	Laurel	
DE	Tybouts Corner Landfill	New Castle County	S
DE	Tyler Refrigeration Pit	Smyrna	
DE	Wildcat Landfill	Dover	C
FL	Agrico Chemical Co	Pensacola	
FL	Airco Plating Co	Miami	
FL	Alpha Chemical Corp	Galloway	C
FL	American Creosote Works (Pensacola Plt)	Pensacola	
FL	Anaconda Aluminum Co./Milgo Electronics	Miami	
FL	Anodyne, Inc	North Miami Beach	
FL	B&B Chemical Co., Inc	Hialeah	
FL	BMI-Textron	Lake Park	
FL	Beulah Landfill	Pensacola	C
FL	Brown Wood Preserving	Live Oak	C
FL	Cabot/Koppers	Gainesville	
FL	Chemform, Inc	Pompano Beach	C
FL	City Industries, Inc	Orlando	
FL	Coleman-Evans Wood Preserving Co	Whitehouse	
FL	Davie Landfill	Davie	
FL	Dubose Oil Products Co	Cantonment	
FL	Florida Steel Corp	Indiantown	
FL	Gold Coast Oil Corp	Miami	C
FL	Harris Corp. (Palm Bay Plant)	Palm Bay	
FL	Helena Chemical Co. (Tampa Plant)	Tampa	
FL	Hipps Road Landfill	Duval County	
FL	Hollingsworth Solderless Terminal	Fort Lauderdale	C
FL	Kassauf-Kimerling Battery Disposal	Tampa	
FL	Madison County Sanitary Landfill	Madison	
FL	Miami Drum Services	Miami	C
FL	Munisport Landfill	North Miami	
FL	Northwest 58th Street Landfill	Hialeah	
FL	Peak Oil Co./Bay Drum Co	Tampa	
FL	Pepper Steel & Alloys, Inc	Medley	C
FL	Petroleum Products Corp	Pembroke Park	
FL	Pickettville Road Landfill	Jacksonville	
FL	Piper Aircraft/Vero Beach Water & Sewer	Vero Beach	
FL	Reeves Southeast Galvanizing Corp	Tampa	
FL	Sapp Battery Salvage	Cottondale	
FL	Schuylkill Metals Corp	Plant City	
FL	Sherwood Medical Industries	Deland	
FL	Sixty-Second Street Dump	Tampa	
FL	Standard Auto Bumper Corp	Hialeah	
FL	Sydney Mine Sludge Ponds	Brandon	
FL	Taylor Road Landfill	Seffner	
FL	Tower Chemical Co	Clermont	
FL	Whitehouse Oil Pits	Whitehouse	
FL	Wilson Concepts of Florida, Inc	Pompano Beach	C
FL	Wingate Road Municipal Incinerator Dump	Fort Lauderdale	
FL	Woodbury Chemical Co. (Princeton Plant)	Princeton	C
FL	Yellow Water Road Dump	Baldwin	
FL	Zellwood Ground Water Contamination	Zellwood	
GA	Cedartown Industries, Inc	Cedartown	
GA	Cedartown Municipal Landfill	Cedartown	
GA	Diamond Shamrock Corp. Landfill	Cedartown	
GA	Firestone Tire & Rubber Co (Albany Plant)	Albany	
GA	Hercules 009 Landfill	Brunswick	
GA	Marzone Inc./Chevron Chemical Co	Tifton	
GA	Mathis Brothers Landfill	Kensington	
GA	Monsanto Corp. (Augusta Plant)	Augusta	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
GA	Powersville Site	Peach County	C
GA	T.H. Agriculture & Nutrition (Albany)	Albany	
GA	Woolfolk Chemical Works, Inc	Fort Valley	
GU	Ordot Landfill	Guam	C,S
IA	Des Moines TCE	Des Moines	
IA	E.I. Du Pont de Nemours (County Rd X23)	West Point	C
IA	Electro-Coatings, Inc	Cedar Rapids	
IA	Fairfield Coal Gasification Plant	Fairfield	
IA	Farmers' Mutual Cooperative	Hospers	
IA	John Deere (Ottumwa Works Landfills)	Ottumwa	C
IA	Lawrence Todtz Farm	Camanche	C
IA	Mid-America Tanning Co	Sergeant Bluff	
IA	Midwest Manufacturing/North Farm	Kellogg	
IA	Northwestern States Portland Cement Co	Mason City	C
IA	Peoples Natural Gas Co	Dubuque	
IA	Red Oak City Landfill	Red Oak	
IA	Shaw Avenue Dump	Charles City	
IA	Sheller-Globe Corp. Disposal	Keokuk	
IA	Vogel Paint & Wax Co	Orange City	
IA	White Farm Equipment Co. Dump	Charles City	
ID	Bunker Hill Mining & Metallurgical	Smelterville	
ID	Eastern Michaud Flats Contamination	Pocatello	
ID	Kerr-McGee Chemical Corp. (Soda Springs)	Soda Springs	
ID	Monsanto Chemical Co. (Soda Springs)	Soda Springs	
ID	Pacific Hide & Fur Recycling Co	Pocatello	
ID	Union Pacific Railroad Co	Pocatello	
IL	A & F Material Reclaiming, Inc	Greenup	C
IL	Acme Solvent Reclaiming (Morristown Plant)	Morristown	
IL	Adams County Quincy Landfills 2&3	Quincy	
IL	Amoco Chemicals (Joliet Landfill)	Joliet	
IL	Beloit Corp	Rockton	
IL	Belvidere Municipal Landfill	Belvidere	C
IL	Byron Salvage Yard	Byron	
IL	Central Illinois Public Service Co	Taylorville	
IL	Cross Brothers Pail Recycling (Pembroke)	Pembroke Township	
IL	DuPage County Landfill/Blackwell Forest	Warrenville	
IL	Galesburg/Koppers Co	Galesburg	
IL	H.O.D. Landfill	Antioch	
IL	Ilada Energy Co	East Cape Girardeau	
IL	Interstate Pollution Control, Inc	Rockford	
IL	Johns-Manville Corp	Waukegan	C
IL	Kerr-McGee (Kress Creek/W Branch DuPage)	DuPage County	
IL	Kerr-McGee (Reed-Kepler Park)	West Chicago	
IL	Kerr-McGee (Residential Areas)	West Chicago/DuPage County	
IL	Kerr-McGee (Sewage Treatment Plant)	West Chicago	
IL	LaSalle Electric Utilities	LaSalle	
IL	Lenz Oil Service, Inc	Lemont	
IL	MIG/Dewane Landfill	Belvidere	
IL	NL Industries/Taracorp Lead Smelter	Granite City	
IL	Ottawa Radiation Areas	Ottawa	
IL	Outboard Marine Corp	Waukegan	S
IL	Pagel's Pit	Rockford	
IL	Parsons Casket Hardware Co	Belvidere	
IL	Southeast Rockford Gd Wtr Contamination	Rockford	
IL	Tri-County Landfill/Waste Mgmt Illinois	South Elgin	
IL	Velsicol Chemical Corp. (Illinois)	Marshall	
IL	Wauconda Sand & Gravel	Wauconda	
IL	Woodstock Municipal Landfill	Woodstock	
IL	Yeoman Creek Landfill	Waukegan	
IN	American Chemical Service, Inc	Griffith	
IN	Bennett Stone Quarry	Bloomington	
IN	Carter Lee Lumber Co	Indianapolis	
IN	Columbus Old Municipal Landfill #1	Columbus	
IN	Conrail Rail Yard (Elkhart)	Elkhart	
IN	Continental Steel Corp	Kokomo	
IN	Douglass Road/Uniroyal, Inc., Landfill	Mishawaka	
IN	Envirochem Corp	Zionsville	
IN	Fisher-Calo	LaPorte	
IN	Fort Wayne Reduction Dump	Fort Wayne	
IN	Galen Myers Dump/Drum Salvage	Osceola	
IN	Himco Dump	Elkhart	
IN	Lake Sandy Jo (M&M Landfill)	Gary	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
IN	Lakeland Disposal Service, Inc	Claypool	
IN	Lemon Lane Landfill	Bloomington	
IN	MIDCO I	Gary	
IN	MIDCO II	Gary	
IN	Main Street Well Field	Elkhart	
IN	Marion (Bragg) Dump	Marion	
IN	Neal's Dump (Spencer)	Spencer	
IN	Neal's Landfill (Bloomington)	Bloomington	
IN	Ninth Avenue Dump	Gary	
IN	Northside Sanitary Landfill, Inc	Zionsville	
IN	Prestolite Battery Division	Vincennes	
IN	Reilly Tar & Chemical (Indianapolis Plant)	Indianapolis	
IN	Seymour Recycling Corp	Seymour	C,S
IN	Southside Sanitary Landfill	Indianapolis	
IN	Tippecanoe Sanitary Landfill, Inc	Lafayette	
IN	Tri-State Plating	Columbus	C
IN	Waste, Inc., Landfill	Michigan City	
IN	Wayne Waste Oil	Columbia City	
IN	Whiteford Sales & Service/Nationalease	South Bend	
KS	29th & Mead Ground Water Contamination	Wichita	
KS	57th and North Broadway Streets Site	Wichita Heights	
KS	Arkansas City Dump	Arkansas City	C,S
KS	Cherokee County	Cherokee County	
KS	Doepke Disposal (Holliday)	Johnson County	
KS	Obee Road	Hutchinson	
KS	Pester Refinery Co	El Dorado	
KS	Strother Field Industrial Park	Cowley County	
KY	A.L. Taylor (Valley of Drums)	Brooks	C
KY	Airco	Calvert City	
KY	B.F. Goodrich	Calvert City	
KY	Brantley Landfill	Island	
KY	Caldwell Lace Leather Co., Inc	Auburn	
KY	Distler Brickyard	West Point	
KY	Distler Farm	Jefferson County	C
KY	Fort Hartford Coal Co. Stone Quarry	Olaton	
KY	General Tire & Rubber (Mayfield Landfill)	Mayfield	C
KY	Green River Disposal, Inc	Maceo	
KY	Howe Valley Landfill	Howe Valley	
KY	Lee's Lane Landfill	Louisville	C
KY	Maxey Flats Nuclear Disposal	Hillsboro	
KY	National Electric Coil/Cooper Industries	Dayhoit	
KY	Newport Dump	Newport	C
KY	Red Penn Sanitation Co. Landfill	PeeWee Valley	
KY	Smith's Farm	Brooks	
KY	Tri-City Disposal Co	Shepherdsville	
LA	American Creosote Works, Inc (Winnfield)	Winnfield	
LA	Bayou Bonfouca	Slidell	
LA	Bayou Sorrel Site	Bayou Sorrel	C
LA	Cleve Reber	Sorrento	
LA	Combustion, Inc	Denham Springs	
LA	D.L. Mud, Inc	Abbeville	
LA	Dutchtown Treatment Plant	Ascension Parish	
LA	Gulf Coast Vacuum Services	Abbeville	
LA	Old Inger Oil Refinery	Darrow	S
LA	PAB Oil & Chemical Service, Inc	Abbeville	
LA	Petro-Processors of Louisiana Inc	Scotlandville	
MA	Atlas Tack Corp	Fairhaven	
MA	Baird & McGuire	Holbrook	
MA	Cannon Engineering Corp. (CEC)	Bridgewater	C
MA	Charles-George Reclamation Landfill	Tyngsborough	
MA	Groveland Wells	Groveland	
MA	Haverhill Municipal Landfill	Haverhill	
MA	Hocomonco Pond	Westborough	
MA	Industri-Plex	Woburn	
MA	Iron Horse Park	Billerica	
MA	New Bedford Site	New Bedford	S
MA	Norwood PCBs	Norwood	
MA	Nyanza Chemical Waste Dump	Ashland	
MA	PSC Resources	Palmer	
MA	Re-Solve, Inc	Dartmouth	
MA	Rose Disposal Pit	Lanesboro	
MA	Salem Acres	Salem	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MA	Shpack Landfill	Norton/Attleboro	
MA	Silresim Chemical Corp	Lowell	
MA	Sullivan's Ledge	New Bedford	
MA	W.R. Grace & Co Inc (Acton Plant)	Acton	
MA	Wells G&H	Woburn	
MD	Bush Valley Landfill	Abingdon	
MD	Kane & Lombard Street Drums	Baltimore	
MD	Limestone Road	Cumberland	
MD	Mid-Atlantic Wood Preservers, Inc	Harmans	C
MD	Sand, Gravel & Stone	Elkton	
MD	Southern Maryland Wood Treating	Hollywood	
MD	Woodlawn County Landfill	Woodlawn	
ME	McKin Co	Gray	C
ME	O'Connor Co	Augusta	
ME	Pinette's Salvage Yard	Washburn	
ME	Saco Municipal Landfill	Saco	
ME	Saco Tannery Waste Pits	Saco	C
ME	Union Chemical Co., Inc	South Hope	
ME	Winthrop Landfill	Winthrop	
MI	Adam's Plating	Lansing	
MI	Albion-Sheridan Township Landfill	Albion	
MI	Allied Paper/Portage Ck/Kalamazoo River	Kalamazoo	
MI	American Anodco, Inc	Ionia	C
MI	Anderson Development Co	Adrian	C
MI	Auto Ion Chemicals, Inc	Kalamazoo	
MI	Avenue "E" Ground Water Contamination	Traverse City	
MI	Barrels, Inc	Lansing	
MI	Bendix Corp./Allied Automotive	St. Joseph	
MI	Berlin & Farro	Swartz Creek	
MI	Bofors Nobel, Inc	Muskegon	
MI	Burrows Sanitation	Hartford	C
MI	Butterworth #2 Landfill	Grand Rapids	
MI	Cannelton Industries, Inc	Saulte Saint Marie	
MI	Carter Industrials, Inc	Detroit	
MI	Cemetery Dump	Rose Center	C
MI	Chem Central	Wyoming Township	
MI	Clare Water Supply	Clare	
MI	Cliff/Dow Dump	Marquette	
MI	Duell & Gardner Landfill	Dalton Township	
MI	Electrovoice	Buchanan	
MI	Folkertsma Refuse	Grand Rapids	
MI	Forest Waste Products	Otisville	
MI	G&H Landfill	Utica	
MI	Grand Traverse Overall Supply Co	Greilickville	C
MI	Gratiot County Landfill	St. Louis	S
MI	H. Brown Co., Inc	Grand Rapids	
MI	Hedblum Industries	Oscoda	C
MI	Hi-Mill Manufacturing Co	Highland	
MI	Ionia City Landfill	Ionia	
MI	J&L Landfill	Rochester Hills	
MI	K&L Avenue Landfill	Oshemo Township	
MI	Kaydon Corp	Muskegon	
MI	Kent City Mobile Home Park	Kent City	
MI	Kentwood Landfill	Kentwood	
MI	Kysor Industrial Corp	Cadillac	
MI	Liquid Disposal, Inc	Utica	
MI	Mason County Landfill	Pere Marquette Twp	C
MI	McGraw Edison Corp	Albion	
MI	Metamora Landfill	Metamora	
MI	Michigan Disposal (Cork Street Landfill)	Kalamazoo	
MI	Motor Wheel, Inc	Lansing	
MI	Muskegon Chemical Co	Whitehall	
MI	North Bronson Industrial Area	Bronson	
MI	Northernair Plating	Cadillac	
MI	Novaco Industries	Temperance	C
MI	Organic Chemicals, Inc	Grandville	
MI	Ossineke Ground Water Contamination	Ossineke	
MI	Ott/Story/Cordova Chemical Co	Dalton Township	
MI	Packaging Corp. of America	Filer City	
MI	Parsons Chemical Works, Inc	Grand Ledge	
MI	Peerless Plating Co	Muskegon	
MI	Petoskey Municipal Well Field	Petoskey	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MI	Rasmussen's Dump	Green Oak Township	
MI	Rockwell International Corp. (Allegan)	Allegan	
MI	Rose Township Dump	Rose Township	
MI	Roto-Finish Co., Inc	Kalamazoo	
MI	SCA Independent Landfill	Muskegon Heights	
MI	Shiawassee River	Howell	
MI	South Macomb Disposal (Landfills 9 & 9A)	Macomb Township	
MI	Southwest Ottawa County Landfill	Park Township	
MI	Sparta Landfill	Sparta Township	
MI	Spartan Chemical Co	Wyoming	
MI	Spiegelberg Landfill	Green Oak Township	
MI	Springfield Township Dump	Davisburg	
MI	State Disposal Landfill, Inc	Grand Rapids	
MI	Sturgis Municipal Wells	Sturgis	
MI	Tar Lake	Mancelona Township	
MI	Thermo-Chem, Inc	Muskegon	
MI	Torch Lake	Houghton County	
MI	U.S. Aviox	Howard Township	C
MI	Velsicol Chemical Corp. (Michigan)	St. Louis	C
MI	Verona Well Field	Battle Creek	
MI	Wash King Laundry	Pleasant Plains Twp	
MI	Waste Management of Michigan (Holland)	Holland	
MN	Agate Lake Scrapyard	Fairview Township	
MN	Arrowhead Refinery Co	Hermantown	
MN	Boise Cascade/Onan Corp./Medtronics, Inc	Fridley	C
MN	Burlington Northern (Brainerd/Baxter)	Brainerd/Baxter	
MN	Dakhue Sanitary Landfill	Cannon Falls	
MN	East Bethel Demolition Landfill	East Bethel Township	
MN	FMC Corp. (Fridley Plant)	Fridley	C
MN	Freeway Sanitary Landfill	Burnsville	
MN	General Mills/Henkel Corp	Minneapolis	C
MN	Jostyn Manufacturing & Supply Co	Brooklyn Center	
MN	Koch Refining Co./N-Ren Corp	Pine Bend	
MN	Koppers Coke	St. Paul	
MN	Kummer Sanitary Landfill	Bemidji	
MN	Kurt Manufacturing Co	Fridley	
MN	LaGrand Sanitary Landfill	LaGrand Township	
MN	Lehillier/Mankato Site	Lehillier/Mankato	C
MN	Long Prairie Ground Water Contamination	Long Prairie	
MN	MacGillis & Gibbs/Bell Lumber & Pole Co	New Brighton	
MN	NL Industries/Taracorp/Golden Auto	St. Louis Park	
MN	New Brighton/Arden Hills	New Brighton	
MN	Nutting Truck & Caster Co	Faribault	C
MN	Oak Grove Sanitary Landfill	Oak Grove Township	C
MN	Oakdale Dump	Oakdale	
MN	Olmsted County Sanitary Landfill	Oronoco	
MN	Perham Arsenic Site	Perham	
MN	Pine Bend Sanitary Landfill	Dakota County	
MN	Reilly Tar&Chem (St. Louis Park Plant)	St. Louis Park	S
MN	Ritari Post & Pole	Sebeka	
MN	South Andover Site	Andover	
MN	St. Augusta Sanitary Landfill/Engen Dump	St. Augusta Township	
MN	St. Louis River Site	St. Louis County	
MN	St. Regis Paper Co	Cass Lake	
MN	University Minnesota (Rosemount Res Cen)	Rosemount	
MN	Waite Park Wells	Waite Park	
MN	Washington County Landfill	Lake Elmo	C
MN	Waste Disposal Engineering	Andover	
MN	Whittaker Corp	Minneapolis	C
MN	Windom Dump	Windom	C
MO	Bee Cee Manufacturing Co	Malden	
MO	Big River Mine Tailings/St. Joe Minerals	Desloge	
MO	Conservation Chemical Co	Kansas City	C
MO	Ellisville Site	Ellisville	S
MO	Fulbright Landfill	Springfield	C
MO	Kem-Pest Laboratories	Cape Girardeau	
MO	Lee Chemical	Liberty	
MO	Minker/Stout/Romaine Creek	Imperial	
MO	Missouri Electric Works	Cape Girardeau	
MO	North-U Drive Well Contamination	Springfield	C
MO	Oronogo-Duerweg Mining Belt	Jasper County	
MO	Quality Plating	Sikeston	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MO	Shenandoah Stables	Moscow Mills	
MO	Solid State Circuits, Inc	Republic	C
MO	St Louis Airport/HIS/Futura Coatings Co	St. Louis County	
MO	Syntex Facility	Verona	
MO	Times Beach Site	Times Beach	
MO	Valley Park TCE	Valley Park	
MO	Westlake Landfill	Bridgeton	
MO	Wheeling Disposal Service Co. Landfill	Amazonia	
MS	Flowood Site	Flowood	C,S
MS	Newsom Brothers/Old Reichhold Chemicals	Columbia	
MT	Anaconda Co. Smelter	Anaconda	
MT	East Helena Site	East Helena	
MT	Idaho Pole Co	Bozeman	
MT	Libby Ground Water Contamination	Libby	C
MT	Milltown Reservoir Sediments	Milltown	
MT	Montana Pole and Treating	Butte	
MT	Mouat Industries	Columbus	
MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge	
NC	ABC One Hour Cleaners	Jacksonville	
NC	Aberdeen Pesticide Dumps	Aberdeen	
NC	Benfield Industries, Inc	Hazelwood	
NC	Bypass 601 Ground Water Contamination	Concord	
NC	Cape Fear Wood Preserving	Fayetteville	
NC	Carolina Transformer Co	Fayetteville	
NC	Celanese Corp. (Shelby Fiber Operations)	Shelby	C
NC	Charles Macon Lagoon & Drum Storage	Cordova	
NC	Chemtronics, Inc	Swannanoa	C
NC	FCX, Inc. (Statesville Plant)	Statesville	
NC	FCX, Inc. (Washington Plant)	Washington	
NC	Geigy Chemical Corp. (Aberdeen Plant)	Aberdeen	
NC	JFD Electronics/Channel Master	Oxford	
NC	Jadco-Hughes Facility	Belmont	
NC	Koppers Co. Inc. (Morrisville Plant)	Morrisville	
NC	Martin-Marietta, Sodyeco, Inc	Charlotte	
NC	NC State University (Lot 86, Farm Unit #1)	Raleigh	
NC	National Starch & Chemical Corp	Salisbury	
NC	New Hanover Cnty Airport Burn Pit	Wilmington	
NC	Potter's Septic Tank Service Pits	Maco	
ND	Arsenic Trioxide Site	Southeastern ND	C,S
ND	Minot Landfill	Minot	
NE	10th Street Site	Columbus	
NE	Cleburn Street Well	Grand Island	
NE	Hastings Ground Water Contamination	Hastings	
NE	Lindsay Manufacturing Co	Lindsay	
NE	Nebraska Ordnance Plant (Former)	Mead	
NE	Sherwood Medical Co	Norfolk	
NE	Waverly Ground Water Contamination	Waverly	
NH	Auburn Road Landfill	Londonderry	
NH	Coakley Landfill	North Hampton	
NH	Dover Municipal Landfill	Dover	
NH	Fletcher's Paint Works & Storage	Milford	
NH	Kearsarge Metallurgical Corp	Conway	C
NH	Keefe Environmental Services	Epping	C
NH	Mottolo Pig Farm	Raymond	C
NH	New Hampshire Plating Co	Merrimack	
NH	Ottati & Goss/Kingston Steel Drum	Kingston	
NH	Savage Municipal Water Supply	Milford	
NH	Somersworth Sanitary Landfill	Somersworth	
NH	South Municipal Water Supply Well	Peterborough	
NH	Sylvester	Nashua	C,S
NH	Tibbets Road	Barrington	
NH	Tinkham Garage	Londonderry	
NH	Town Garage/Radio Beacon	Londonderry	C
NJ	A.O. Polymer	Sparta Township	
NJ	American Cyanamid Co	Bound Brook	
NJ	Asbestqs Dump	Millington	
NJ	Bog Creek Farm	Howell Township	
NJ	Brick Township Landfill	Brick Township	
NJ	Bridgeport Rental & Oil Services	Bridgeport	
NJ	Brook Industrial Park	Bound Brook	
NJ	Burnt Fly Bog	Marlboro Township	
NJ	CPS/Madison Industries	Old Bridge Township	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NJ	Caldwell Trucking Co	Fairfield	
NJ	Chemical Control	Elizabeth	
NJ	Chemical Insecticide Corp	Edison Township	
NJ	Chemical Leaman Tank Lines, Inc	Bridgeport	
NJ	Chemsol, Inc	Piscataway	
NJ	Ciba-Geigy Corp	Toms River	
NJ	Cinnaminson Ground Water Contamination	Cinnaminson Township	
NJ	Combe Fill North Landfill	Mount Olive Township	C
NJ	Combe Fill South Landfill	Chester Township	
NJ	Cosden Chemical Coatings Corp	Beverly	
NJ	Curcio Scrap Metal, Inc	Saddle Brook Township	
NJ	D'Imperio Property	Hamilton Township	
NJ	Dayco Corp./L.E Carpenter Co	Wharton Borough	
NJ	De Rewal Chemical Co	Kingwood Township	
NJ	Delilah Road	Egg Harbor Township	
NJ	Denzer & Schafer X-Ray Co	Bayville	
NJ	Diamond Alkali Co	Newark	
NJ	Dover Municipal Well 4	Dover Township	
NJ	Ellis Property	Evesham Township	
NJ	Evor Phillips Leasing	Old Bridge Township	
NJ	Ewan Property	Shamong Township	
NJ	Fair Lawn Well Field	Fair Lawn	
NJ	Florence Land Recontouring Landfill	Florence Township	
NJ	Fried Industries	East Brunswick Township	
NJ	GEMS Landfill	Gloucester Township	
NJ	Garden State Cleaners Co	Minotola	
NJ	Glen Ridge Radium Site	Glen Ridge	
NJ	Global Sanitary Landfill	Old Bridge Township	
NJ	Goose Farm	Plumstead Township	C
NJ	Helen Kramer Landfill	Mantua Township	C
NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown	
NJ	Higgins Disposal	Kingston	
NJ	Higgins Farm	Franklin Township	
NJ	Hopkins Farm	Plumstead Township	
NJ	Imperial Oil Co., Inc./Champion Chemicals	Morganville	
NJ	Industrial Latex Corp	Wallington Borough	
NJ	JIS Landfill	Jamesburg/S. Brnswck	
NJ	Jackson Township Landfill	Jackson Township	
NJ	Kauffman & Minter, Inc	Jobstown	
NJ	Kin-Buc Landfill	Edison Township	
NJ	King of Prussia	Winslow Township	
NJ	Landfill & Development Co	Mount Holly	
NJ	Lang Property	Pemberton Township	
NJ	Lipari Landfill	Pitman	
NJ	Lodi Municipal Well	Lodi	C
NJ	Lone Pine Landfill	Freehold Township	
NJ	Mannheim Avenue Dump	Galloway Township	
NJ	Maywood Chemical Co	Maywood/Rochelle Park	
NJ	Metaltec/Aerosystems	Franklin Borough	
NJ	Monitor Devices/Intercircuits Inc	Wall Township	
NJ	Monroe Township Landfill	Monroe Township	C
NJ	Montclair/West Orange Radium Site	Montclair/W Orange	
NJ	Montgomery Township Housing Development	Montgomery Township	
NJ	Myers Property	Franklin Township	
NJ	NL Industries	Pedricktown	
NJ	Nascolite Corp	Millville	
NJ	PJP Landfill	Jersey City	
NJ	Pepe Field	Boonton	
NJ	Pijak Farm	Plumstead Township	
NJ	Pohatcong Valley Ground Water Contaminat	Warren County	
NJ	Pomona Oaks Residential Wells	Galloway Township	C
NJ	Price Landfill	Pleasantville	S
NJ	Radiation Technology, Inc	Rockaway Township	
NJ	Reich Farms	Pleasant Plains	
NJ	Renora, Inc	Edison Township	
NJ	Ringwood Mines/Landfill	Ringwood Borough	C
NJ	Rockaway Borough Well Field	Rockaway Township	
NJ	Rockaway Township Wells	Rockaway	
NJ	Rocky Hill Municipal Well	Rocky Hill Borough	
NJ	Roebing Steel Co	Florence	
NJ	Sayreville Landfill	Sayreville	
NJ	Scientific Chemical Processing	Carlstadt	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NJ	Sharkey Landfill	Parsippany/Troy Hls	
NJ	Shieldalloy Corp	Newfield Borough	
NJ	South Brunswick Landfill	South Brunswick	C
NJ	South Jersey Clothing Co	Minotola	
NJ	Spence Farm	Plumstead Township	
NJ	Swope Oil & Chemical Co	Pennsauken	
NJ	Syncon Resins	South Kearny	
NJ	Tabernacle Drum Dump	Tabernacle Township	C
NJ	U.S. Radium Corp	Orange	
NJ	Universal Oil Products (Chemical Division)	East Rutherford	
NJ	Upper Deerfield Township Sanit. Landfill	Upper Deerfield Township	C
NJ	Ventron/Velsicol	Wood Ridge Borough	
NJ	Vineland Chemical Co., Inc	Vineland	
NJ	Vineland State School	Vineland	C
NJ	Waldick Aerospace Devices, Inc	Wall Township	
NJ	White Chemical Corp	Newark	A
NJ	Williams Property	Swainton	
NJ	Wilson Farm	Plumstead Township	C
NJ	Witco Chemical Corp. (Oakland Plt)	Oakland	C
NJ	Woodland Route 532 Dump	Woodland Township	
NJ	Woodland Route 72 Dump	Woodland Township	
NM	AT & SF (Clovis)	Clovis	
NM	Cimarron Mining Corp	Carrizozo	C
NM	Cleveland Mill	Silver City	
NM	Homestake Mining Co	Milan	
NM	Prewitt Abandoned Refinery	Prewitt	
NM	South Valley	Albuquerque	S
NM	United Nuclear Corp	Church Rock	
NV	Carson River Mercury Site	Lyon/Churchill Cnty	
NY	Action Anodizing, Plating, & Polishing	Copiague	C
NY	American Thermostat Co	South Cairo	
NY	Anchor Chemicals	Hicksville	
NY	Applied Environmental Services	Glenwood Landing	
NY	Batavia Landfill	Batavia	
NY	BioClinical Laboratories, Inc	Bohemia	C
NY	Brewster Well Field	Putnam County	
NY	Byron Barrel & Drum	Byron	
NY	C & J Disposal Leasing Co. Dump	Hamilton	C
NY	Carroll & Dubies Sewage Disposal	Port Jervis	
NY	Circuitron Corp	East Farmingdale	
NY	Claremont Polychemical	Old Bethpage	
NY	Clothier Disposal	Town of Granby	C
NY	Colesville Municipal Landfill	Town of Colesville	
NY	Conklin Dumps	Conklin	
NY	Cortese Landfill	Village of Narrowsburg	
NY	Endicott Village Well Field	Village of Endicott	
NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby	
NY	Facet Enterprises, Inc	Elmira	
NY	Forest Glen Mobile Home Subdivision	Niagara Falls	A
NY	Fulton Terminals	Fulton	
NY	GE Moreau	South Glen Falls	
NY	General Motors (Central Foundry Division)	Massena	
NY	Genzale Plating Co	Franklin Square	
NY	Goldisc Recordings, Inc	Holbrook	
NY	Haviland Complex	Town of Hyde Park	
NY	Hertel Landfill	Plattekill	
NY	Hooker (102nd Street)	Niagara Falls	
NY	Hooker (Hyde Park)	Niagara Falls	
NY	Hooker (S Area)	Niagara Falls	
NY	Hooker Chemical/Ruco Polymer Corp	Hicksville	
NY	Hudson River PCBs	Hudson River	
NY	Islip Municipal Sanitary Landfill	Islip	
NY	Johnstown City Landfill	Town of Johnstown	
NY	Jones Chemicals, Inc	Caledonia	
NY	Jones Sanitation	Hyde Park	
NY	Katonah Municipal Well	Town of Bedford	C
NY	Kenmark Textile Corp	Farmingdale	
NY	Kentucky Avenue Well Field	Horseheads	
NY	Li Tungsten Corp	Glen Cove	
NY	Liberty Industrial Finishing	Farmingdale	
NY	Love Canal	Niagara Falls	
NY	Ludlow Sand & Gravel	Clayville	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
NY	Malta Rocket Fuel Area	Malta	
NY	Marathon Battery Corp	Cold Springs	
NY	Mattiace Petrochemical Co., Inc	Glen Cove	
NY	Mercury Refining, Inc	Colonie	
NY	Nepera Chemical Co., Inc	Maybrook	
NY	Niagara County Refuse	Wheatfield	
NY	Niagara Mohawk Power Co (Saratoga Springs)	Saratoga Springs	
NY	North Sea Municipal Landfill	North Sea	
NY	Old Bethpage Landfill	Oyster Bay	C
NY	Olean Well Field	Olean	
NY	Pasley Solvents & Chemicals, Inc	Hempstead	
NY	Pollution Abatement Services	Oswego	S
NY	Port Washington Landfill	Port Washington	
NY	Preferred Plating Corp	Farmingdale	
NY	Radium Chemical Co., Inc	New York City	A
NY	Ramapo Landfill	Ramapo	
NY	Richardson Hill Road Landfill/Pond	Sidney Center	
NY	Robintech, Inc./National Pipe Co	Town of Vestal	
NY	Rosen Brothers Scrap Yard/Dump	Cortland	
NY	Rowe Industries Gnd Water Contamination	Noyack/Sag Harbor	
NY	SMS Instruments, Inc	Deer Park	
NY	Sarney Farm	Amenia	
NY	Sealand Restoration, Inc	Lisbon	
NY	Sidney Landfill	Sidney	
NY	Sinclair Refinery	Wellsville	
NY	Solvent Savers	Lincklaen	
NY	Syosset Landfill	Oyster Bay	
NY	Tri-Cities Barrel Co., Inc	Port Crane	
NY	Tronic Plating Co., Inc	Farmingdale	C
NY	Vestal Water Supply Well 1-1	Vestal	
NY	Vestal Water Supply Well 4-2	Vestal	
NY	Volney Municipal Landfill	Town of Volney	
NY	Warwick Landfill	Warwick	
NY	Wide Beach Development	Brant	C
NY	York Oil Co	Moira	
OH	Allied Chemical & Ironton Coke	Ironton	
OH	AlSCO Anaconda	Gnadenhutten	
OH	Arcanum Iron & Metal	Darke County	
OH	Big D Campground	Kingsville	
OH	Bowers Landfill	Circleville	C
OH	Buckeye Reclamation	St. Clairsville	
OH	Chem-Dyne	Hamilton	C, S
OH	Coshocton Landfill	Franklin Township	
OH	E.H. Schilling Landfill	Hamilton Township	C
OH	Fields Brook	Ashtabula	
OH	Fultz Landfill	Jackson Township	
OH	Industrial Excess Landfill	Uniontown	
OH	Laskin/Poplar Oil Co	Jefferson Township	C
OH	Miami County Incinerator	Troy	
OH	Nease Chemical	Salem	
OH	New Lyme Landfill	New Lyme	C
OH	Old Mill	Rock Creek	C
OH	Ormet Corp	Hannibal	
OH	Powell Road Landfill	Dayton	
OH	Pristine, Inc	Reading	
OH	Reilly Tar & Chemical (Dover Plant)	Dover	
OH	Republic Steel Corp Quarry	Elyria	C
OH	Sanitary Landfill Co (Industrial Waste)	Dayton	
OH	Skinner Landfill	West Chester	
OH	South Point Plant	South Point	
OH	Summit National	Deerfield Township	
OH	TRW, Inc (Minerva Plant)	Minerva	
OH	United Scrap Lead Co., Inc	Troy	
OH	Van Dale Junkyard	Marietta	
OH	Zanesville Well Field	Zanesville	
OK	Compass Industries (Avery Drive)	Tulsa	C
OK	Double Eagle Refinery Co	Oklahoma City	
OK	Fourth Street Abandoned Refinery	Oklahoma City	
OK	Hardage/Criner	Criner	
OK	Mosley Road Sanitary Landfill	Oklahoma City	
OK	Oklahoma Refining Co	Cyril	
OK	Sand Springs Petrochemical Complex	Sand Springs	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
OK	Tar Creek (Ottawa County)	Ottawa County	
OK	Tenth Street Dump/Junkyard	Oklahoma City	
OR	Allied Plating, Inc	Portland	C
OR	Gould, Inc	Portland	
OR	Joseph Forest Products	Joseph	C
OR	Martin-Marietta Aluminum Co	The Dalles	
OR	Northwest Pipe & Casing Co	Clackamas	
OR	Teledyne Wah Chang	Albany	
OR	Union Pacific Railroad Tie Treatment	The Dalles	
OR	United Chrome Products, Inc	Corvallis	C
PA	A.I.W. Frank/Mid-County Mustang	Exton	
PA	AMP, Inc. (Glen Rock Facility)	Glen Rock	
PA	Aladdin Plating	Scott Township	
PA	Ambler Asbestos Piles	Ambler	C
PA	Austin Avenue Radiation Site	Delaware County	A
PA	Avco Lycoming (Williamsport Division)	Williamsport	
PA	Bally Ground Water Contamination	Bally Borough	
PA	Bell Landfill	Terry Township	
PA	Bendix Flight Systems Division	Bridgewater Township	
PA	Berkley Products Co Dump	Denver	
PA	Berks Landfill	Spring Township	
PA	Berks Sand Pit	Longswamp Township	
PA	Blosenski Landfill	West Cain Township	
PA	Boarhead Farms	Bridgeton Township	
PA	Brodhead Creek	Stroudsburg	
PA	Brown's Battery Breaking	Shoemakersville	
PA	Bruin Lagoon	Bruin Borough	C
PA	Butler Mine Tunnel	Pittston	
PA	Butz Landfill	Stroudsburg	
PA	C & D Recycling	Foster Township	
PA	Centre County Kepone	State College Borough	
PA	Commodore Semiconductor Group	Lower Providence Township	
PA	Craig Farm Drum	Parker	
PA	Crater Resources/Keystone Coke/Alan Wood	Upper Merion Township	
PA	Crossley Farm	Hereford Township	
PA	Croydon TCE	Croydon	
PA	CryoChem, Inc	Worman	
PA	Delta Quarries & Disp./Stotler Landfill	Antis/Logan Twps	
PA	Domey Road Landfill	Upper Macungie Township	
PA	Douglassville Disposal	Douglassville	
PA	Drake Chemical	Lock Haven	
PA	Dublin TCE Site	Dublin Borough	
PA	East Mount Zion	Springettsbury Township	
PA	Eastern Diversified Metals	Hometown	
PA	Elizabethtown Landfill	Elizabethtown	
PA	Fischer & Porter Co	Warminster	
PA	Foote Mineral Co	East Whiteland Township	
PA	Havertown PCP	Haverford	
PA	Hebelka Auto Salvage Yard	Weisenberg Township	
PA	Heleva Landfill	North Whitehall Township	
PA	Hellertown Manufacturing Co	Hellertown	
PA	Henderson Road	Upper Merion Township	C
PA	Hranica Landfill	Buffalo Township	
PA	Hunterstown Road	Straban Township	
PA	Industrial Lane	Williams Township	
PA	Jacks Creek/Sitkin Smelting and Refinery	Maitland	
PA	Keystone Sanitation Landfill	Union Township	
PA	Kimberton Site	Kimberton Borough	C
PA	Lackawanna Refuse	Old Forge Borough	
PA	Lindane Dump	Harrison Township	
PA	Lord-Shope Landfill	Girard Township	
PA	MW Manufacturing	Valley Township	
PA	Malvern TCE	Malvern	
PA	McAdoo Associates	McAdoo Borough	S
PA	Metal Banks	Philadelphia	
PA	Metropolitan Mirror and Glass	Frackville	
PA	Middletown Air Field	Middletown	
PA	Mill Creek Dump	Erie	
PA	Modern Sanitation Landfill	Lower Windsor Township	
PA	Moyers Landfill	Eagleview	
PA	North Penn—Area 1	Souderton	
PA	North Penn—Area 12	Worcester	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
PA	North Penn—Area 2	Hatfield	
PA	North Penn—Area 5	Montgomery Township	
PA	North Penn—Area 6	Lansdale	
PA	North Penn—Area 7	North Wales	
PA	Novak Sanitary Landfill	South Whitehall Township	
PA	Occidental Chemical Corp./Firestone Tire	Lower Pottsgrove Township	
PA	Ohio River Park	Neville Island	
PA	Old City of York Landfill	Seven Valleys	
PA	Osborne Landfill	Grove City	
PA	Palmerton Zinc Pile	Palmerton	
PA	Paoli Rail Yard	Paoli	
PA	Publizer Industries Inc	Philadelphia	
PA	Raymark	Hatboro	
PA	Recticon/Allied Steel Corp	East Coventry Twp	
PA	Resin Disposal	Jefferson Borough	
PA	Revere Chemical Co	Nockamixon Township	
PA	River Road Landfill/Waste Mngmnt, Inc	Hermitage	
PA	Rodale Manufacturing Co., Inc	Emmaus Borough	
PA	Route 940 Drum Dump	Pocono Summit	C
PA	Saegertown Industrial Area	Saegertown	
PA	Shriver's Corner	Straban Township	
PA	Stanley Kessler	King of Prussia	
PA	Strasburg Landfill	Newlin Township	
PA	Taylor Borough Dump	Taylor Borough	C
PA	Tonoli Corp	Nesquehoning	
PA	Tysons Dump	Upper Merion Twp	
PA	Walsh Landfill	Honeybrook Township	
PA	Westinghouse Electronic (Sharon Plant)	Sharon	
PA	Westinghouse Elevator Co. Plant	Gettysburg	
PA	Whitmoyer Laboratories	Jackson Township	
PA	William Dick Lagoons	West Caln Township	
PA	York County Solid Waste/Refuse Landfill	Hopewell Township	
PR	Barceloneta Landfill	Florida Afuera	
PR	Fibers Public Supply Wells	Jobos	
PR	Frontera Creek	Rio Abajo	
PR	GE Wiring Devices	Juana Diaz	
PR	Juncos Landfill	Juncos	
PR	RCA Del Caribe	Barceloneta	
PR	Upjohn Facility	Barceloneta	
PR	Vega Alta Public Supply Wells	Vega Alta	
RI	Central Landfill	Johnston	
RI	Davis (GSR) Landfill	Glocester	
RI	Davis Liquid Waste	Smithfield	
RI	Landfill & Resource Recovery, Inc. (L&RR)	North Smithfield	
RI	Peterson/Puritan, Inc	Lincoln/Cumberland	
RI	Picillo Farm	Coventry	S
RI	Rose Hill Regional Landfill	South Kingston	
RI	Stamina Mills, Inc	North Smithfield	
RI	West Kingston Town Dump/URI Disposal	South Kingston	
RI	Western Sand & Gravel	Burrillville	C
SC	Beaunit Corp. (Circular Knit & Dye)	Fountain Inn	
SC	Carolawn, Inc	Fort Lawn	
SC	Elmore Waste Disposal	Greer	
SC	Geiger (C & M Oil)	Rantoules	
SC	Golden Strip Septic Tank Service	Simpsonville	
SC	Helena Chemical Co. Landfill	Fairfax	
SC	Independent Nail Co	Beaufort	C
SC	Kalama Specialty Chemicals	Beaufort	
SC	Koppers Co., Inc. (Florence Plant)	Florence	
SC	Leonard Chemical Co., Inc	Rock Hill	
SC	Lexington County Landfill Area	Cayce	
SC	Medley Farm Drum Dump	Gaffney	
SC	Palmetto Recycling, Inc	Columbia	
SC	Palmetto Wood Preserving	Dixiana	
SC	Para-Chem Southern, Inc	Simpsonville	
SC	Rochester Property	Travelers Rest	
SC	Rock Hill Chemical Co	Rock Hill	
SC	SCRDI Bluff Road	Columbia	S
SC	SCRDI Dixiana	Cayce	C
SC	Sangamo Weston/Twelve-Mile/Hartwell PCB	Pickens	
SC	Townsend Saw Chain Co	Pontiac	
SC	Wamchem, Inc	Burton	

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
SD	Whitewood Creek	Whitewood	C,S
SD	Williams Pipe Line Co., Disposal Pit	Sioux Falls	
TN	American Creosote Works, (Jackson Plant)	Jackson	
TN	Amnicola Dump	Chattanooga	C
TN	Arlington Blending & Packaging	Arlington	
TN	Carrier Air Conditioning Co	Collierville	
TN	Galloway Pits	Galloway	
TN	Lewisburg Dump	Lewisburg	C
TN	Mallory Capacitor Co	Waynesboro	
TN	Murray-Ohio Dump	Lawrenceburg	
TN	North Hollywood Dump	Memphis	S
TN	Velsicol Chemical Corp (Hardeman County)	Toone	
TN	Wrigley Charcoal Plant	Wrigley	
TX	ALCOA (Point Comfort)/Lavaca Bay	Point Comfort	
TX	Bailey Waste Disposal	Bridge City	
TX	Bio-Ecology Systems, Inc	Grand Prairie	C
TX	Brio Refining, Inc	Friendswood	
TX	Crystal Chemical Co	Houston	
TX	Crystal City Airport	Crystal City	C
TX	Dixie Oil Processors, Inc	Friendswood	C
TX	French, Ltd	Crosby	
TX	Geneva Industries/Fuhrmann Energy	Houston	C
TX	Highlands Acid Pit	Highlands	C
TX	Koppers Co. Inc (Texarkana Plant)	Texarkana	
TX	Motco, Inc	La Marque	S
TX	North Cavalcade Street	Houston	
TX	Odessa Chromium #1	Odessa	
TX	Odessa Chromium #2 (Andrews Highway)	Odessa	
TX	Pesses Chemical Co	Fort Worth	C
TX	Petro-Chemical Systems, (Turtle Bayou)	Liberty County	
TX	Sheridan Disposal Services	Hempstead	
TX	Sikes Disposal Pits	Crosby	
TX	Sol Lynn/Industrial Transformers	Houston	C
TX	South Cavalcade Street	Houston	
TX	Stewco, Inc	Waskom	C
TX	Texarkana Wood Preserving Co	Texarkana	
TX	Triangle Chemical Co	Bridge City	C
TX	United Creosoting Co	Conroe	
UT	Midvale Slag	Midvale	
UT	Monticello Radioactive Contaminated Prop	Monticello	
UT	Petrochem Recycling Corp./Ekotek Plant	Salt Lake City	
UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City	
UT	Rose Park Sludge Pit	Salt Lake City	C,S
UT	Sharon Steel Corp. (Midvale Tailings)	Midvale	
UT	Utah Power & Light/American Barrel Co	Salt Lake City	
UT	Wasatch Chemical Co. (Lot 6)	Salt Lake City	
VA	Abex Corp	Portsmouth	
VA	Arrowhead Associates/Scovill Corp	Montross	
VA	Atlantic Wood Industries, Inc	Portsmouth	
VA	Avtex Fibers, Inc	Front Royal	
VA	Buckingham County Landfill	Buckingham	
VA	C & R Battery Co., Inc	Chesterfield County	C
VA	Chisman Creek	York County	C
VA	Culpeper Wood Preservers, Inc	Culpeper	
VA	Dixie Caverns County Landfill	Salem	
VA	First Piedmont Rock Quarry (Route 719)	Pittsylvania County	
VA	Greenwood Chemical Co	Newtown	
VA	H & H Inc., Burn Pit	Farrington	
VA	L.A. Clarke & Son	Spotsylvania County	
VA	Rentokil, Inc. (VA Wood Preserving Div)	Richmond	
VA	Rhinehart Tire Fire Dump	Frederick County	
VA	Saltville Waste Disposal Ponds	Saltville	
VA	Saunders Supply Co	Chuckatuck	
VA	Suffolk City Landfill	Suffolk	C
VA	U.S. Titanium	Piney River	
VT	BFI Sanitary Landfill (Rockingham)	Rockingham	
VT	Bennington Municipal Sanitary Landfill	Bennington	
VT	Burgess Brothers Landfill	Woodford	
VT	Darling Hill Dump	Lyndon	C
VT	Old Springfield Landfill	Springfield	
VT	Parker Sanitary Landfill	Lyndon	
VT	Pine Street Canal	Burlington	S

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
VT	Tansitor Electronics, Inc	Bennington	
WA	ALCOA (Vancouver Smelter)	Vancouver	
WA	American Crossarm & Conduit Co	Chehalis	
WA	American Lake Gardens	Tacoma	
WA	Centralia Municipal Landfill	Centralia	
WA	Coibert Landfill	Coibert	
WA	Commencement Bay, Near Shore/Tide Flats	Pierce County	
WA	Commencement Bay, South Tacoma Channel	Tacoma	
WA	FMC Corp. (Yakima Pit)	Yakima	C
WA	Frontier Hard Chrome, Inc	Vancouver	
WA	General Electric Co. (Spokane Shop)	Spokane	
WA	Greenacres Landfill	Spokane County	
WA	Harbor Island (Lead)	Seattle	
WA	Hidden Valley Landfill (Thun Field)	Pierce County	
WA	Kaiser Aluminum Mead Works	Mead	
WA	Lakewood Site	Lakewood	C
WA	Mica Landfill	Mica	
WA	Midway Landfill	Kent	
WA	Moses Lake Wellfield Contamination	Moses Lake	
WA	North Market Street	Spokane	
WA	Northside Landfill	Spokane	C
WA	Northwest Transformer	Everson	
WA	Northwest Transformer (South Harkness St)	Everson	
WA	Old Inland Pit	Spokane	
WA	Pacific Car & Foundry Co	Renton	
WA	Pasco Sanitary Landfill	Pasco	
WA	Queen City Farms	Maple Valley	
WA	Seattle Municipal Landfill (Kent Hghlnds)	Kent	
WA	Silver Mountain Mine	Loomis	C
WA	Vancouver Water Station #4 Contamination	Vancouver	
WA	Western Processing Co., Inc	Kent	C
WA	Wyckoff Co./Eagle Harbor	Bainbridge Island	
WA	Yakima Plating Co	Yakima	C
WI	Algoma Municipal Landfill	Algoma	
WI	Better Brite Plating Chrome & Zinc Shops	DePere	
WI	City Disposal Corp. Landfill	Dunn	
WI	Delavan Municipal Well #4	Delavan	
WI	Eau Claire Municipal Well Field	Eau Claire	C
WI	Fadowski Drum Disposal	Franklin	
WI	Hagen Farm	Stoughton	
WI	Hechimovich Sanitary Landfill	Williamstown	
WI	Hunts Disposal Landfill	Caledonia	
WI	Janesville Ash Beds	Janesville	
WI	Janesville Old Landfill	Janesville	
WI	Kohler Co. Landfill	Kohler	
WI	Lauer I Sanitary Landfill	Menomonee Falls	
WI	Lemberger Landfill, Inc	Whitelaw	
WI	Lemberger Transport & Recycling	Franklin Township	
WI	Madison Metropolitan Sewerage District	Blooming Grove	
WI	Master Disposal Service Landfill	Brookfield	
WI	Mid-State Disposal, Inc. Landfill	Cleveland Township	
WI	Moss-American (Kerr-McGee Oil Co.)	Milwaukee	
WI	Muskego Sanitary Landfill	Muskego	
WI	N.W. Mauthe Co., Inc	Appleton	S
WI	National Presto Industries, Inc	Eau Claire	
WI	Northern Engraving Co	Sparta	C
WI	Oconomowoc Electroplating Co. Inc	Ashippin	
WI	Omega Hills North Landfill	Germantown	
WI	Onalaska Municipal Landfill	Onalaska	
WI	Refuse Hideaway Landfill	Middleton	
WI	Sauk County Landfill	Excelsior	
WI	Schmalz Dump	Harrison	C
WI	Scrap Processing Co., Inc	Medford	
WI	Sheboygan Harbor & River	Sheboygan	
WI	Spickler Landfill	Spencer	
WI	Stoughton City Landfill	Stoughton	
WI	Tomah Armory	Tomah	
WI	Tomah Fairgrounds	Tomah	
WI	Tomah Municipal Sanitary Landfill	Tomah	
WI	Waste Mgmt of WI (Brookfield Sanit LF)	Brookfield	
WI	Wausau Ground Water Contamination	Wausau	
WI	Wheeler Pit	La Prairie Township	C

TABLE 1.—GENERAL SUPERFUND SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
WV	Fike Chemical, Inc	Nitro	
WV	Follansbee Site	Follansbee	
WV	Leetown Pesticide	Leetown	C
WV	Ordnance Works Disposal Areas	Morgantown	
WV	West Virginia Ordnance	Point Pleasant	S
WY	Baxter/Union Pacific Tie Treating	Laramie	
WY	Mystery Bridge Rd/U.S. Highway 20	Evansville	C

Notes:

A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be >28.50).

C=Completion Category.

S=State top priority (included among the 100 top priority sites regardless of score).

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994

State	Site name	City/county	Notes
AK	Eielson Air Force Base	Fairbanks N Star Borough.	
AK	Elmendorf Air Force Base	Greater Anchorage Borough.	
AK	Fort Wainwright	Fairbanks N Star Borough.	
AK	Standard Steel & Metals Salvage Yard (USDOT)	Anchorage.	
AL	Alabama Army Ammunition Plant	Childersburg.	
AL	Anniston Army Depot (SE Industrial Area)	Anniston.	
AZ	Luke Air Force Base	Glendale.	
AZ	Williams Air Force Base	Chandler.	
AZ	Yuma Marine Corps Air Station	Yuma.	
CA	Barstow Marine Corps Logistics Base	Barstow.	
CA	Camp Pendleton Marine Corps Base	San Diego County.	
CA	Castle Air Force Base	Merced.	
CA	Edwards Air Force Base	Kern County.	
CA	El Toro Marine Corps Air Station	El Toro.	
CA	Fort Ord	Marina.	
CA	George Air Force Base	Victorville.	
CA	Jet Propulsion Laboratory (NASA)	Pasadena.	
CA	Lawrence Livermore Laboratory (Site 300)	Livermore.	
CA	Lawrence Livermore Laboratory (USDOE)	Livermore.	
CA	March Air Force Base	Riverside.	
CA	Mather Air Force Base	Sacramento.	
CA	McClellan Air Force Base (GW Contam)	Sacramento.	
CA	Moffett Naval Air Station	Sunnyvale.	
CA	Norton Air Force Base	San Bernardino.	
CA	Riverbank Army Ammunition Plant	Riverbank.	
CA	Sacramento Army Depot	Sacramento.	
CA	Sharpe Army Depot	Lathrop.	
CA	Tracy Defense Depot	Tracy.	
CA	Travis Air Force Base	Solano County.	
CA	Treasure Island Naval Station-Hun Pt An	San Francisco.	
CO	Air Force Plant PJKS	Waterton.	
CO	Rocky Flats Plant (USDOE)	Golden.	
CO	Rocky Mountain Arsenal	Adams County.	
CT	New London Submarine Base	New London.	
DE	Dover Air Force Base	Dover.	
FL	Cecil Field Naval Air Station	Jacksonville.	
FL	Homestead Air Force Base	Homestead.	
FL	Jacksonville Naval Air Station	Jacksonville.	
FL	Pensacola Naval Air Station	Pensacola.	
GA	Marine Corps Logistics Base	Albany.	
GA	Robins Air Force Base (Lf#4/Sludge Lagoon)	Houston County.	
GU	Andersen Air Force Base	Yigo.	
HI	Pearl Harbor Naval Complex	Pearl Harbor.	
HI	Schofield Barracks	Oahu.	
IA	Iowa Army Ammunition Plant	Middletown.	
ID	Idaho National Engineering Lab (USDOE)	Idaho Falls.	
ID	Mountain Home Air Force Base	Mountain Home.	
IL	Joliet Army Ammunition Plant (LAP Area)	Joliet.	
IL	Joliet Army Ammunition Plant (Mfg Area)	Joliet.	
IL	Sangamo Electric/Crab Orchard NWR (USDOI)	Cartersville.	
IL	Savanna Army Depot Activity	Savanna.	
KS	Fort Riley	Junction City.	
LA	Louisiana Army Ammunition Plant	Doyline.	
MA	Fort Devens	Fort Devens.	
MA	Fort Devens-Sudbury Training Annex	Middlesex County.	

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
MA	Otis Air National Guard /Camp Edwards	Falmouth.	
MD	Aberdeen Proving Ground (Edgewood Area)	Edgewood.	
MD	Aberdeen Proving Ground (Michaelsville LF)	Aberdeen.	
ME	Brunswick Naval Air Station	Brunswick.	
ME	Loring Air Force Base	Limestone.	
MN	Naval Industrial Reserve Ordnance Plant	Fridley.	
MN	Twin Cities Air Force Base (SAR Landfill)	Minneapolis.	
MO	Lake City Army Ammu. Plant (NW Lagoon)	Independence.	
MO	Weldon Spring Former Army Ordnance Works	St. Charles County.	
MO	Weldon Spring Quarry/Plant/Pitts (USDOE)	St. Charles County.	
NC	Camp Lejeune Military Reservation	Onslow County.	
NE	Cornhusker Army Ammunition Plant	Hall County.	
NH	Pease Air Force Base	Portsmouth/Newington.	
NJ	Federal Aviation Admin. Tech. Center	Atlantic County.	
NJ	Fort Dix (Landfill Site)	Pemberton Township.	
NJ	Naval Air Engineering Center	Lakehurst.	
NJ	Naval Weapons Station Earle (Site A)	Colts Neck.	
NJ	Picatinny Arsenal	Rockaway Township.	
NJ	W.R. Grace/Wayne Interim Storage (USDOE)	Wayne Township.	
NM	Cal West Metals (USSBA)	Lemitar.	
NM	Lee Acres Landfill (USDO)	Farmington.	
NY	Brookhaven National Laboratory (USDOE)	Upton.	
NY	Griffiss Air Force Base	Rome.	
NY	Plattsburgh Air Force Base	Plattsburgh.	
NY	Seneca Army Depot	Romulus.	
OH	Feed Materials Production Center (USDOE)	Fernald.	
OH	Mound Plant (USDOE)	Miamisburg.	
OH	Wright-Patterson Air Force Base	Dayton.	
OK	Tinker Air Force (Soldier Cr/Bldg 300)	Oklahoma City.	
OR	Umatilla Army Depot (Lagoons)	Hermiston.	
PA	Letterkenny Army Depot (PDO Area)	Franklin County.	
PA	Letterkenny Army Depot (SE Area)	Chambersburg.	
PA	Naval Air Development Center (8 Areas)	Warminster Township.	
PA	Tobyhanna Army Depot	Tobyhanna.	
PR	Naval Security Group Activity	Sabana Seca.	
RI	Davisville Naval Construction Batt Cent	North Kingston.	
RI	Newport Naval Education/Training Center	Newport.	
SC	Savannah River Site (USDOE)	Aiken.	
SD	Ellsworth Air Force Base	Rapid City.	
TN	Memphis Defense Depot	Memphis.	
TN	Milan Army Ammunition Plant	Milan.	
TN	Oak Ridge Reservation (USDOE)	Oak Ridge.	
TX	Air Force Plant #4 (General Dynamics)	Fort Worth.	
TX	Lone Star Army Ammunition Plant	Texarkana.	
TX	Longhorn Army Ammunition Plant	Karnack.	
UT	Hill Air Force Base	Ogden.	
UT	Monticello Mill Tailings (USDOE)	Monticello.	
UT	Ogden Defense Depot	Ogden.	
UT	Tooele Army Depot (North Area)	Tooele.	
VA	Defense General Supply Center	Chesterfield County.	
VA	Naval Surface Warfare—Dahlgren	Dahlgren.	
VA	Naval Weapons Station—Yorktown	Yorktown.	
WA	Bangor Naval Submarine Base	Silverdale.	
WA	Bangor Ordnance Disposal	Bremerton.	
WA	Bonneville Power Admin Ross (USDOE)	Vancouver.	
WA	Fairchild Air Force Base (4 Waste Areas)	Spokane County.	
WA	Fort Lewis (Landfill No. 5)	Tacoma.	
WA	Fort Lewis Logistics Center	Tillicum.	
WA	Hamilton Island Landfill(USA/COE)	North Bonneville.	

TABLE 2.—FEDERAL FACILITIES SECTION, FEBRUARY 1994—Continued

State	Site name	City/county	Notes
WA	Hanford 100—Area (USDOE)	Benton County.	
WA	Hanford 1100—Area (USDOE)	Benton County.	
WA	Hanford 200—Area (USDOE)	Benton County.	
WA	Hanford 300—Area (USDOE)	Benton County.	
WA	McChord Air Force Base (Wash Rack/Treat)	Tacoma.	
WA	Naval Air Station, Whidbey Is (Seaplane)	Whidbey Island.	
WA	Naval Air Station, Whidbey Island (Ault)	Whidbey Island.	
WA	Naval Undersea Warfare Station (4 Areas)	Keyport.	
WY	F.E. Warren Air Force Base	Cheyenne.	

Notes:

A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be >28.50)
 C=Completion Category. S=State top priority (included among the 100 top priority sites regardless of score).

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Federal Register

Wednesday
February 23, 1994

Part VII

Department of Transportation

Federal Highway Administration

49 CFR Part 390, et al.
Private Motor Carriers of Passengers;
Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 393, 395, and 396

[FHWA Docket No. MC-88-15]

RIN 2125-AB62

Private Motor Carriers of Passengers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule with request for comments.

SUMMARY: In accordance with changes in the definitions of interstate commerce and commercial motor vehicle contained in the Motor Carrier Act of 1984, the FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to make private motor carriers of passengers involved in interstate transportation subject to them with certain exceptions. Implementation of the final rule is being delayed to allow the new class of regulatees an opportunity to comment on the type and scope of educational and technical assistance necessary and to provide ample time to come into compliance with the FMCSRs.

DATES: This regulation is effective January 1, 1995; comments must be received on or before October 1, 1994.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC-10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. F. Daniel Hartman, Office of Motor Carrier Standards, (202) 366-4009, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Since 1935, the Federal government has been regulating, for safety purposes,

interstate transportation performed by for-hire carriers of property and passengers and private carriers of property. Prior to the passage of the Motor Carrier Act of 1984 (Pub. L. 98-554, 98 Stat. 2832, 49 U.S.C. app. 2501 *et. seq.*), the Federal government's jurisdiction did not extend to private motor carriers of passengers (PMCPs).

With the enactment of the Motor Carrier Safety Act of 1984, Congress defined the FHWA's jurisdiction on the basis of vehicles operating in interstate commerce. The stated purposes of the 1984 Act were to (1) promote the safe operation of commercial motor vehicles; (2) minimize dangers to the health of operators of commercial motor vehicles; and (3) assure increased compliance with traffic laws and with the commercial motor vehicle safety rules.

Congress expanded the definition of commercial motor vehicle (CMV) in section 204 of that Act (49 U.S.C. app. 2503) to include any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property if (a) such vehicle has a gross vehicle weight rating of 10,001 or more pounds; (b) such vehicle is designed to transport 16 or more passengers, including the driver; or (c) such vehicle is used in the transportation of hazardous materials which require a placard.

Interstate commerce was defined in the same section of the Act as "trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States." Therefore, anyone operating or causing to be operated vehicles as defined in the Act in interstate commerce became subject to regulation by the Secretary of Transportation.

Current Regulations

The FMCSRs are contained in title 49, Code of Federal Regulations, parts 350 through 399. These regulations set minimum safety standards for motor carriers, vehicles and drivers involved in interstate commerce. The areas covered include driver qualification, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection and maintenance. Consistent with the pre-1984 authority, PMCPs are currently exempt from the FMCSRs (parts 390-399) pursuant to 49 CFR 390.3(f)(6).

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Title XII, Pub. L. 99-570, 49 U.S.C. app. 2701-2718) established requirements for testing and

licensing of all drivers of commercial motor vehicles as defined in that Act. Under the implementing regulations in 49 CFR part 383, all drivers subject to that part must successfully complete a knowledge test and skills examination, as applicable, both of which are administered by the driver's State of residence. The State then issues a Commercial Driver's License (CDL), which is the only license that may be possessed by an operator of a commercial motor vehicle. The operative definitions in the CMVSA of 1986 extend jurisdiction to any driver of a defined vehicle, whether in interstate or intrastate commerce, and whether or not otherwise subject to DOT jurisdiction. The current rulemaking does not alter the provisions of Part 383 for any CMV driver, nor does it affect other regulatory exemptions, e.g., the transportation of school children and government operations.

The FHWA issued a Notice of Interpretation (58 FR 27328, May 7, 1993) to clarify its policy relating to for-hire transportation of passengers. That notice clarifies the FHWA's policy that businesses operating passenger-carrying commercial motor vehicles in interstate commerce, and receiving direct or indirect compensation for their transportation services, are for-hire motor carriers subject to the minimum levels of financial responsibility requirements. If the passenger-carrying capacity of the vehicle is 16 or more, including the driver, they are also subject to the remainder of the FMCSRs.

Rulemaking History

In 1985, the FHWA issued an advance notice of proposed rulemaking (ANPRM) in the Federal Register (50 FR 2998, Docket No. MC-114) to obtain comments on the merits of regulating PMCPs. Recognizing the wide diversity of operating practices, the FHWA (shortly after the 1984 Act) contracted for a study to gain greater insight into the operating practices of these carriers. (ASW Associates, Silver Spring, Md., June 10, 1987.) Although there is little definitive accident data, the study concluded that highway safety would be enhanced by regulating PMCPs. After comments to the ANPRM were received and analyzed, the FHWA issued a notice of proposed rulemaking (NPRM) on February 17, 1989 (MC-88-15), proposing to assert jurisdiction over these carriers with respect to certain requirements of the FMCSRs (see 54 FR 7362).

In the NPRM, the FHWA acknowledged that all buses should be in safe operating condition and driven by qualified drivers. However, it would

be overly burdensome and counterproductive to attempt to require every entity transporting people by bus, regardless of purpose, to comply with the whole range of regulations, including recordkeeping requirements.

In the NPRM, the FHWA divided PMCPs into two groups based on the relationship of the driver to the motor carrier. Group I consisted of all employees hired to perform primarily as drivers. Group II consisted of volunteer drivers (who may also be employees) who received little or no remuneration for their driving and drove for less than 10 percent of their work time. The division of the two groups was intended to recognize the distinction between business and nonbusiness operations.

Under the proposal advanced in the NPRM, Group I would have been treated the same as for-hire motor carriers of passengers and would have been subject to all of the FMCSRs. Group II would have been subject to CDL and the vehicle and maintenance requirements, but would not have been required to keep driver qualification files.

The FHWA was also aware that some buses currently in use may not have been subject to the National Highway Traffic Safety Administration's (NHTSA) fuel system requirements at the time of manufacture. The NPRM proposed to "grandfather" this equipment and, therefore, would not require retrofitting of the fuel systems if the vehicle has been maintained and meets the original manufacturer's standards.

Discussion of Comments to the Docket

The FHWA received 28 comments to this docket: 14 from organizations and groups potentially affected by the rulemaking, 5 from national associations, 3 from for-hire bus companies, 2 from State enforcement agencies, 1 from a Federal advisory board, 1 from a union, and 2 from individuals. Only three commenters, two of which were churches, opposed the rule as an unnecessary regulatory burden.

The American Bus Association (ABA) supported the NPRM, expressing the opinion that PMCPs are less safe than for-hire carriers because they operate older, inferior equipment, with less experienced drivers, and in its opinion, are involved in a disproportionate number of fatal accidents. The ABA also stated that these drivers should be subject to the same driver qualification and hours of service requirements, including recordkeeping, because they are usually less experienced and qualified. The ABA raised questions about the enforceability of the definition

in the NPRM for limited PMCPs, specifically the 10 percent driving time factor. It felt these carriers would reduce driving time below 10 percent to avoid the paperwork requirements. The ABA also recommended that all PMCPs get a U.S. DOT number to facilitate enforcement.

The United Bus Owners of America and the National School Transportation Association supported the rule, maintaining that anyone transporting passengers should comply fully with the FMCSRs, including recordkeeping, in the interest of safety for the passengers on board a vehicle and the motoring public at large. The International Brotherhood of Teamsters supported the rule and favored the division of PMCPs into groups for the purpose of paperwork burden relief.

Those commenters opposed to the NPRM were concerned that the rule placed an unnecessary burden on churches, with little accident or safety data to support the rule. They contended that many churches will terminate interstate travel rather than attempt to comply with the requirements.

Two States wrote to the docket—one supporting and one opposing the proposal. The Transportation Cabinet of the Commonwealth of Kentucky supported the rule. The Cabinet believed that school bus operations also should be subject to the FMCSRs, but did not provide data to support its position. The Department of Motor Vehicles in North Carolina opposed the rule as an unnecessary burden, claiming private buses are usually not used in commerce. The Department instead recommended that FHWA staff focus on truck safety problems.

FHWA's Response

In consideration of the comments to the NPRM, the FHWA concluded that the use of volunteer driver status, coupled with the 10 percent driving factor, would not be a workable criterion for separation of the two groups because of the uncertainty in defining "volunteer status" and measuring the 10 percent driving time factor. Instead, the FHWA will base its distinction on whether the motor carrier is providing the transportation of passengers in furtherance of a commercial purpose other than transportation.

Those PMCPs involved in a business activity which provides transportation, in the furtherance of a commercial purpose other than for-hire transportation, will be subject to all of the FMCSRs, including recordkeeping. Those PMCPs engaged in nonbusiness

activities, but providing transportation of some kind, must have safe drivers and vehicles and will be subject to many of the FMCSRs. These PMCPs will not be required to comply with the current recordkeeping requirements. The FHWA also agrees with, and has incorporated into the final rule, comments that all PMCPs should obtain a U.S. DOT number, which should facilitate the proper collection of accurate roadside inspection and enforcement information. The "grandfather" provision for fuel system requirements, as proposed in the NPRM, also has been retained.

Although interstate commerce is historically defined to include trade, traffic, or transportation across State boundaries and is not limited to business entities in profit-making ventures, the FHWA believes most churches will fall within the definition of nonbusiness PMCPs. As such, these carriers will not be subject to the current recordkeeping requirements. Under this final rule, once a driver obtains a CDL, no additional files, such as driver qualification records including the medical examination certificate, or drivers' record of duty status, are required to be maintained.

Requirements of the Final Rule

The final rule is very similar to the NPRM except that (1) the definition of PMCP has been consolidated with the definition of private motor carrier of property, (2) the definitions of "nonbusiness PMCPs" and "business PMCPs" have been added, (3) nonbusiness PMCPs will be exempt from subpart H of part 391 and all current recordkeeping requirements, (4) PMCPs will not be subject to the road and written test requirements of part 391, and (5) all passenger carriers will be required to obtain a US DOT number to identify their buses for enforcement by Federal and State officials.

Many operations which are classified as PMCPs are companies that transport their workers to and from job sites. PMCPs also include nonbusiness-type organizations, including scout, church and civic groups, that characteristically use volunteers to transport members by bus and charge no fee, or only a nominal fee to cover expenses of the transportation service provided.

Definitions

Business PMCPs

A business PMCP is defined as any entity involved in the interstate transportation of passengers; the transportation provided is in the furtherance of the entity's commercial

purpose, which is not for-hire transportation; and the transportation is not available to the general public. The FHWA believes that any business entity transporting people should meet the same minimum safety requirements as those businesses involved in the private transportation of property. Therefore, these carriers must comply with the entire body of the FMCSRs, including recordkeeping. These carriers need not comply with the road and written test requirements of part 391, since these requirements are essentially met by acquiring a CDL with proper bus endorsements. In addition, these carriers need not comply with the fuel system requirements of § 393.67, provided the carrier's commercial motor vehicle fuel systems have been maintained and meet the original manufacturer's standards.

Nonbusiness PMCPs

A nonbusiness PMCP is any entity involved in the interstate transportation of passengers, other than for-hire, and does not meet the definition of a business PMCP. These carriers will be subject to parts 383, 385 (requiring a Motor Carrier Identification Report), 390, 391 (excluding subpart H and recordkeeping requirements), 392, 393 (excluding fuel systems that have been maintained and meet the original manufacturer's standards), 395 (excluding the recordkeeping requirements), and 396 (excluding the recordkeeping requirements). Churches, civic associations, scouts, and other charitable institutions that may purchase or lease buses for sponsored activities are included in this category.

The special treatment afforded nonbusiness carriers is not to relieve churches or civic associations from compliance with any of the safety regulations when these carriers arrange tours for the public at large and charge a fee with the intent to make a profit. In this instance, nonbusiness carriers are in fact performing transportation services as for-hire carriers. When engaged in chartering operations, the transportation service is the primary activity of the organization and such charter service is not incidental to the non-transportation purposes of the organization. Such activities are and will continue to be treated as for-hire transportation of passengers, subject to all the FMCSRs.

Driver and Carrier Requirements

Business PMCPs

These carriers must meet all of the driver recordkeeping requirements in part 391, except for the road and written

test requirements, which are essentially met by acquiring a CDL with proper bus endorsements. This recordkeeping requirement includes maintaining all documents required in a driver qualification file and drug testing documentation. These carriers must also comply with the recordkeeping requirements in part 395 regarding drivers' records of duty status.

Consistent with past FHWA practice, a one-time exemption for currently employed drivers is provided in this rulemaking. The recordkeeping requirements, including application for employment (§ 391.21), investigation and inquiries (§ 391.23), and notifications of previous employment (§ 383.35), will not apply to those drivers regularly employed by a motor carrier prior to July 1, 1994 and for as long as the person continues to be regularly employed as a driver for that motor carrier.

Nonbusiness PMCPs

Nonbusiness PMCPs must comply with the driving and on-duty hours limitation contained in part 395. The costs associated with requiring record retention by these motor carriers, who operate sporadically, would outweigh the benefits and, accordingly, the FHWA will not impose the recordkeeping requirements of part 395 on these carriers. It is recognized that some individuals who volunteer to drive for their church or civic organization may also drive for other motor carriers and in that capacity are required to maintain a record of duty status (driver logs). All on-duty and driving time, performed in a volunteer capacity by an individual who is otherwise regularly employed as a commercial driver, for a nonbusiness PMCP must be recorded on the records of duty-status submitted to that driver's regularly employing motor carrier. On duty and driving time for those drivers regularly employed must be considered in determining whether the driver has adequate time to drive as a volunteer, and vice-versa. The FHWA believes this requirement is necessary to ensure that a fatigued driver is not permitted or required to drive beyond the hours of service limits.

These carriers are not required to have their drivers medically examined and do not have to maintain the records required in parts 391, 395 and 396.

Drug and Alcohol Testing

Nonbusiness PMCPs are not subject to the current drug testing requirements found in 49 CFR part 391. However, business PMCPs are subject to those regulations.

Under a final rule published in the Federal Register on February 15, 1994, the FHWA announced new drug and alcohol testing rules. These rules were issued in response to the Omnibus Transportation Employee Testing Act of 1991 and will require that all operators of CMVs subject to the CDL requirements, be tested for controlled substances and alcohol. Both business and nonbusiness PMCPs will be subject to these rules.

Due to the broad scope of these rules, business and nonbusiness PMCPs with 50 or more drivers will have until January 1, 1995 to comply with the new drug and alcohol testing regulations. Business and nonbusiness PMCPs with less than 50 drivers will be required to comply with the new drug and alcohol testing regulations beginning January 1, 1996.

To further the purpose of the Omnibus Transportation Employee Testing Act, no waiver or exemption from any provision of the new rules, including the recordkeeping requirements, is provided. Consequently, all nonbusiness PMCPs will be required to meet certain recordkeeping requirements when the final rule is fully implemented.

Vehicle Requirements

Business PMCPs

Part 393, Parts and Accessories Necessary for Safe Operation, and Part 396, Inspection, Repair and Maintenance, provide detailed safety requirements for commercial motor vehicle components and inspection thereof. Business PMCPs are required to comply with the vehicle equipment requirements contained in part 393 (excluding fuel systems that have been maintained and meet original manufacturer's standards) and the maintenance and recordkeeping requirements in part 396. A few carriers may need to perform minor retrofitting to bring their vehicles into compliance with the requirements of part 393.

Nonbusiness PMCPs

Nonbusiness PMCPs must comply with the vehicle equipment requirements in part 393 (excluding fuel systems that have been maintained and meet original manufacturer's standards) and the maintenance requirements of part 396. These carriers will not have to comply with the recordkeeping requirements contained in part 396.

Insurance Requirements

Section 18 (a) through (g) of the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261, 96 Stat. 1102, 1120, as

amended) established minimum levels of financial responsibility for for-hire motor carriers of passengers. The Act did not extend coverage to motor carriers involved in private transportation of passengers. Therefore, for purposes of this final rule, PMCPs are not required to comply with part 387.

Enforcement

PMCPs will be subject to the FHWA and State motor carrier safety enforcement activities. The FHWA has a field staff which monitors compliance and enforces the regulations primarily by reviews of company records. Also, the FHWA administers a formula grant program, the Motor Carrier Safety Assistance Program (MCSAP), to reimburse States for uniform enforcement of commercial motor vehicle safety and hazardous materials compliance through roadside driver/vehicle inspections and review of motor carrier safety practices.

Business PMCPs

The primary enforcement activity will be unannounced terminal and roadside driver/vehicle inspections conducted by State personnel. Roadside driver/vehicle inspections may include inspections performed at origin or destination points such as parking lots, amusement parks, sporting complexes, and convention centers as well as on the road. A terminal inspection is a comprehensive vehicle inspection conducted at the carrier's terminal facility, garage or at a bus station. The vehicle standards for these inspections are reflected in the current periodic inspection requirements (part 396, Appendix G). Business PMCP drivers will have CDLs, medical cards, and records of duty status reviewed.

Federal and State investigators will also conduct safety and compliance reviews of these carriers at their principal places of business. The investigators will review motor carriers' safety management practices and regulatory compliance as evidenced by records maintained. These carriers will also be subject to FHWA's rating process and the provisions of the Motor Carrier Act of 1990 regarding the consequences of unsatisfactory safety ratings, i.e., an unsatisfactory rating will prohibit the operation of buses effective 45 days after receipt of the rating. Unsafe carriers will be subject to the same civil and criminal penalties as all other carriers currently under the jurisdiction of the FHWA. Carriers identified in FHWA's information system as having unsafe operations will be scheduled for safety and compliance reviews.

Nonbusiness PMCPs

Nonbusiness PMCPs will be subject to the same terminal and roadside driver/vehicle inspections as business PMCPs, except the drivers will only be subject to having their CDL reviewed and hours of service verified from evidence gathered at the scene. Compliance reviews will not be performed on these carriers nor will they be subject to FHWA's safety rating process, unless the information systems reveal that the carrier has been identified as having ongoing roadside safety inspection problems.

Marking

To facilitate State inspections of these vehicles and drivers, the FHWA is requiring each PMCP to have its name, city and State, and U.S. DOT number marked on the side of the bus to the extent presently required of all motor carriers.

Implementation

Marketing and Educational Program

Because PMCPs have not been regulated in the past, the FHWA and state personnel will be providing educational and technical assistance for these carriers prior to the effective date. The FHWA is seeking comments on the type and scope of educational and technical assistance that should be provided to assist PMCPs in complying with the FMCSRs. Comments must be received on or before October 1, 1994. The FHWA will make the materials available to National and State organizations which represent PMCPs or anyone who requests assistance directly from the FHWA. The FHWA also has Division offices in every State that can answer questions and provide technical assistance to these carriers upon request. The addresses for the FHWA Division Offices are listed in appendix D to 49 CFR part 7.

Effective Date

PMCPs (business and nonbusiness) will have until January 1, 1995, to meet these requirements.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Because this rulemaking has been the subject of substantial congressional and public interest, the FHWA has determined that this final rule is a significant regulatory action within the meaning of Executive Order 12866 and a significant regulation under the DOT regulatory policies and procedures. In the Motor Carrier Act of 1984, Congress

expanded the definitions of "interstate commerce" and "commercial motor vehicle" which expanded the Department of Transportation's regulatory jurisdiction to include private motor carriers of passengers. Both Congress and the bus industry have shown a keen interest in the progress of this rulemaking. The safety benefits and opportunities for benefits from this rule will offset any cost. A regulatory evaluation has been prepared and is available for review in the public docket.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities. Many small entities will be economically impacted by this rulemaking and some may decide to cease transportation of passengers rather than comply with the safety rules and regulations. However, the overall impact on small entities will be minimal. The FHWA is exempting the majority of small entities—those defined as nonbusiness—from the paperwork and recording requirements of this rule. The vast majority of PMCPs are small entities, especially the non-business carriers. Some of the smallest entities may find it preferable to discontinue their operations in interstate commerce, and to charter buses for their interstate trips. Private carriers which pay their drivers are even more likely to consider chartering as an option because of their increased costs for driver salaries or other compensation. Chartering does not reduce the cost of complying with this rule, but does place an effective ceiling on how much this rule might cost small entities. Thus, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This regulation amends certain parts of the FMCSRs pertaining to the scope and applicability of the FMCSRs to interstate transportation by PMCPs as authorized by the Motor Carrier Act of 1984. The FMCSRs establish minimum safety regulations which may be supplemented by the States, provided the State safety laws and regulations are compatible

with the Federal requirements. (See 57 FR 40946, September 8, 1992, which includes the Tolerance Guidelines for Adopting Compatible State Rules and Regulations.) The statutory basis for Federal regulation of interstate commerce has been outlined above. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

*Executive Order 12372
(Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Numbers 20.217, Motor Carrier Safety, and 20.218, Motor Carrier Safety Assistance Program. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in part 390 of this rule are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390, 391, 393, 395, and 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: February 14, 1994.

Rodney E. Slater,
Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, parts 390, 391, 393, 395 and 396 as set forth below.

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.3 [Amended]

2. In § 390.3, paragraph (f)(6) is removed.

§ 390.5 [Amended]

3. In § 390.5, the definition of *motor carrier* is revised; the definitions of *private motor carrier of passengers* and *private motor carrier of property* are removed; the definitions of *private motor carrier, private motor carrier of passengers (business)* and *private motor carrier of passengers (nonbusiness)* are added in alphabetical order as follows:

§ 390.5 Definitions.

* * * * *

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, this definition includes the terms *employer*, and *exempt motor carrier*.

* * * * *

Private motor carrier means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

Private motor carrier of passengers (business) means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

Private motor carrier of passengers (nonbusiness) means private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business).

* * * * *

PART 391—[AMENDED]

5. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 391.31 [Amended]

6. In § 391.31, paragraph (a) is revised to read as follows:

§ 391.31 Road test.

(a) Except as provided in subpart G, a person shall not drive a motor vehicle unless he/she has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

* * * * *

§ 391.35 [Amended]

7. In § 391.35, paragraph (a) is revised to read as follows:

§ 391.35 Written examination.

(a) Except as provided in subpart G, a person shall not drive a motor vehicle unless he/she has first taken a written examination in accordance with this section.

* * * * *

8. In § 391.51, paragraph (a) is revised to read as follows:

§ 391.51 Driver qualification files.

(a) Except as provided in subpart G, each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with the driver's personnel file.

* * * * *

9. § 391.68 is added to subpart G to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

(a) The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and their drivers:

(1) Section 391.11(b)(8), (b)(10), (b)(11), and (b)(12), (relating to driver qualifications in general).

(2) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(3) Subpart D (relating to road tests and written examinations).

(4) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person.

(5) Subpart F (relating to maintenance of files and records).

(6) Subpart H (relating to controlled substances testing).

(b) The following rules in this part do not apply to a private motor carrier of passengers (business) driver: subpart D (relating to road tests and written examinations).

10. Section 391.73 is added to subpart G to read as follows:

§ 391.73 Private motor carrier of passengers (business).

The provisions of § 391.21 (relating to applications for employment), § 391.23

(relating to investigations and inquiries), § 391.31 (relating to road tests), and § 391.35 (relating to written examinations) do not apply to a driver who has been a regularly employed driver (as defined in § 390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if that driver fulfills the requirements of paragraphs (b)(1) through (b)(9) of § 391.11 (relating to qualifications of drivers).

11. In § 391.83, paragraph (a) is revised to read as follows:

§ 391.83 Applicability.

(a) Except for a private motor carrier of passengers (nonbusiness), this subpart applies to motor carriers and persons who operate a commercial motor vehicle as defined in this subpart in interstate commerce and are subject to the driver qualification requirements of part 391 of this subchapter.

* * * * *

PART 393—[AMENDED]

12. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

§ 393.67 [Amended]

13. Section 393.67 is amended by adding a new paragraph (a)(6) to read as follows:

§ 393.67 Liquid fuel tanks.

(a) * * *
(6) Private motor carrier of passengers. Motor carriers engaged in the private transportation of passengers may continue to operate a commercial motor vehicle which was not subject to this section or 49 CFR 571.301 at the time of its manufacture, provided the fuel tank of such vehicle is maintained to the original manufacturer's standards.

* * * * *

PART 395—[AMENDED]

16. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; and 49 CFR 1.48.

17. In § 395.8, paragraph (a) introductory text is revised to read as follows:

§ 395.8 Driver's record of duty status.

(a) Except for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period using the methods prescribed in either paragraphs (a)(1) or (2) of this section.

* * * * *

PART 396—[AMENDED]

18. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. app. 2509; 49 U.S.C. 3102; 49 CFR 1.48.

19. In § 396.3, the introductory text of paragraph (b) is revised to read as follows:

§ 396.3 Inspection, repair, and maintenance.

* * * * *

(b) *Required records*—For vehicles controlled for 30 consecutive days or more, except for a private motor carrier of passengers (nonbusiness), the motor carriers shall maintain, or cause to be maintained, the following record for each vehicle:

* * * * *

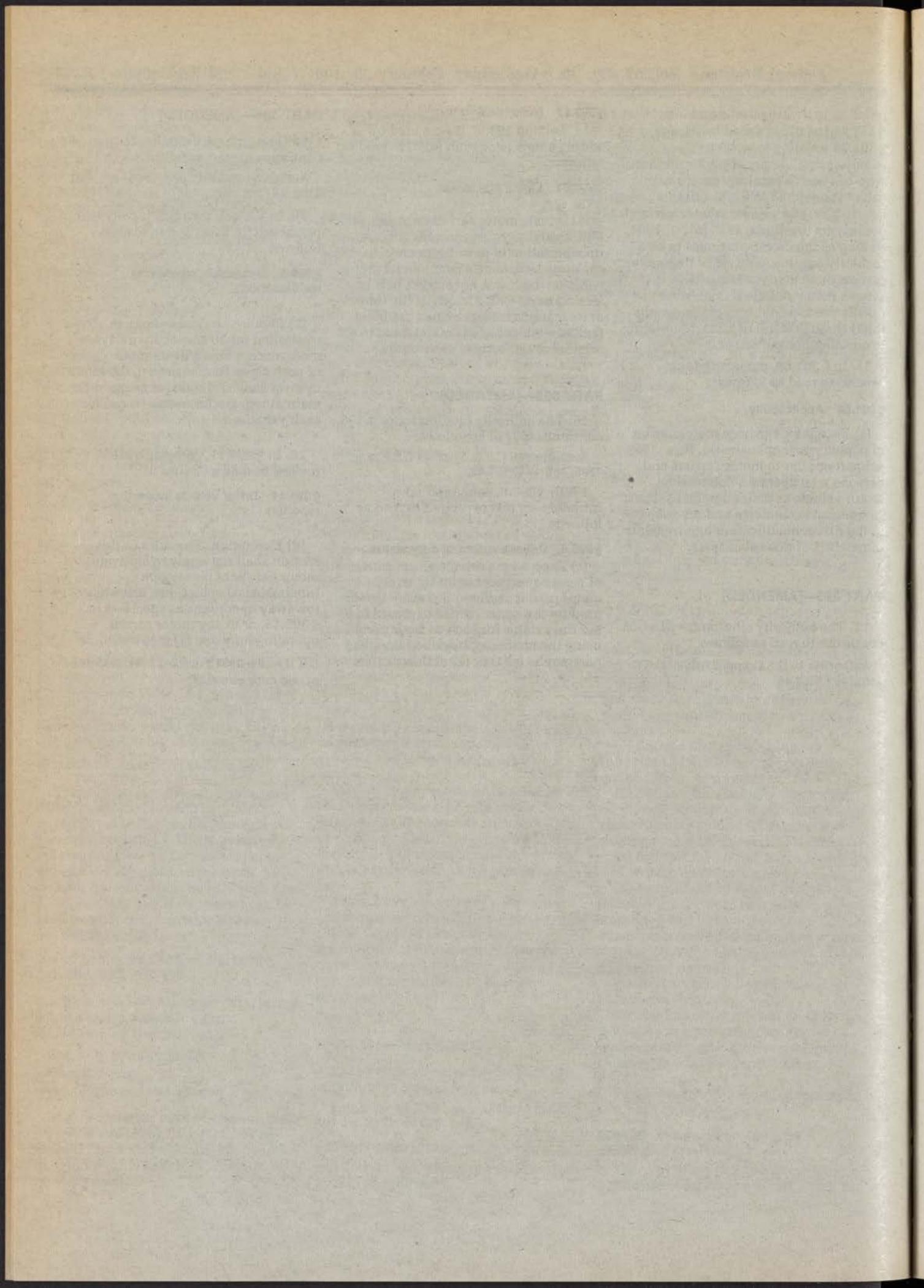
20. In § 396.11, paragraph (d) is revised to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(d) Exemption. The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness) operations, driveaway-towaway operations as specified in § 396.15, or to any motor carrier operating only one (1) motor vehicle.

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federal register

Wednesday
February 23, 1994

Part VIII

Department of Education

**Nondiscrimination in Federally Assisted
Programs; Title VI of the Civil Rights Act
of 1964; Notice**

DEPARTMENT OF EDUCATION

Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964

AGENCY: Department of Education.

ACTION: Notice of final policy guidance.

SUMMARY: The Secretary of Education issues final policy guidance on Title VI of the Civil Rights Act of 1964 and its implementing regulations. The final policy guidance discusses the applicability of the statute's and regulations' nondiscrimination requirement to student financial aid that is awarded, at least in part, on the basis of race or national origin.

EFFECTIVE DATE: This policy guidance takes effect on May 24, 1994, subject to the transition period described in this notice.

FOR FURTHER INFORMATION CONTACT:

Jeanette Lim, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036-1 Switzer Building, Washington, DC 20202-1174. Telephone (202) 205-8635. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at 1-800-358-8247.

SUPPLEMENTARY INFORMATION: On December 10, 1991, the Department published a notice of proposed policy guidance and request for public comment in the *Federal Register* (56 FR 64548). The purpose of the proposed guidance and of this final guidance is to help clarify how colleges can use financial aid to promote campus diversity and access of minority students to postsecondary education without violating Federal anti-discrimination laws. The Secretary of Education encourages continued use of financial aid as a means to provide equal educational opportunity and to provide a diverse educational environment for all students. The Secretary also encourages the use by postsecondary institutions of other efforts to recruit and retain minority students, which are not affected by this policy guidance.

This guidance is designed to promote these purposes in light of Title VI of the Civil Rights Act of 1964 (Title VI), which states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Department has completed its review of this issue, taking into account the results of a recent study by the

General Accounting Office (GAO) and public comments submitted in response to the proposed policy guidance. The Secretary has determined that the proposed policy guidance interpreted the requirements of Title VI too narrowly in light of existing regulations and case law. While Title VI requires that strong justifications exist before race or national origin is used as a basis for awarding financial aid, many of the rationales for existing race-based financial aid programs described by commenters appear to meet this standard.

The recent report by GAO on current financial aid programs does not indicate the existence of serious problems of noncompliance with the law in postsecondary institutions. That report found that race-targeted scholarships constitute a very small percentage of the scholarships awarded to students at postsecondary institutions. The Secretary anticipates that most existing programs will be able to satisfy the principles set out in this final guidance.

The Department will use the principles described in this final policy guidance in making determinations concerning discrimination based on race or national origin in the award of financial aid. These principles describe the circumstances in which the Department, based on its interpretation of Title VI and relevant case law, believes consideration of race or national origin in the award of financial aid to be permissible. A financial aid program that falls within one or more of these principles will be, in the Department's view, in compliance with Title VI.¹ This guidance is intended to assist colleges in fashioning legally defensible affirmative action programs to promote the access of minority students to postsecondary education. The Department will offer technical assistance to colleges in reexamining their financial aid programs based on this guidance.

This notice consists of five simply stated principles and a section containing a legal analysis for each principle. The legal analysis addresses the major comments received in response to the notice of proposed policy guidance.

¹ In identifying these principles, the Department is not foreclosing the possibility that there may be other bases on which a college may support its consideration of race or national origin in awarding financial aid. The Department will consider any justifications that are presented during the course of a Title VI investigation on a case-by-case basis.

Summary of Changes in the Final Policy Guidance

Almost 600 written responses were received by the Department in response to the proposed policy guidance, many with detailed suggestions and analysis. Many additional suggestions and concerns were raised in meetings between Department officials and representatives of postsecondary institutions and civil rights groups. The vast majority of comments expressed support for the objective of clarifying the options colleges have to use financial aid to promote student diversity and access of minorities to postsecondary education without violating Title VI. Many comments, however, took issue with specific principles in the proposed policy guidance and questioned whether those principles would be effective in accomplishing this purpose.

As more fully explained in the legal analysis section of this document, after reviewing the public comments and reexamining the legal precedents in light of those comments, the Department has revised the policy guidance in the following respects:

(1) Principle 3—"Financial Aid to Remedy Past Discrimination"—has been amended to permit a college to award financial aid based on race or national origin as part of affirmative action to remedy the effects of its past discrimination without waiting for a finding to be made by the Office for Civil Rights (OCR), a court, or a legislative body, if the college has a strong basis in evidence of discrimination justifying the use of race-targeted scholarships.

(2) Principle 4—"Financial Aid to Create Diversity"—has been amended to permit the award of financial aid on the basis of race or national origin if the aid is a necessary and narrowly tailored means to accomplish a college's goal to have a diverse student body that will enrich its academic environment.

(3) Principle 5—"Private Gifts Restricted by Race or National Origin"—has been amended to clarify that a college can administer financial aid from private donors that is restricted on the basis of race or national origin only if that aid is consistent with the other principles in this policy guidance.

(4) A provision has been added to permit historically black colleges and universities (HBCUs) to participate in race-targeted programs for black students established by third parties if the programs are not limited to students at HBCUs.

(5) Provisions in the proposed policy guidance for a transition period have

been revised to provide that, as far as the Department's enforcement efforts are concerned—

(a) Colleges and other recipients of federal financial assistance will have a reasonable period of time—up to two years—to review their financial aid programs and to make any adjustments necessary to come into compliance with the principles in this final policy guidance;

(b) No student who has received or applied for financial aid at the time this guidance becomes effective will lose aid as a result of this guidance. Thus, if an award of financial aid is inconsistent with the principles in this guidance, a college or other recipient of Federal financial assistance may continue to provide the aid to a student during the course of his or her enrollment in the academic program for which the aid was awarded, if the student had either applied for or received the aid prior to the effective date of this policy guidance.

Principles

Definitions

For purposes of these principles—
College means any postsecondary institution that receives federal financial assistance from the Department of Education.

Financial aid includes scholarships, grants, loans, work-study, and fellowships that are made available to assist a student to pay for his or her education at a college.

Race-neutral means not based, in whole or in part, on race or national origin.

Race-targeted, race-based, and awarded on the basis of race or national origin mean limited to individuals of a particular race or races or national origin or origins.

Principle 1: Financial Aid for Disadvantaged Students

A college may make awards of financial aid to disadvantaged students, without regard to race or national origin, even if that means that these awards go disproportionately to minority students.

Financial aid may be earmarked for students from low-income families. Financial aid also may be earmarked for students from school districts with high dropout rates, or students from single-parent families, or students from families in which few or no members have attended college. None of these or other race-neutral ways of identifying and providing aid to disadvantaged students present Title VI problems. A college may use funds from any source to provide financial aid to disadvantaged students.

Principle 2: Financial Aid Authorized by Congress

A college may award financial aid on the basis of race or national origin if the aid is awarded under a Federal statute that authorizes the use of race or national origin.

Principle 3: Financial Aid To Remedy Past Discrimination

A college may award financial aid on the basis of race or national origin if the aid is necessary to overcome the effects of past discrimination. A finding of discrimination may be made by a court or by an administrative agency—such as the Department's Office for Civil Rights. Such a finding may also be made by a State or local legislative body, as long as the legislature has a strong basis in evidence identifying discrimination within its jurisdiction for which that remedial action is necessary.

In addition, a college may award financial aid on the basis of race or national origin to remedy its past discrimination without a formal finding of discrimination by a court or by an administrative or legislative body. The college must be prepared to demonstrate to a court or administrative agency that there is a strong basis in evidence for concluding that the college's action was necessary to remedy the effects of its past discrimination. If the award of financial aid based on race or national origin is justified as a remedy for past discrimination, the college may use funds from any source, including unrestricted institutional funds and privately donated funds restricted by the donor for aid based on race or national origin.

A State may award financial aid on the basis of race or national origin, under the preceding standards, if the aid is necessary to overcome its own past discrimination or discrimination at colleges in the State.

Principle 4: Financial Aid To Create Diversity

America is unique because it has forged one Nation from many people of a remarkable number of different backgrounds. Many colleges seek to create on campus an intellectual environment that reflects that diversity. A college should have substantial discretion to weigh many factors—including race and national origin—in its efforts to attract and retain a student population of many different experiences, opinions, backgrounds, and cultures—provided that the use of race or national origin is consistent with the constitutional standards reflected in Title VI, *i.e.*, that it is a narrowly

tailored means to achieve the goal of a diverse student body.

There are several possible options for a college to promote its First Amendment interest in diversity. First, a college may, of course, use its financial aid program to promote diversity by considering factors other than race or national origin, such as geographic origin, diverse experiences, or socioeconomic background. Second, a college may consider race or national origin with other factors in awarding financial aid if the aid is necessary to further the college's interest in diversity. Third, a college may use race or national origin as a condition of eligibility in awarding financial aid if this use is narrowly tailored, or, in other words, if it is necessary to further its interest in diversity and does not unduly restrict access to financial aid for students who do not meet the race-based eligibility criteria.

Among the considerations that affect a determination of whether awarding race-targeted financial aid is narrowly tailored to the goal of diversity are (1) whether race-neutral means of achieving that goal have been or would be ineffective; (2) whether a less extensive or intrusive use of race or national origin in awarding financial aid as a means of achieving that goal has been or would be ineffective; (3) whether the use of race or national origin is of limited extent and duration and is applied in a flexible manner; (4) whether the institution regularly reexamines its use of race or national origin in awarding financial aid to determine whether it is still necessary to achieve its goal; and (5) whether the effect of the use of race or national origin on students who are not beneficiaries of that use is sufficiently small and diffuse so as not to create an undue burden on their opportunity to receive financial aid.

If the use of race or national origin in awarding financial aid is justified under this principle, the college may use funds from any source.

Principle 5: Private Gifts Restricted by Race or National Origin

Title VI does not prohibit an individual or an organization that is not a recipient of Federal financial assistance from directly giving scholarships or other forms of financial aid to students based on their race or national origin. Title VI simply does not apply.

The provisions of Principles 3 and 4 apply to the use of race-targeted privately donated funds by a college and may justify awarding these funds on the basis of race or national origin if the

college is remedying its past discrimination pursuant to Principle 3 or attempting to achieve a diverse student body pursuant to Principle 4. In addition, a college may use privately donated funds that are not restricted by their donor on the basis of race or national origin to make awards to disadvantaged students as described in Principle 1.

Additional Guidance

Financial Aid at Historically Black Colleges and Universities

Historically black colleges and universities (HBCUs), as defined in Title III of the Higher Education Act (Title III), 20 U.S.C. 1061, are unique among institutions of higher education in America because of their role in serving students who were denied access to postsecondary education based on their race.² Congress has made numerous findings reflecting the special role and needs of these institutions in light of the history of discrimination by States and the Federal Government against both the institutions and their students and has required enhancement of these institutions as a remedy for this history of discrimination.

Based upon the extensive congressional findings concerning HBCUs, and consistent with congressional and Executive Branch efforts to enhance and strengthen HBCUs, the Department interprets Title VI to permit these institutions to participate in student aid programs established by third parties that target financial aid to black students, if those programs are not limited to students at the HBCUs. These would include programs to which HBCUs contribute their own institutional funds if necessary for participation in the programs. Precluding HBCUs from these programs would have an unintended negative effect on their ability to recruit talented student bodies and would undermine congressional actions aimed at enhancing these institutions. HBCUs may not create their own race-targeted programs using institutional funds, nor may they accept privately donated race-targeted aid limited to students at the HBCUs, unless they satisfy the requirements of any of the other principles in this guidance.³

² Title III states a number of requirements that an institution must meet in order to be considered an historically black college or university, including the requirement that the college or university was established prior to 1964. 20 U.S.C. 1061. In regulations implementing Title III, the Secretary has identified the institutions that meet these requirements. 34 CFR 608.2(b).

³ For example, an HBCU might award race-targeted aid to Mexican American students or to

Transition Period

Although the Department anticipates that most financial aid programs that consider race or national origin in awarding assistance will be found to be consistent with one or more of the principles in this final policy guidance, there will be some programs that require adjustment to comply with Title VI. In order to permit colleges time to assess their programs and to make any necessary adjustments in an orderly manner—and to ensure that students who already have either applied for or received financial aid do not lose their student aid as a result of the issuance of this policy guidance—there will be a transition period during which the Department will work with colleges that require assistance to bring them into compliance.⁴

The Department will afford colleges up to two academic years to adjust their programs for new students. However, to the extent that a college does not need the full two years to make adjustments to its financial aid programs, the Department expects that the adjustments will be made as soon as practicable.

No student who is currently receiving financial aid, or who has applied for aid prior to the effective date of this policy guidance, should lose aid as a result of this guidance. Thus, if a college determines that a financial aid program is not permissible under this policy guidance, the college may continue to provide assistance awarded on the basis of race or national origin to students during the entire course of their academic program at the college, even if that period extends beyond the two-year transition period, if the students had either applied for or received that assistance prior to the effective date of this policy.

Legal Analysis

Introduction

The Department of Education is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, at institutions receiving Federal education funds. Section 601 of Title VI provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or

white students to promote diversity under Principle 4.

⁴ This transition period also applies to recipients of Federal financial assistance that are not colleges, e.g., a nonprofit organization that operates a scholarship program.

activity receiving Federal financial assistance. 42 U.S.C. 2000d.

The Department has issued regulations implementing Title VI that are applicable to all recipients of financial assistance from the Department. 34 CFR part 100. The regulations prohibit discrimination in the administration of financial aid programs. Specifically, they prohibit a recipient, on the basis of race, color, or national origin, from denying financial aid; providing different aid; subjecting anyone to separate or different treatment in any matter related to financial aid; restricting the enjoyment of any advantage or privilege enjoyed by others receiving financial aid; and treating anyone differently in determining eligibility or other requirements for financial aid. 34 CFR 100.3(b)(1); see also 34 CFR 100.3(b)(2).

In addition to prohibiting discrimination, the Title VI regulations require that a recipient that has previously discriminated "must take affirmative action to overcome the effects of prior discrimination." 34 CFR 100.3(b)(6)(i). The regulations also permit recipients to take voluntary affirmative action "[e]ven in the absence of such prior discrimination * * * to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin" in the recipient's programs. 34 CFR 100.3(b)(6)(ii); see 34 CFR 100.5(i).

The permissibility of awarding student financial aid based, in whole or in part, on a student's race or national origin involves an interpretation of the preceding provisions concerning affirmative action. The Supreme Court has made clear that Title VI prohibits intentional classifications based on race or national origin for the purpose of affirmative action to the same extent and under the same standards as the Equal Protection Clause of the Fourteenth Amendment.⁵ *Guardians Ass'n v. Civil Service Commission of the City of New York*, 463 U.S. 582 (1983); *Regents of the University of California v.*

⁵ Some commenters suggested that Native Americans and Native Hawaiians—because of their special relationship with the Federal Government—should be exempt from the restrictions outlined in the policy guidance. The Department has found no legal authority for treating affirmative action by recipients of Federal assistance any differently if the group involved is Native Americans or Native Hawaiians. Thus, the principles in this policy guidance—including Principle 2, which states that a college may award financial aid on the basis of race or national origin if authorized by Federal statute—apply to financial aid that is limited to Native Americans and Native Hawaiians. However, the policy does not address the authority of tribal governments or tribally controlled colleges to restrict aid to members of their tribes.

Bakke, 438 U.S. 265 (1978). Thus, the Department's interpretation of the general language of the Title VI regulations concerning permissible affirmative action is based on case law under both Title VI and the Fourteenth Amendment.

The following discussion addresses the legal basis for each of the five principles set out in the Department's policy guidance.

1. Financial Aid for Disadvantaged Students

The first principle provides that colleges may award financial aid to disadvantaged students. Colleges are free to define the circumstances under which students will be considered to be disadvantaged, as long as that determination is not based on race or national origin.

As some commenters noted, the Title VI regulations prohibit actions that, while not intentionally discriminatory, have the effect of discriminating on the basis of race or national origin. 34 CFR 100.3(b)(2); see *Guardians Ass'n v. Civil Service Commission of the City of New York*, *supra*; *Lau v. Nichols*, 414 U.S. 563 (1974). However, actions that have a disproportionate effect on students of a particular race or national origin are permissible under Title VI if they bear a "manifest demonstrable relationship" to the recipient's educational mission. *Georgia State Conference of Branches of NAACP v. State of Georgia*, 775 F.2d 1403, 1418 11th Cir. (1985). It is the Department's view that awarding financial aid to disadvantaged students provides a sufficiently strong educational purpose to justify any racially disproportionate effect the use of this criterion may entail. In particular, the Department believes that an applicant's character, motivation, and ability to overcome economic and educational disadvantage are educationally justified considerations in both admission and financial aid decisions. Therefore, the award of financial assistance to disadvantaged students does not violate Title VI.

2. Financial Aid Authorized by Congress

This principle states that a college may award financial aid on the basis of race or national origin if the use of race or national origin in awarding that aid is authorized by Federal statute. This is because financial aid programs for minority students that are authorized by a specific Federal law cannot be considered to violate another Federal law, *i.e.*, Title VI. In the case of the establishment of federally funded financial aid programs, such as the

Patricia Roberts Harris Fellowship, the authorization of specific minority scholarships by that legislation prevails over the general prohibition of discrimination in Title VI.⁶ This result also is consistent with the canon of construction under which the specific provisions of a statute prevail over the general provisions of the same or a different statute. See 2A N. Singer *Sutherland Statutory Construction* section 46.05 (5th ed. 1992); *Radzanower v. Touche Ross and Co.*, 426 U.S. 148, 153 (1976); *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974); *Fourco Glass Co. v. Transmira Products Corp.*, 353 U.S. 225, 228-29 (1957).

Some commenters argued that the existence of congressionally authorized race-targeted financial aid programs supports the position that all race-targeted financial aid programs are permissible under Title VI. However, the fact that Congress has enacted specific Federal programs for race-targeted financial aid does not serve as an authorization for States or colleges to create their own programs for awarding student financial aid based on race or national origin.

3. Financial Aid To Remedy Past Discrimination

Classifications based on race or national origin, including affirmative action measures, are "suspect" classifications that are subject to strict scrutiny by the courts. *Regents of the University of California v. Bakke*, 438 U.S. at 292. The use of those classifications must be based on a compelling governmental interest and must be narrowly tailored to serve that interest. *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986).

The Supreme Court has repeatedly held that the Government has a compelling interest in ensuring the elimination of discrimination on the basis of race or national origin. To further this governmental interest, the Supreme Court has sanctioned the use of race-conscious measures to eliminate discrimination. *United States v. Fordice*, _____ U.S. _____ (1992); *United States v. Paradise*, 480 U.S. 149, 167 (1987); *Swann v. Charlotte-Mecklenburg Board*

⁶Of course, an individual may challenge the statute under which the aid is provided as violative of the Constitution. The statute would then be evaluated under the constitutional standards for racial classifications authorized by Federal statute that were established in *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990) and *Fullilove v. Klutznick*, 448 U.S. 448 (1980). However, as explained previously, such a suit would not be viable under Title VI, for which the Department has enforcement responsibility.

of Education, 402 U.S. 1, 15-16 (1971); *McDaniel v. Barresi*, 402 U.S. 39 (1971); *Green v. County School Board of New Kent County*, 391 U.S. 430, 438 (1968). Most recently, in *United States v. Fordice*, *supra*, the Court found that States that operated *de jure* systems of higher education have an affirmative obligation to ensure that no vestiges of the *de jure* system continue to have a discriminatory effect on the basis of race.

The implementing regulations for Title VI provide that a recipient of Federal financial assistance that has previously discriminated in violation of the statute or regulations must take affirmative action to overcome the effects of the past discrimination. 34 CFR 100.3(b)(6)(i). Thus, a college that has been found to have discriminated against students on the basis of race or national origin must take steps to remedy that discrimination. That remedial action may include the awarding of financial aid to students from the racial or national origin groups that have been discriminated against.

The proposed policy guidance provided that a finding of past discrimination could be made by a court or by an administrative agency, such as the Department's Office for Civil Rights. It also could be made by a State or local legislative body, as long as the legislature requiring the affirmative action had a strong basis in evidence identifying discrimination within its jurisdiction for which that remedial action is required.

A number of commenters argued that colleges should be able to take remedial action without waiting for a formal finding by a court, administrative agency, or legislature. The Department agrees. The final policy guidance provides that, even in the absence of a finding by a court, legislature, or administrative agency, a college—in order to remedy its past discrimination—may implement a remedial race-targeted financial aid program. It may do so if it has a strong basis in evidence for concluding that this affirmative action is necessary to remedy the effects of its past discrimination and its financial aid program is narrowly tailored to remedy that discrimination. Permitting colleges to remedy the effects of their past discrimination without waiting for a formal finding is consistent with the approach taken by the Supreme Court in *Wygant v. Jackson Board of Education*, *supra*. In *Wygant*, the Court clarified that a school district's race-conscious voluntary affirmative action plan could be upheld based on subsequent judicial findings of past discrimination by the

district. *Wygant v. Jackson Board of Education*, 476 U.S. at 277.

In the *Wygant* case, teachers challenged their school board's adoption, through a collective bargaining agreement, of a layoff plan that included provisions protecting employees from layoffs on the basis of their race. The school board contended, among other things, that the plan's race-conscious layoff provisions were constitutional because they were adopted to remedy the school board's own prior discrimination. *Id.*, at 276, 277. Justice Powell, in a plurality opinion, stated that a public employer must have "convincing evidence" that an affirmative action plan is warranted by past discrimination before undertaking that plan. *Id.*, at 277. If the plan is challenged by employees who are harmed by the plan, the court must then make a determination that the employer had a "strong basis in evidence for its conclusion that remedial action was necessary." *Id.*

In a concurring opinion, Justice O'Connor agreed that a "contemporaneous or antecedent finding of past discrimination by a court was not a constitutional prerequisite to a public employer's voluntary agreement to an affirmative action plan." *Id.*, at 289. She explained that contemporaneous or antecedent findings were not necessary because "A violation of Federal statutory or constitutional requirements does not arise with the making of findings; it arises when the wrong is committed." Moreover, she explained that important values would be sacrificed if contemporaneous findings were required because "a requirement that public employers make findings that they engaged in illegal discrimination before they engage in affirmative action programs would severely undermine public employers' incentive to meet voluntarily their civil rights obligations." *Id.*, at 289, 290 (citations omitted).

In *Richmond v. J.A. Croson, supra*, the Court again emphasized that remedial race-conscious action must be based on strong evidence of discrimination. That case involved the constitutionality of a city ordinance establishing a plan to remedy past discrimination by requiring prime contractors awarded city construction contracts to subcontract at least 30% of the dollar amount of each contract to minority-controlled businesses. The Court found that the city council had failed to make sufficient factual findings to demonstrate a "strong basis in evidence" of racial discrimination "by anyone in the Richmond construction

industry." *Richmond v. J.A. Croson*, 488 U.S. at 500.

Evidence of past discrimination may, but need not, include documentation of specific incidents of intentional discrimination. Instead, evidence of a statistically significant disparity between the percentage of minority students in a college's student body and the percentage of qualified minorities in the relevant pool of college-bound high school graduates may be sufficient. Such an approach is analogous to cases of employment discrimination where the courts accept statistical evidence to infer intentional discrimination against minority job applicants. See *Hazelwood School District v. United States*, 433 U.S. 299 (1977).

Based on this case law, Principle 3 provides that a college may award race-targeted scholarships to remedy discrimination as found by a court or by an administrative agency, such as the Department's Office for Civil Rights. OCR often has approved race-targeted financial aid programs as part of a Title VI remedial plan to eliminate the vestiges of prior discrimination within a State higher education system that previously was operated as a racially segregated dual system. As indicated by the *Croson* decision, a finding of past discrimination also may be made by a State or local legislative body, as long as the legislature has a strong basis in evidence identifying discrimination within its jurisdiction. The remedial use of race-targeted financial aid must be narrowly tailored to remedy the effects of the discrimination.

As revised, Principle 3 also allows a college to award student aid on the basis of race or national origin as part of affirmative action to remedy the effects of the school's past discrimination without waiting for a finding to be made by OCR, a court, or a legislative body, if the college has convincing evidence of past discrimination justifying the affirmative action. The Department's Title VI regulations, like the Fourteenth Amendment, do not require that antecedent or contemporaneous findings of past discrimination be made before remedial affirmative action is implemented, as long as the college has a strong basis in evidence of its past discrimination. Allowing colleges to implement narrowly tailored remedial affirmative action if there is strong evidentiary support for it—without requiring that it be delayed until a finding is made by OCR, a court, or a legislative body—will assist in ensuring that Title VI's mandate against discrimination based on race or national origin is achieved.

4. Financial Aid To Create Diversity

The Title VI regulations permit a college to take voluntary affirmative action, even in the absence of past discrimination, in response to conditions that have limited the participation at the college of students of a particular race or national origin. 34 CFR 100.3(b)(6)(ii); see 34 CFR 100.5(i). In *Regents of the University of California v. Bakke, supra*, the Supreme Court considered whether the University could take voluntary affirmative action by setting aside places in each medical school class for which only minority students could compete.⁷

The Court considered four rationales provided by the University of California for taking race and national origin into account in making admissions decisions: (1) To reduce the historic deficit of traditionally disfavored minorities in medical schools and the medical profession. (2) To counter the effects of societal discrimination. (3) To increase the number of physicians who would practice in communities lacking medical services. (4) To obtain the educational benefits of a diverse student body. Similar arguments have been advanced in response to the Department's proposed policy guidance on student financial assistance awarded on the basis of race or national origin.

The Court rejected the first three justifications. The first reason was rejected as facially invalid because setting aside a fixed number of admission spaces only to ensure that members of a specified race are admitted was found to be racial "discrimination for its own sake." *Regents of the University of California v. Bakke*, 438 U.S. at 307. In rejecting the second contention that the effects of societal discrimination warranted the racial preferences, the Court recognized that the State had a substantial interest in eliminating the effects of discrimination, but that interest was found to be limited to "redress[ing] the wrongs worked by specific instances of discrimination." *Id.* The third contention, concerning the provision of health care services to underserved communities, was rejected by the *Bakke* Court as an evidentiary matter because the State had "not carried its burden of demonstrating that it must prefer members of particular ethnic groups over all other individuals in order to

⁷The Court noted that the University "does not purport to have made" a determination that its affirmative action plan was necessary to remedy any past discrimination at the medical school. *Regents of the University of California v. Bakke*, 438 U.S. at 309.

promote better health-care delivery to deprived citizens." *Id.*, at 311.

With respect to the final objective, the "attainment of a diverse student body," Justice Powell found that—

This clearly is a constitutionally permissible goal for an institution of higher education. Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body.

Id., at 311, 312. Thus, colleges have a First Amendment right to seek diversity in admissions to fulfill their academic mission through the "robust exchange of ideas" that flows from a diverse student body. *Id.*, at 312-313.⁸ However, the means to achieve this "countervailing constitutional interest" under the First Amendment must comport with the requirements of the Fourteenth Amendment. The Medical School's policy of setting aside a fixed number of admission spaces solely for minorities was found not to pass the Fourteenth Amendment's strict scrutiny test, because the policy's use of race as a condition of eligibility for the slots was not necessary to promote the school's diversity interest. *Id.*, at 315-316. Justice Powell found that the Medical School could advance its diversity interest under the First Amendment in a narrowly tailored manner that passed the Fourteenth Amendment's strict scrutiny test by using race or national origin as one of several factors that would be considered as a plus factor for an applicant in the admissions process. *Id.*, at 317-319.

Following the *Bakke* decision, the Department reexamined its Title VI regulations to determine whether any changes were necessary. In a policy interpretation published in the *Federal Register* (44 FR 58509), the Department concluded that no change was warranted. The Department determined that the Title VI regulatory provision authorizing voluntary affirmative action was consistent with the Court's decision and that the provision would be interpreted to incorporate the limitations on voluntary affirmative

⁸ The Secretary believes that a college's academic freedom interest in the "robust exchange of ideas" also includes an interest in the existence of a diverse faculty and, more generally, in diversity of professors nationally, since scholars engage in the interchange of ideas with others in their field, and not merely with faculty at their particular school. A university could contribute to this interest by enrolling graduate students who are committed to becoming professors and who will promote the overall diversity of scholars in their field of study, regardless of the diversity of the students who are admitted to the university's own graduate program.

action announced by the Court.⁹ Thus, if a college's use of race or national origin in awarding financial aid meets the Supreme Court's test under the Fourteenth Amendment for permissible voluntary affirmative action, it will also meet the requirements of Title VI.

In the Department's proposed policy guidance on financial aid, a principle was included permitting the use of race or national origin as a "plus" factor in awarding student aid. The basis for the principle was the *Bakke* decision and the Department's assessment that using an approach that had been approved by the Supreme Court as narrowly tailored to achieve diversity in the admissions context also would be permissible in awarding financial aid.¹⁰

In response to the proposed policy, many colleges submitted comments arguing that the use of race or national origin as a plus factor in awarding financial aid may be inadequate to achieve diversity. They contended that, in some cases, it may be necessary to designate a limited amount of aid for students of a particular race or national origin. According to those commenters, a college's financial aid program can serve a critical role in achieving a diverse student body in at least three respects: First, the availability of financial aid set aside for members of a particular race or national origin serves as a recruitment tool, encouraging applicants to consider the school. Second, it provides a means of encouraging students who are offered admission to accept the offer and enroll at the school. Finally, it assists colleges in retaining students until they complete their program of studies.

The commenters argued that a college—because of its location, its reputation (whether deserved or not) of being inhospitable to minority students, or its number of minority graduates—may be unable to recruit sufficient minority applicants even if race or national origin is considered a positive factor in admissions and the award of aid. That is, the failure to attract a sufficient number of minority applicants who meet the academic requirements of the college will make it impossible for the college to enroll a diverse student body, even if race or national origin is given a competitive "plus" in the

⁹ The present policy guidance on student financial assistance supplements the 1979 policy interpretation.

¹⁰ The Department will presume that a college's use of race or national origin as a plus factor, with other factors, is narrowly tailored to further the compelling governmental interest in diversity, as long as the college periodically reexamines whether its use of race or national origin as a plus factor continues to be necessary to achieve a diverse student body.

admissions process. In addition, a college that has sufficient minority applicants to offer admission to a diverse group of applicants may find that, absent the availability of financial aid set aside for minority students, its offers of admission are disproportionately rejected by minority applicants.

Furthermore, commenters were concerned that, while there may be large amounts of financial aid available for undergraduates at their institutions, there may be insufficient aid for graduate students, almost all of whom are able to demonstrate financial need. Thus, it is possible that a college that is able to achieve a diverse student body in some of its programs using race-neutral financial aid criteria or using race or national origin as a "plus" factor may find it necessary to use race or national origin as a condition of eligibility in awarding limited amounts of financial aid to achieve diversity in some of its other programs, such as its graduate school or particular undergraduate schools.

The Department agrees with the commenters that in the circumstances they have described it may be necessary for a college to set aside financial aid to be awarded on the basis of race or national origin in order to achieve a diverse student body. Whether a college's use of race-targeted financial aid is "narrowly tailored" to achieve this compelling interest involves a case-by-case determination that is based on the particular circumstances involved. The Department has determined, based on the comments, to expand Principle 4 to permit those case-by-case determinations.

The Court in *Bakke* indicated that race or national origin could be used in making admissions decisions to further the compelling interest of a diverse student body even though the effect might be to deny admission to some students who did not receive a competitive "plus" based on race or ethnicity.¹¹ However, the use of a set-aside of places in the entering class was impermissible because it was not necessary to the goal of diversity. In cases since *Bakke*, the Supreme Court has provided additional guidance on the factors to be considered in determining whether a classification based on race or national origin is narrowly tailored to its purpose. These factors will be

¹¹ *Bakke* was the Supreme Court's first decision in an affirmative action case. Since that time, the Court has decided a number of affirmative action cases, none of which have invalidated Justice Powell's opinion in *Bakke* that the promotion of diversity in the higher education setting is a compelling interest.

considered by the Department in assessing whether a college's race-targeted financial aid program meets the requirements of Title VI.

First, it is necessary to determine the efficacy of alternative approaches. *United States v. Paradise*, 480 U.S. at 171. Thus, it is important that consideration has been given to the use of alternative approaches that are less intrusive (e.g., the use of race or national origin as a "plus" factor rather than as a condition of eligibility). *Metro Broadcasting, Inc. v. F.C.C.*, 497 U.S. at 583; *Richmond v. J.A. Croson*, 488 U.S. at 507. Financial aid that is restricted to students of a particular race or national origin should be used only if a college determines that these alternative approaches have not or will not be effective.

Second, the extent, duration, and flexibility of the racial classification must be addressed. *Metro Broadcasting, Inc. v. F.C.C.*, 497 U.S. at 594; *United States v. Paradise*, 480 U.S. at 171. The extent of the use of the classification should be no greater than is necessary to carry out its purpose. *Richmond v. J.A. Croson*, 488 U.S. at 507. That is, the amount of financial aid that is awarded based on race or national origin should be no greater than is necessary to achieve a diverse student body.

The duration of the use of a racial classification should be no longer than is necessary to its purpose, and the classification should be periodically reexamined to determine whether there is a continued need for its use. *Metro Broadcasting, Inc. v. F.C.C.*, 497 U.S. at 594. Thus, the use of race-targeted financial aid should continue only while it is necessary to achieve a diverse student body, and an assessment as to whether that continues to be the case should be made on a regular basis.

In addition, the use of the classification should be sufficiently flexible that exceptions can be made if appropriate. For example, the Supreme Court in *United States v. Paradise* found that a race-conscious promotion requirement was flexible in operation because it could be waived if no qualified candidates were available. 480 U.S. at 177. Similarly, racial restrictions on the award of financial aid could be waived if there were no qualified applicants.

Finally, the burden on those who are excluded from the benefit conferred by the classification based on race or national origin (i.e., non-minority students) must be considered. *Id.*, at 171. A use of race or national origin may impose such a severe burden on particular individuals—for example, eliminating scholarships currently

received by non-minority students in order to start a scholarship program for minority students—that it is too intrusive to be considered narrowly tailored. See *Wygant v. Jackson Board of Education*, 476 U.S. at 283 (use of race in imposing layoffs involves severe disruption to lives of identifiable individuals). Generally, the less severe and more diffuse the impact on non-minority students, the more likely a classification based on race or national origin will address this factor satisfactorily. However, it is not necessary to show that no student's opportunity to receive financial aid has been in any way diminished by the use of the race-targeted aid. Rather, the use of race-targeted financial aid must not place an undue burden on students who are not eligible for that aid.

A number of commenters argued that race-targeted financial aid is a minimally intrusive method to attain a diverse student body, far more limited in its impact on non-minority students, for example, than race-targeted admissions policies. Under this view, and unlike the admissions plan at issue in *Bakke*, a race-targeted financial aid award could be a narrowly tailored means of achieving the compelling interest in diversity.

The Department agrees that there are important differences between admissions and financial aid. The affirmative action admissions program struck down in *Bakke* had the effect of excluding applicants from the university on the basis of their race. The use of race-targeted financial aid, on the other hand, does not, in and of itself, dictate that a student would be foreclosed from attending a college solely on the basis of race. Moreover, in contrast to the number of admissions slots, the amount of financial aid available to students is not necessarily fixed. For example, a college's receipt of privately donated monies restricted to an underrepresented group might increase the total pool of funds for student aid in a situation in which, absent the ability to impose such a limitation, the donor might not provide any aid at all.

Even in the case of a college's own funds, a decision to bar the award of race-targeted financial aid will not necessarily translate into increased resources for students from non-targeted groups. Funds for financial aid restricted by race or national origin that are viewed as a recruitment device might be rechanneled into other methods of recruitment if restricted financial aid is barred. In other words, unlike admission to a class with a fixed number of places, the amount of

financial aid may increase or decrease based on the functions it is perceived to promote.

In summary, a college can use its financial aid program to promote diversity by considering factors other than race or national origin, such as geographic origin, diverse experiences, or socioeconomic background. In addition, a college may take race or national origin into account as one factor, with other factors, in awarding financial aid if necessary to promote diversity. Finally, a college may use race or national origin as a condition of eligibility in awarding financial aid if it is narrowly tailored to promote diversity.

5. Private Gifts Restricted by Race or National Origin

The fifth principle sets out the circumstances under which a recipient college can award financial aid provided by private donors that is restricted on the basis of race or national origin.

As noted by many commenters, pursuant to the Civil Rights Restoration Act of 1987, all of the operations of a college are covered by Title VI if the college receives any Federal financial assistance. 42 U.S.C. 2000d-4a(2)(A). Since a college's award of privately donated financial aid is within the operations of the college, the college must comply with the requirements of Title VI in awarding those funds.¹²

A college may award privately donated financial aid on the basis of race or national origin if the college is remedying its past discrimination pursuant to Principle 3 or attempting to achieve a diverse student body pursuant to Principle 4. In other words, Principles 3 and 4 apply to the use of privately donated funds and may justify awarding these funds on the basis of race or national origin in accordance with the wishes of the donor. Similarly, under Principle 1, a college may award privately donated financial aid that is restricted to disadvantaged students.

Some commenters were uncertain whether it is permissible under Title VI for a college to solicit private donations of student financial aid that are restricted to students of a particular race or national origin. If the receipt and award of these funds is permitted by Title VI, that is, in the circumstances

¹² Similarly, other organizations that receive Federal financial assistance must comply with Title VI in their award of student financial aid. On the other hand, individuals or organizations not receiving Federal funds are not subject to Title VI. They may thus, as far as Title VI is concerned, directly award financial aid to students on the basis of race or national origin.

previously described, it is similarly permissible to solicit the funds from private sources.

Financial Aid at Historically Black Colleges and Universities

To ensure that the principles in this policy guidance do not subvert congressional efforts to enhance historically black colleges and universities (HBCUs), these institutions may participate in student aid programs established by third parties for black students that are not limited to students at the HBCUs and may use their own institutional funds in those programs if necessary for participation.¹³ See 20 U.S.C. 1051, 1060, and 1132c (congressional findings of past discrimination against HBCUs and of the need for enhancement).

This finding is based upon congressional findings of past discrimination against HBCUs and the students they have traditionally served, as well as the Department's determination that these institutions and their students would be harmed if precluded from participation in programs created by third parties that designate financial aid for black students. That action would have an unintended negative effect on their ability to recruit excellent student bodies and could undermine congressional actions aimed at enhancing these institutions.

Congress has repeatedly made findings that recognize the unique historical mission and important role that HBCUs play in the American system of higher education, and particularly in providing equal educational opportunity for black students. 20 U.S.C. 1051, 1060, and 1132c. Congress has created programs that strengthen and enhance HBCUs in Titles II through VII of the Higher Education Act, as amended by Public Law 99-498, 20 U.S.C. 1021-1132i-2. It has found that "there is a particular national interest in aiding institutions of higher education that have historically served students who have been denied access to postsecondary education because of race or national origin . . . so that equality of access and quality of postsecondary education opportunities may be enhanced for all students." 20 U.S.C. 1051. "A key link to the chain of expanding college opportunity for African American youth is

strengthening the Nation's historically Black colleges and universities." House Report No. 102-447, 1992 U.S. Code Cong. and Adm. News p. 353.

Congress has found that "the current state of HBCUs is partly attributable to the discriminatory action of the States and the Federal Government and this discriminatory action requires the remedy of enhancement of Black postsecondary institutions to ensure their continuation and participation in fulfilling the Federal mission of equality of educational opportunity." 20 U.S.C. 1060. See also, House Report No. 102-447, 1992 U.S. Code Cong. and Adm. News p. 353; House Report No. 99-383, 1986 U.S. Code Cong. and Adm. News 2592-2596. This includes providing access and quality education to low-income and minority students, and improving HBCUs' academic quality. 20 U.S.C. 1051.

For these same reasons, every Administration in recent years has recognized the special role and contributions of HBCUs and expressed support for their enhancement. See "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education," 43 FR 6658 (1977); Exec. Orders Nos. 12232, 45 FR 53437 (1980); 12320, 46 FR 48107 (1981); 12677, 54 FR 18869 (1989); and 12876, 58 FR 58735 (1993). The Department's own data indicate that HBCUs continue to play a vital role in providing higher education for many black students. In 1989 and 1990, more than one in four black bachelor's degree recipients received their degree from an HBCU (26.7%). See, "Historically Black Colleges and Universities, 1976-90" (U.S. Department of Education, Office of Educational Research and Improvement, July 1992).

This policy guidance is not intended to limit the efforts to enhance HBCUs called for by Congress and the President. The Department recognizes, however, that Principle 3 (remediating past discrimination) and Principle 4 (creating diversity) may not provide for HBCUs the same possibility of participating in race-targeted programs of financial aid for black students established by third parties as are provided for other colleges and universities. As some commenters pointed out, HBCUs continue to enroll a disproportionate percentage of black students and need to be able to compete for the most talented black students if they are to improve the quality and prestige of their academic environments and, therefore, enhance their attractiveness to all students regardless of race or national origin.

HBCUs' abilities to recruit, enroll and retain talented students will be undermined unless HBCUs are permitted to attract talented black students by participating in aid programs for black students that are established by third parties in which other colleges, *i.e.*, those that meet Principle 3 or 4, participate. Limiting or precluding HBCUs' participation in private programs, such as the National Achievement Scholarship program, would have an unintended negative effect on their ability to recruit a talented student body. Under this scholarship program, which is restricted to academically excellent black students, one type of National Achievement Scholarship is funded by the institution. If HBCUs were unable to participate in this program, some top black students might be forced to choose between (1) receiving a National Achievement Scholarship to attend a school that met Principle 3 or 4 and (2) attending an HBCU. For these reasons, the Department interprets Title VI to permit HBCUs to participate in certain race-targeted aid programs for black students, such as the National Achievement Scholarship program.

The Department reads Title VI consistent with other statutes and Executive orders addressing the special needs and history of HBCUs. In particular, the Department notes congressional findings of discrimination against black students that are the basis for enhancement efforts at HBCUs. Additionally, the Department interprets Title VI to permit limited use of race to avoid an anomalous and absurd result, *i.e.*, penalizing HBCUs and students who seek admission to HBCUs, and putting HBCUs at a disadvantage with respect to other schools precisely because of the special history and composition of the HBCUs.

The use of race-targeted aid by HBCUs that the Department is interpreting Title VI to permit under this provision is narrowly tailored to further the congressionally recognized purpose of enhancement of HBCUs. HBCUs may not discriminate on the basis of race or national origin in admitting students. They may not create their own race-targeted financial aid programs using their own institutional funds unless they satisfy the requirements of any of the other principles in this guidance. Nor may they accept private donations of race-targeted aid for black students that are limited to students at the institution unless otherwise permitted by the guidance. Because HBCUs have traditionally enrolled black students, it should not subvert the goal of enhancing the institutions to require

¹³ This provision is limited to HBCUs as defined in Title III of the Higher Education Act. It does not apply generally to predominantly black institutions of higher education. The reason for this distinction is that Congress has made specific findings concerning the unique status of the HBCUs that serve as the basis for this provision.

that they not restrict aid to black students if using their own funds or funds from private donors that wish to set up financial aid programs at these institutions. However, because the applicant pool that is attracted to HBCUs presently consists primarily of black students, HBCUs would be placed at a distinct disadvantage with regard to other colleges in attracting talented students if they could not participate in financial aid programs set up by third parties for black students. Thus, the Department interprets Title VI to permit an HBCU to participate in race-targeted financial aid programs for black students that are created by third parties, if the programs are not restricted to students at HBCUs.

The participation by HBCUs in those race-targeted aid programs will be subject to periodic reassessment by the Department. The Department will regularly review the results of enhancement efforts at HBCUs, including the annual report to the President on the progress achieved in enhancing the role and capabilities of HBCUs required by Section 7 of Executive Order 12876. If an HBCU has been enhanced to the point that the institution is attractive to individuals regardless of their race or national origin to the same extent as a non-HBCU, then that institution may participate in only those race-targeted aid programs that are consistent with the other principles in this policy guidance.

Transition Period

The proposed policy guidance would have provided a four-year transition period for individual students to ensure that they did not lose their financial aid as a result of the guidance. Commenters pointed out that, in some cases, four years may not be a sufficient time for a student to complete his or her academic program at a college. In addition,

commenters expressed concern that revising the policies and procedures used in recruiting minority students and in providing student financial assistance would require time to develop and implement. The revisions that have been made to the final policy guidance should result in far fewer instances in which colleges will be required to change their financial aid programs. However, the Department recognizes that colleges may need to conduct extensive reviews of their current programs and that in some cases adjustments to those programs may be necessary. As a result, the Department is expanding the proposed transition period.

The Department is providing colleges a reasonable period of time to review and, if necessary, adjust their financial aid programs in an orderly manner that causes the least possible disruption to their students. Colleges must adjust their financial aid programs to be consistent with the principles previously set out no later than two years after the effective date of the Department's policy guidance. However, colleges may continue to provide financial aid awarded on the basis of race or national origin to students who had either applied for or received that assistance prior to the effective date of this guidance during the full course of those students' academic program at the college, even though, in many cases, this will extend beyond the two-year period and, in some cases, the four-year period identified in the proposed policy.

Although some commenters questioned the Department's authority to create a transition period, such a period for adjustments is consistent with the Department's approach in the past under other civil rights statutes it enforces. See 34 CFR 106.41(d) (transition period to permit recipients to

bring their athletic programs into compliance with Title IX of the Education Amendments of 1972); 34 CFR 104.22(e) (transition period to permit recipients to make facilities accessible to individuals with disabilities, as required by Section 504 of the Rehabilitation Act of 1973). It is based on the Department's recognition of the practical difficulties that some colleges may face in making changes to their recruitment and financial aid award processes.

The transition period also is consistent with the Department's policy, in approving plans for the desegregation of State systems of higher education, that students who have been the beneficiaries of past discriminatory conduct not be required to bear the burden of corrective action. For example, while the Department requires State higher education systems to take remedial action to increase the enrollment of previously excluded students, it does not require the expulsion of any student in order to permit admission of those previously excluded. See *Wygant v. Jackson Board of Education*, 476 U.S. at 282-85.

Finally, the transition period is consistent with the Department's obligations under Title VI to seek voluntary compliance by recipients that have been found in violation of the statute. 42 U.S.C. 2000d-1. During the transition period, the Department will provide colleges with technical assistance to help them make any necessary changes to their financial aid programs in order to achieve compliance with Title VI.

Program Authority: 42 U.S.C. 2000d.

Dated: February 17, 1994.

Richard W. Riley,

Secretary of Education.

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Part IX

Department of Education

Star Schools Program; Notice Inviting
Application for New Awards for Fiscal
Year 1994

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.203 A, B and C]

Star Schools Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

Note to applicants: This notice is a complete application package. Together with the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under the Star Schools Program competitions.

Organization of notice: This notice applies to three separate grant competitions under the Star Schools Program. The notice is organized in four parts plus an appendix. Part I contains certain information that is pertinent to all competitions. Part II consists of fiscal information for each competition announced in this notice. Part III consists of programmatic information for each competition. Part IV consists of the selection criteria that applies to all competitions. The appendix contains all forms necessary for applying for grant awards under each of the individual competitions.

Part I: The following information applies to all three competitions in this notice:

Deadline for transmittal of applications: April 18, 1994.

Deadline for intergovernmental review: June 17, 1994.

Project period: Up to 24 months.

Budget period: 12 months.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(a) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(b) 34 CFR Part 75 (Direct Grant Programs).

(c) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(d) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(e) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(f) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(g) 34 CFR Part 82 (New Restrictions on Lobbying).

(h) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(i) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Description of program: The Star Schools Program is authorized by Title IX of the Education for Economic Security Act (the "Act"), Public Law 100-297, as amended by Public Law 102-103. The purpose of the program is to encourage improved instruction in mathematics, science, foreign languages, and other subjects, such as literacy skills and vocational education, and to serve underserved populations, including disadvantaged, illiterate, limited-English proficient, and disabled students through distance learning technologies. The Star Schools Program, as well as the absolute priorities for this year, supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, in the Goals 2000 legislation pending before Congress, National Education Goal 3 calls for students' mastery of challenging subject matter in the following subjects: English, mathematics, science, foreign languages, the arts, history, civics, and geography. Goal 4 calls for U. S. students to be first in the world in mathematics and science. Goal 5 calls for all Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Geographic distribution: In determining which applications shall be funded, the Secretary shall assure an

equitable geographic distribution of funds and services.

Special requirement: The Federal Government maintains an interest in all equipment purchased through projects funded under this program for the useful life of the equipment. Therefore, grantees are required to maintain an annual inventory of equipment and the use of such equipment for ten years after purchase.

Definitions: The following definitions apply to the terms used in this notice:

"Educational institution" means an institution of higher education, a local educational agency, and a State educational agency.

"Institution of higher education" has the same meaning given that term under section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1141(2)).

"Instructional programming" means courses of instruction, training courses, and materials used in such instruction and training which have been prepared in audio and visual form on tape, disc, film, or live interactive presentations, and presented by means of telecommunications devices.

"Local educational agency" has the same meaning given the term under section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

"Public broadcasting entity" has the same meaning as that given that term in section 397 of the Communications Act of 1934 (47 U.S.C. 397).

"State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands.

"State educational agency" has the same meaning given that term under section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

"Secretary" means the Secretary of Education.

PART II—FISCAL INFORMATION

CFDA No. and name	Estimated available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.203A Distance Education Projects	\$20,096,800	\$1,500,000–4,000,000	\$2,500,000	8
84.203B Special Statewide Project	4,000,000	4,000,000	4,000,000	1
84.203C Dissemination Grants	1,297,200	250,000–350,000	300,000	4

Note: The Act limits any one award to not more than \$10,000,000 for any one fiscal year. The Department is not bound by any estimates in this notice.

Part III

CFDA No. 84.203A Star Schools— Distance Education Projects

Purpose of the program: To encourage improved instruction in various subject areas for underserved populations through the use of telecommunications networks.

Eligible applicants: Only eligible telecommunications partnerships may receive grants under this program. Eligible telecommunications partnerships must be organized on a statewide or multistate basis. Two types of partnerships are eligible:

(a) A public agency or corporation established for the purposes of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, provided that the agency or corporation represents the interests of elementary and secondary schools which are eligible for assistance under Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965; or

(b) A partnership which includes three or more of the following, and at least one of which shall be an agency described in (1) or (2), and which will provide a telecommunications network:

(1) A local educational agency, which has a significant number of elementary and secondary schools which are eligible for assistance under Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965 or elementary and secondary schools operated for Indian children by the Department of the Interior eligible under section 1005(d) of the Elementary and Secondary Education Act of 1965;

(2) A State educational agency;

(3) An institution of higher education or a State higher education agency;

(4) A teacher training center or academy which—
(A) Provides teacher preservice and inservice training; and
(B) Receives Federal financial assistance or has been approved by a State agency;

(5)(A) A public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computers; or

(B) A public broadcasting entity with such experience; or

(6) A public or private elementary or secondary school.

Continuing eligibility: An eligible telecommunications partnership currently funded under the Star Schools Program is eligible to receive an additional grant if it demonstrates that the partnership will:

(a) Continue to provide services in the subject areas and geographic areas in which services were provided under the previous Star Schools grant; and

(b) Use all grant funds to provide expanded services by:

(1) Increasing the number of students, schools, or school districts served by the courses of instruction assisted under this program in the previous grant period;

(2) Providing new courses of instruction; or

(3) Serving new populations of underserved individuals, such as children or adults who are disadvantaged, have limited-English proficiency, are disabled, are illiterate, or lack high school diplomas or their equivalent.

Priorities: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Absolute Priority 1—National Education Goals

Projects that develop and deliver instructional programming for elementary or secondary school students, or both, that supports achievement of one or more of the National Education Goals, and that is consistent with challenging national or State content standards.

Absolute Priority 2—Preparation for Work

Projects that develop and deliver instructional programming to enhance the workplace and literacy skills of high school students, or young adults who are not in school, or both, in order to prepare students for responsible citizenship, further learning, and productive employment, and make the school-to-work transition more successful.

Absolute Priority 3—Preservice and Inservice Teacher Education

Projects that develop and deliver programming for preservice teachers attending colleges and universities, or professional development for practicing teachers and other educational personnel, or both. In meeting this priority, projects must provide

information about the National Education Goals, emerging national or State content standards, and ways in which standards-driven systemic reform can help ensure that all students have opportunities to reach high levels of achievement. In addition, projects must provide professional development activities that include strong academic content and subject-specific pedagogical components to help teachers provide challenging learning experiences in the core academic subjects for their students.

Competitive priority: Under 20 U.S.C. 4084(c) and 34 CFR 75.105(c)(2)(ii), the Secretary gives preference to applications that meet the following competitive priority. For those applications that include a mathematics or science component, the Secretary gives preference to applications that meet paragraphs (a)–(i) of the competitive priority. For those applications that include a foreign language component, the Secretary gives preference to applications that meet paragraphs (a)–(h) of the competitive priority. For those applications that do not include a mathematics, science or foreign language component, the Secretary gives preference to applications that meet paragraphs (b)–(g) of the competitive priority. An application that meets the applicable paragraph of the following competitive priority is selected by the Secretary over applications of comparable merit that do not meet this priority:

(a) The applicant will provide a concentration and quality of mathematics, science, and foreign languages resources which, by their distribution through the eligible telecommunications partnership, will offer significant new educational opportunities to network participants and particularly to traditionally underserved populations and areas with scarce resources and limited access to courses in mathematics, science, and foreign languages.

Note: Although an application that focuses on a subject area other than mathematics, science or foreign languages is not required to meet paragraph (a) of the competitive priority, the Secretary encourages the applicant to address the needs of traditionally underserved populations and areas with scarce resources and limited access to courses in the subject area addressed in the application.

(b) The applicant has secured the direct cooperation and involvement of public and private educational institutions, State and local government, and industry in planning the network.

(c) The applicant will serve the broadest range of institutions, including,

in the case of elementary and secondary schools, those elementary and secondary schools having significant numbers of children counted for the purpose of Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965, programs providing instruction outside of the school setting, institutions of higher education, teacher training centers, research institutions, and private industry.

(d) The applicant will demonstrate that a significant number of educational institutions have agreed to participate in the use of the telecommunications system for which assistance is sought.

(e) The applicant will have substantial academic and teaching capabilities including the capability of training, retraining, and inservice upgrading of teaching skills.

(f) The applicant will provide a comprehensive range of courses for educators with different skill levels to teach them instructional strategies for students with different levels of skills, provide training to participating educators in ways to integrate telecommunications courses into existing school curricula, and include instruction for students, teachers, and parents.

(g) The applicant will serve a multistate area.

(h) The applicant will demonstrate that a telecommunications entity (such as a satellite, cable, telephone, or computer company, or public or private television station) will participate in the partnership and will donate equipment or in-kind services for telecommunications linkages.

(i) The applicant will, in providing services with funds provided under this program, meet the needs of groups of individuals traditionally excluded from careers in mathematics and science because of discrimination, inaccessibility, or economically disadvantaged backgrounds.

Funding requirement: The Federal share for each fiscal year shall be 75 percent of the cost of the project. The eligible telecommunications partnership shall provide the remainder of the funds from non-Federal sources. The matching funds for the project may be in cash or in-kind support, fairly evaluated. In the case of financial hardship, an applicant may request that the Secretary reduce or waive the matching requirement.

**CFDA NO. 84.203B Star Schools—
Special Statewide Network**

Purpose of the program: In addition to the Star Schools Distance Education Projects (CFDA # 84.203A), the Secretary will fund one statewide telecommunications network to

demonstrate the delivery of instructional programming through a fiber optic telecommunications network using two-way full motion interactive video, voice and data telecommunications.

Eligible applicants: An eligible telecommunications partnership that meets the criteria described under Part III 84.203A and is organized on a statewide basis may apply for a grant under this section.

Priorities: The competitive priority described under Part III 84.203A of this notice applies to this section, with the exception of paragraph (g) of the competitive priority.

Funding requirement: The Federal share for each fiscal year shall be not more than 50 percent of the cost of the project. The statewide telecommunications partnership shall provide the remainder of the funds from non-Federal sources. The matching funds for the project may be in cash or in-kind support, fairly evaluated.

Special program requirements: (a) A project funded under this section must demonstrate the use of a fiber optic telecommunications network to carry two-way interactive voice, video, and data transmissions.

(b) During the funding period, the project must link together public and private institutions of higher education and secondary schools, and must include a participant in every county in the State.

**CFDA No. 84.203C Star Schools—
Dissemination Grants**

Purpose of the program: To provide dissemination and technical assistance to State and local educational agencies not presently served by telecommunications partnerships to assist them to plan and implement technology-based distance learning systems.

Eligible applicants: (a) Telecommunications partnerships previously or currently funded through the Star Schools Program.

(b) Other eligible entities, which are defined as federally funded programs or institutions of higher education that have demonstrated expertise in educational applications of technology and provide comprehensive technical assistance to educators and policymakers at the local level.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority.

Absolute priority: Dissemination projects that will provide services nationwide.

Special program requirements: A project funded under this section must provide technical assistance to State and local educational agencies to plan and implement technology-based systems including—

(a) Information regarding successful distance learning resources for States, local educational agencies, and schools;

(b) Assistance in connecting users of distance learning, regional educational service centers, colleges, and universities, the private sector, and other relevant entities;

(c) Assistance and advice in the design and implementation of systems to include needs assessment and technology design; and

(d) Assistance in the identification of possible connections and cost-sharing arrangements for users of such systems.

Part IV: The following information applies to all competitions in this notice:

Selection criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) **The criteria—**(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the Star Schools Program, P.L. 100-297 as amended by P.L. 102-103, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Star Schools Program.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute authorizing the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures

proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental review of federal programs: This program is subject to the

requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on Friday, September 24, 1993.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA # 84.203 A, B or C, U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as it is for applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address. Instructions for transmittal of applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202-4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline

date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), Room #3633, Regional Office Building #3 7th and D Streets, SW., Washington, DC 20202-4725.

Note: Although applicants are not obligated to do so, it would be quite helpful if an additional two copies of the application were submitted (an original and four copies). The additional copies would be used during the review process.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application instructions and forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner in which the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

*Part III: Application Narrative***Additional Materials**

Estimated Public Reporting Burden.

Star Schools Program Assurances.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013, 6/90).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

Note: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT:
Richard Lallmang or Deborah Williams,

U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave. NW., Washington, DC 20208-5644. Telephone 202-219-1770. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 4081-4086.

Dated: February 17, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

Appendix

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: <i>Application</i> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction <i>Preapplication</i> <input type="checkbox"/> Construction <input type="checkbox"/> 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) <input type="checkbox"/> <ul style="list-style-type: none"> 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: <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____		9. NAME OF FEDERAL AGENCY: U.S. Department of Education																						
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: [8] [4] [a] [2] [0] [3] TITLE: Star Schools Program		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: <table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>a. Federal</td><td>\$</td><td>.00</td></tr> <tr><td>b. Applicant</td><td>\$</td><td>.00</td></tr> <tr><td>c. State</td><td>\$</td><td>.00</td></tr> <tr><td>d. Local</td><td>\$</td><td>.00</td></tr> <tr><td>e. Other</td><td>\$</td><td>.00</td></tr> <tr><td>f. Program Income</td><td>\$</td><td>.00</td></tr> <tr><td>g. TOTAL</td><td>\$</td><td>.00</td></tr> </table>		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 <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
a. Federal	\$.00																						
b. Applicant	\$.00																						
c. State	\$.00																						
d. Local	\$.00																						
e. Other	\$.00																						
f. Program Income	\$.00																						
g. TOTAL	\$.00																						
		17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No																						
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED																								
a. Typed Name of Authorized Representative		b. Title	c. Telephone number																					
d. Signature of Authorized Representative		e. Date Signed																						

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
 Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 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 <i>only</i> 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. |
| 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. | 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. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 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. |
| 7. | Enter the appropriate letter in the space provided. | 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.) |
| 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. | | |

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (g)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
l. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year				4th Quarter
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
13. Federal	\$	\$	\$	\$	\$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks					

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes to existing grants*, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

03

n Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the priorities, and the selection criteria the Secretary uses to evaluate applications.

CFDA No. 84.203A Star Schools—Distance Education Projects

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.
2. Describe how the proposed project will meet one or more of the absolute priorities, and the competitive priority, if appropriate, in the light of each of the selection criteria in the order in which the criteria are listed in this notice.

Requirements—Distance Education Projects

The legislation authorizing the Star Schools Program requires that all applications address each of the following:

1. Describe the telecommunication facilities and equipment and technical assistance for which assistance is sought which may include—
 - A. The design, development, construction, and acquisition of State or multistate educational telecommunications networks and technology resource centers;
 - B. Microwave, fiber optics, cable, and satellite transmission equipment or any combination thereof;
 - C. Reception facilities;
 - D. Satellite time;
 - E. Production facilities;
 - F. Other telecommunication equipment capable of serving a wide geographic area;
 - G. The provision of training services to instructors who will be using the facilities and equipment for which assistance is sought; and in using such facilities and equipment, and in integrating programs into the class curriculum; and
 - H. The development of educational programming for students, or for educational personnel, or both, to be used on the telecommunication network;
2. Describe the types of programming that will be acquired or developed to enhance instruction and training and provide assurances that such programming will be designed in consultation with professionals who are experts in the applicable subject matter and grade level.
3. Demonstrate that the eligible telecommunications partnership has

engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the telecommunications partnership will increase the availability of courses of instruction in the subjects to be offered.

4. Describe the manner in which traditionally underserved students (such as students who are disadvantaged, limited-English proficient, disabled or illiterate) will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming assisted under this proposed project, and the extent to which existing telecommunications equipment will be used where available.

5. Describe the training policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought.

6. Describe the activities or services for which assistance is sought including activities and services such as—

- A. Providing facilities, equipment, training, services, and technical assistance;
- B. Making programs accessible to individuals with disabilities through mechanisms such as closed captioning and descriptive video services;
- C. Linking networks together, for example, around an issue of national importance such as elections;
- D. Sharing curriculum materials among networks;
- E. Providing teacher and student support services;
- F. Incorporating community resources such as libraries and museums into instructional programs;
- G. Providing teacher training to early childhood development and Head Start teachers and staff;
- H. Providing teacher training to vocational education teachers and staff, and
- I. Providing programs for adults at times other than the regular school day in order to maximize the use of the telecommunications facilities and equipment.

Additional Instructions—Distance Education Projects

1. The applicant may include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who will render the telecommunications service, and when it will be delivered.
2. Justifications and specifications for equipment purchases should be clearly related to existing facilities and resources as well as to distance learning services to be delivered.

3. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and the tasks required to produce the proposed courses of instruction.

4. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed 8½" × 11" pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, also on 8½" × 11" paper or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

The applicant may provide a VHS ½ inch videotape, however such a tape should be limited to no more than 12 minutes.

CFDA NO: 84.203B Star Schools—Special Statewide Network

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.
2. Describe how the proposed project will use a Statewide fiber optics network with two-way full motion video and audio communications to meet any or all of the priorities in the light of each of the selection criteria in the order in which the criteria are listed in this notice.

Requirements—Special Statewide Network

The legislation authorizing the Star Schools Program requires that all applications address each of the following:

1. Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include:
 - A. The design, development, construction, and acquisition of Statewide educational telecommunications networks and technology resource centers;
 - B. Reception facilities;
 - C. Production facilities;
 - D. Other telecommunications equipment capable of serving a wide geographic area;
 - E. The provision of training services to instructors who will be using the facilities and equipment and how to integrate distance learning into the classroom curriculum; and

F. The development of educational programming for students to be used on the telecommunications network.

2. Describe the types of programming which will be developed to enhance instruction and training and provide assurances that such programming will be designed in consultation with professionals who are experts in the applicable subject matter and grade level.

3. Demonstrate that the eligible telecommunications partnership has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the telecommunications partnership will increase the availability of courses of instruction in mathematics, science, foreign languages and literacy skills as well as other subjects to be offered.

4. Describe the training policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought.

5. Describe the activities or services for which assistance is sought including activities and services such as—

A. Providing facilities, equipment, training, services, and technical assistance;

B. Making programs accessible to individuals with disabilities through mechanisms such as closed captioning and descriptive video services;

C. Linking networks together, for example, around an issue of national importance such as elections;

D. Sharing curriculum materials among networks;

E. Providing teacher and student support services;

F. Incorporating community resources such as libraries and museums into instructional programs;

G. Providing teacher training to early childhood development and Head Start teachers and staff;

H. Providing teacher training to vocational education teachers and staff, and

I. Providing programs for adults at times other than the regular school day in order to maximize the use of the telecommunications facilities and equipment.

Additional Instructions—Special Statewide Network

1. The applicant may include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who will render the telecommunication service, when it will be delivered, and the role of the interactive components.

2. Justifications and specifications for equipment purchases should be clearly related to existing facilities and resources as well as to distance learning services to be delivered.

3. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and the tasks required to produce the proposed courses of instruction.

4. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

5. The applicant should detail the sources of matching funds and how they will be applied to the project. Other Federal funds may not be used as matching funds.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

The applicant may provide a VHS $\frac{1}{2}$ inch videotape, however such a tape should be limited to no more than 12 minutes.

CFDA NO: 84.203C Star Schools—Dissemination Grants

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe how the proposed project will conduct the required activities described in Part III 84.203C of this notice in light of each of the selection criteria, in the order in which the criteria are listed in this notice.

3. Demonstrate that the applicant has engaged in sufficient survey and analysis to ensure that the services offered by the proposed project will increase the information about and access to distance learning technologies and resources for State and local educational agencies.

4. Enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

5. Include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed 8 $\frac{1}{2}$ " x 11" pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, also on 8 $\frac{1}{2}$ " x 11" paper or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 100 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-0623, Washington, DC 20503.

(Information collection approved under OMB control number 1850-0623. Expiration date: June 30, 1994)

Applicants for grants under 84.203A and 84.203B must submit the following *Star Schools Program Assurances* with an application:

The eligible telecommunications partnership hereby assures and certifies as follows:

1. The eligible telecommunications partnership will protect the financial interest of the United States in the telecommunications facilities and equipment for the useful life of such facilities and equipment. (Estimated at ten years)

2. The eligible telecommunications partnership will make available a significant portion of any facilities and equipment, technical assistance, and programming for which assistance is sought to public elementary or secondary schools eligible for assistance under Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965.

3. The eligible telecommunications partnership will use the funds to

supplement and not supplant funds otherwise available for the purposes of this title.

4. The eligible telecommunications partnership will design any programming that may be developed to enhance instruction and training in consultation with professionals who are experts in the applicable subject matter and grade level.

Name and Title of Authorized Representative

Signature of Authorized Representative

Agency or Organization

Date

Applicants for grants under 84.203C must submit the following *Star Schools*

Program Assurances with an application:

1. The eligible telecommunications partnership or other eligible entity hereby assures and certifies that the partnership or other eligible entity will provide technical assistance to State and local educational agencies to plan and implement technology-based systems, including—

(A) information regarding successful distance learning resources for States, local educational agencies, and schools;

(B) assistance in connecting users of distance learning, regional educational service centers, colleges and universities, the private sector, and other relevant entities;

(C) assistance and advice in the design and implementation of systems to include needs assessments and technology design; and

(D) support for the identification of possible connections, and cost-sharing arrangements for users of such systems.

2. Grant funds shall be used to supplement and not supplant services provided by the partnership under this program in previous years.

Name and Title of Authorized Representative

Signature of Authorized Representative

Agency or Organization

Date

BILLING CODE 4000-01-P

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205)
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C §§ 1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C §§ 4801 et seq) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

federal register

Wednesday
February 23, 1994

Part X

Department of
Education

Star Schools Program; Notice

DEPARTMENT OF EDUCATION

Star Schools Program

AGENCY: Department of Education.

ACTION: Notice of final priorities for Fiscal Year 1994.

SUMMARY: The Secretary announces priorities for fiscal year 1994 under the Star Schools program. The Secretary takes this action to focus the services provided by the Star Schools distance education projects on assisting participating elementary and secondary students in public and private schools and others to work toward achieving the National Education Goals, and to focus the Star Schools dissemination projects on nationwide services.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard Lallmang or Deborah Williams, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208-5644. Telephone: (202) 219-1770. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains three absolute priorities for distance education projects under the Star Schools program. Under the distance education projects competition, the Star Schools program provides grants to telecommunications partnerships to support the use of distance education technologies.

The notice also contains one absolute priority for dissemination projects under the Star Schools program. Dissemination projects provide information and technical assistance concerning distance education technologies to local and State education agencies.

On October 5, 1993 the Secretary published a notice of proposed priorities for this competition in the *Federal Register* (58 FR 51960).

Public Comment

In the notice of proposed priorities, the Secretary invited comments on the proposed priorities. The Secretary received one comment in support of the proposed priorities.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the *Federal Register*.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for applications that meet the following priorities. The Secretary funds under the relevant competition only applications that meet one or more of the absolute priorities established for that competition.

Star Schools Distance Education Projects*Absolute Priority 1—National Education Goals*

Projects that develop and deliver instructional programming for elementary or secondary school students, or both, that supports achievement of one or more of the National Education Goals, and that is consistent with challenging national or State content standards.

Absolute Priority 2—Preparation for Work

Projects that develop and deliver instructional programming to enhance the workplace and literacy skills of high school students, or young adults who are not in school, or both, in order to prepare students for responsible citizenship, further learning, and productive employment, and make the school-to-work transition more successful.

Absolute Priority 3—Preservice and Inservice Teacher Education

Projects that develop and deliver programming for preservice teachers attending colleges and universities, or professional development for practicing teachers and other educational personnel, or both. In meeting this priority, projects must provide information about the National Education Goals, emerging national or State content standards, and ways in which standards-driven systemic reform can help ensure that all students have opportunities to reach high levels of achievement. In addition, projects must provide professional development activities that include strong academic content and subject-specific pedagogical components to help teachers provide challenging learning experiences in the core academic subjects for their students.

Star Schools Dissemination Projects

Absolute Priority: Dissemination projects that will provide services nationwide.

Intergovernmental Review

The program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 4081-4086. (Catalog of Federal Domestic Assistance Number 84.203 Star Schools Program)

Dated: February 17, 1994.

Sharon P. Robinson,
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94-4058 Filed 2-22-94; 8:45 am]

BILLING CODE 4000-01-P

Federal Register

Wednesday
February 23, 1994

Part XI

Department of Transportation

Office of the Secretary

National Service; Announcement of
Request for Proposals; Notice

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary

National Service; Announcement of Request for Proposals

AGENCY: Office of the Secretary,
Department of Transportation.

ACTION: Notice of requests for proposals.

SUMMARY: The Corporation for National and Community Service (the "Corporation") offers support for national service activities designed to help address the Nation's human, educational, environmental and public safety needs. The President has urged all Federal agencies to incorporate national service into their Federal programs. The Department of Transportation will join the Corporation in its effort by supporting and promoting transportation-related national service programs. This request solicits proposals for transportation-related national service projects, and describes what kind of local service organizations might wish to apply. It also lists specific program areas in which DOT encourages proposals. DOT will evaluate all the proposals received. After programs have been selected, DOT may enter into a formal agreement to establish a partnership with their sponsors and include those programs as part of DOT's application to the Corporation for operating funds and for the funding of educational awards.

FOR GENERAL INFORMATION CONTACT: Paul B. Larsen, Office of the General Counsel, telephone (202) 366-9161; or CDR Timothy Beltz, Military Assistant to the Secretary of Transportation, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-5742.

FOR INFORMATION ABOUT SPECIFIC PROGRAMS: Contact the persons indicated in the programs described in this announcement.

SEND PROPOSALS TO: Mrs. Brenda L. Harris, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., room 9414, Washington, DC 20590.

DEADLINE FOR SUBMISSION OF PROPOSALS: March 23, 1994, 4 p.m. EST.

Dated: February 16, 1994.

Federico Peña,
Secretary of Transportation.

Table of Contents

1. Introduction
 - 1.1 Background
 - 1.2 Programs and Purpose
 - 1.3 General Program Requirements

- 1.4 Eligibility Requirements
 2. Program Descriptions
 - 2.1 Overview
 - 2.2 Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities
 - 2.3 Transit Ambassadors
 - 2.4 Operation Lifesaver
 - 2.5 Hazardous Materials Transportation Emergency Preparedness Assistance
 - 2.6 Youth Traffic Safety Education Programs
 3. Submission of Proposals
 - 3.1 Content and Format for Proposals
 - 3.2 Address, Number of Copies, Deadline for Submission
 - 3.3 Coordination with State Community Service Plan
 4. Selection Criteria
 - 4.1 General Criteria
 - 4.2 Priority Consideration
 - 4.3 Priorities for Specific DOT Programs
 - 4.4 Preferences Applying to Urban Youth Corps Programs
 5. Funding
 - 5.1 Direct Funding from DOT
 - 5.2 National Service Corporation Funding
 - 5.3 Matching Funds
 - 5.4 Restrictions on Use of Federal and Corporation Funds
- Application Form for Proposals—Appendix A

1. Introduction

1.1 Background

On September 21, 1993, the President signed into law the National and Community Service Trust Act (the "Act"). The purpose of the Act is to engage Americans of all ages and backgrounds in community-based service to address the Nation's educational, public safety, human, and environmental needs. The Act establishes several different types of service programs designed to accomplish these goals, and establishes the Corporation for National and Community Service (the "National Service Corporation") to administer these programs.

The service program that this Request for Proposals ("RFP") addresses is the "AmeriCorps" program. The AmeriCorps program will enable dedicated individuals to work on a variety of community and national service programs on a full-time or part-time basis for a period of at least nine months. In exchange for their contribution, participants will receive living stipends and, at the end of their terms of service, may receive educational awards to pay for further education or to pay off student loans.

In order to further the goals of his national service initiative, the President has urged all Federal agencies to explore ways in which to incorporate national and community service into their Federal programs. To encourage the

integration of national and community service with Federal programs, the National Service Corporation has earmarked up to \$16.3 million that may be available specifically for the planning and operation of national and community service programs to be operated by Federal agencies or by other eligible entities (as defined in Section 1.4.1, "Eligible Service Organizations," of this RFP) in partnership with Federal agencies. Federal agencies may also apply for educational awards for program participants.

At the Department of Transportation ("DOT"), we intend to fully embrace this opportunity to use national and community service programs to further our transportation-related community, state, and national goals. It is our mission to provide future generations with a transportation system that is safer, more environmentally sound, and more efficient. The strategic goals that we have set to accomplish this mission go hand-in-hand with the goals of the National and Community Service Trust Act. At DOT, we are striving to:

- Tie America together through an effective intermodal transportation system;
- Promote safe and secure transportation;
- Actively enhance our environment through wise transportation decisions;
- Put people first in our transportation system by making it relevant and accessible to users.

We believe that national and community service can contribute effectively to the achievement of all of these transportation-related goals.

1.2 Programs and Purpose

Since DOT is new to the community service field, our intent is to tap the resources of existing community service organizations to implement our national and community service programs. The purpose of this RFP is to solicit proposals from eligible service organizations for transportation-related national and community service projects. Applicants may submit proposals involving activities within one or a combination of the five transportation-related programs that have been developed by DOT as being particularly suitable for national and community service projects:

1. Rehabilitation, Reclamation and Beautification of Transportation-Related Facilities;
2. "Transit Ambassadors"—providing assistance to the elderly, disabled, and children in Head Start programs in using public transportation systems;
3. "Operation Lifesaver"—making rail/highway crossings safer;

4. Hazardous Materials Transportation Emergency Preparedness Assistance; and

5. Youth Traffic Safety Education Programs.

Each of these five programs are explained in more detail later in this RFP and are referred to throughout as the "DOT Programs."

DOT will evaluate all of the proposals that it receives based on the criteria and priorities set forth in Section 4 of this RFP, and will enter into formal agreements to establish partnerships with service organizations that submit the proposals that are selected. Initially, these projects will most likely be concentrated in geographic areas of the greatest need based on the criteria set forth in the regulations issued under the National and Community Service Trust Act (see "Needs" under Section 4.1, "General Criteria" in this RFP). However, DOT views these initial projects to be the beginning of a broader, more comprehensive program.

DOT plans to fund the initial projects in these programs through two sources. First, DOT funds appropriated to DOT agencies will be available to partially finance projects in some of the five DOT Programs in fiscal year 1994. In addition, DOT may apply to the National Service Corporation for additional funding for operational costs and for educational awards (if requested) from the funds set aside by the National Service Corporation for Federal agency programs. (Since there is no guarantee that DOT will receive funding from the National Service Corporation, a proposal selected by DOT ultimately might not be fully funded or funded at all if DOT's request for funding from the National Service Corporation is not granted.) The service organizations sponsoring the project will have to provide matching funds for a portion of project costs.

Any funds that DOT receives from the National Service Corporation will be from the \$16.3 million that has been earmarked for Federal agencies. Therefore, the DOT Programs may provide service organizations with access to a source of funds for which they are otherwise not eligible.

DOT will inform applicants prior to April 15, 1994, as to whether they have been selected to receive DOT funding and whether they will be included in DOT's application to the National Service Corporation. DOT anticipates that notification of National Service Corporation awards for Federal agency programs will occur in May or June of 1994.

1.3 General Program Requirements

Any proposal submitted under this RFP must comply with the general requirements for service programs that are set forth in the National and Community Service Trust Act and related regulations. These requirements include:

1. Employing participants on a full-time basis (1700 hours for a period of not less than nine months and not more than a year); or on a part-time basis (900 hours for a period of not more than two years, or, if the individual is enrolled in an institution of higher education while performing all or part of the service, not more than three years).

2. Employing at least 20 full time equivalent participants unless an explanation is provided as to why a smaller number is appropriate.

3. Paying participants a living allowance of at least \$7,440 for fiscal year 1994 (but not more than twice that amount).

4. Providing participants with health care benefits and, if necessary, child care benefits during the term of service.

5. Providing for participants to receive educational awards (either from the National Service Corporation or from some other source) in an amount of \$4,725 for one full-time term of service or \$2,360 for one part-time term of service, for up to two terms of service. (If educational awards will not be received by all participants, the program must ensure that the distribution of educational awards is performed in an equitable manner that treats equally all participants doing the same or essentially similar work. Distribution based solely on economic needs of participants is not encouraged.)

6. Not displacing other employees or positions, nor supplanting the hiring or promotion of employees. The written concurrence of any local labor organization representing employees engaged in the same or substantially similar work must be obtained.

If a proposal is selected and funded, the service organization will be required to enter into a formal agreement to establish the partnership with DOT, which will set forth the specific terms and conditions of the partnership arrangement, including provisions for monitoring and evaluating the project. The selected service organization will also be required to enter into formal agreements with the participants in its project to spell out the terms and conditions of service.

1.4 Eligibility Requirements

1.4.1 Eligible Service Organizations

Subdivisions of states, Indian Tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, or a consortia of entities that propose to administer or operate a national or community service program are eligible to submit proposals for the DOT Programs.

1.4.2 Eligible Participants

Eligibility for individual participation in community and national service projects is limited to participants who: (1) are 17 years of age or older at the commencement of service, unless the individual is in a youth corps program, in which case the participant must be between the ages of 16 and 25; (2) either have received a high school diploma or its equivalent, including an alternative diploma or certificate for those individuals with mental and physical disabilities for whom such alternative diploma or certificate is appropriate, or agree to obtain a high school diploma or its equivalent. (However, if the program conducts an independent evaluation demonstrating that the potential participant is incapable of obtaining a high school diploma or its equivalent, this requirement may be waived); (3) have not dropped out of elementary or secondary school in order to enroll as a national service participant, unless the participant is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965; (4) are citizens or nationals of the United States; and (5) meet the task-related eligibility requirements established by the program.

2. Program Descriptions

2.1 Overview

To implement its national and community service program, DOT has identified five specific national and community service programs that combine the goals and priorities of the National and Community Service Trust Act and the goals and priorities of DOT. Applicants may submit proposals falling within one or a combination of DOT Programs. The proposals should tailor the selected DOT Program(s) to the specific needs of the community to be served. The following is a description of the five DOT Programs:

2.2 Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities

2.2.1 Description of Program

The DOT program for "Rehabilitation, Reclamation and Beautification of Transportation-Related Facilities" has been developed to implement the provisions of section 106(d) of the Act, which establishes an urban youth corps in DOT, and authorizes the Secretary of Transportation to enter into formal agreements to form partnerships with qualified urban youth corps. The Secretary may make grants of DOT funds to States (and through States to local governments) for the purpose of supporting qualified urban youth corps projects. In addition, proposals for qualified urban youth corps projects to be conducted by eligible service organizations (as defined in Section 1.4.1 of this RFP) may be included in DOT's application for funding from the National Service Corporation. These include projects that the Secretary is authorized to carry out under other authority of law involving public works resources or facilities.

Section 106(d) is based on the finding of Congress that public works and transportation resources are in need of labor intensive rehabilitation, reclamation, and beautification work that has been neglected in the past and cannot be adequately carried out by Federal, State, and local government at existing personnel levels.

Rehabilitation, reclamation, and beautification of public roads and public works facilities through the efforts of young people in the United States participating in urban youth corps can benefit these youths and their communities.

An urban youth corps project that would qualify under this DOT Program is one that is established by an eligible service organization (as defined under Section 1.4.1 of this RFP) and that:

- Is capable of offering meaningful, full-time, productive work for individuals between the ages of 16 and 25, inclusive, in an urban public works or transportation setting;
- Gives participants a mix of work experience, basic and life skills, education, training, and support services; and
- Provides participants with the opportunity to develop citizenship values and skills through service to their communities and the United States.

Although any project proposed under this Program should involve an urban youth corps in a significant portion of the work, the proposal may also include other eligible groups of community

service participants that will work along with the urban youth corps.

Potential projects include organizing and managing community beautification projects to plant trees and flowers adjacent to highways and transportation terminals and corridors; coordinating with railroad companies to organize clean up campaigns and work days along railroad tracks and rights of way; working with local artists to beautify terminals and facilities with art work; and clean up and beautification of roadsides, transportation corridors, and access to transportation facilities. Community service projects will be associated with at least one mode of transportation, i.e., rail, transit, or highway.

All projects will need to be coordinated with the organizations having authority over the relevant transportation facilities (such as State Departments of Transportation, local Metropolitan Planning Organizations (MPOs), or transit authorities). As part of its proposal under this DOT Program, an applicant will need to show that the project is acceptable to the relevant transportation organizations.

2.2.2 Goals and Priorities

This program addresses the following national priorities established by the National Service Corporation:

- Education**—Urban youth corps projects will include specific project-related and general job skills training that will prepare participants for future employment opportunities. Training will also include specific skills related to the project being undertaken, such as carpentry, landscaping, and environmental planning.
- Public Safety**—Recruiting at-risk youths in urban settings for participation in youth corps activities will provide opportunities for youths to be productively involved in community activities, reducing the inclination to turn to activities such as drug dealing or other crimes. In addition, cleaner transportation facilities will make the facilities more attractive, drawing more users, and in turn, making them safer for use by all.
- Human Needs**—Urban youth corps projects will provide job skills training that will help individuals become self-sufficient. Job skills will include basics such as taking responsibility for attendance, being accountable for work products, and dealing with supervisors. In addition, these projects will be targeted at improving communities and neighborhoods.
- Environment**—Rehabilitation, reclamation and beautification of transportation facilities will enhance

neighborhoods as well as assist in conserving and restoring the environment.

2.2.3 Anticipated Outcomes and Results

Urban youth corps projects will result in benefits to communities, neighborhoods, and transportation facilities in the form of renovated, restored, and cleaner facilities and areas. Participants will not only have the opportunity to perform community service but will learn job skills that will prepare them for future employment opportunities.

2.2.4 Funding

The Federal share of funding for urban youth corps projects may be provided from existing DOT program funds and state Federal-aid funds. DOT intends to apply for any additional funds needed for program costs, including living allowances, educational awards, health insurance, and child care costs, from the National Service Corporation. It is anticipated that direct funding for the Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities Program may be available from DOT in future years.

2.2.5 DOT Agency Involvement and Expertise Available

DOT agencies involved in this Program include the Federal Highway Administration, the Federal Transit Administration, and the Federal Railroad Administration. For the selected proposals, DOT representatives will work with sponsoring organizations to contact State DOTs, MPOs, transit authorities, etc., with authority over the relevant transportation facilities to assist with project arrangements and agreements.

2.2.6 DOT Contacts

Karen Kabel, Federal Highway Administration (HMS-31) (202) 366-9074, FAX (202) 366-3235
 Gordon Smith, Federal Railroad Administration (RAD-10.1) (202) 366-0589, FAX (202) 366-7439
 Roger Tate, Federal Transit Administration (TTS-31) (202) 366-0235, FAX (202) 366-3765
 Address: 400 7th St., SW., Washington, DC 20950.

2.3 Transit Ambassadors

2.3.1 Description of Program

The DOT Federal Transit Administration's program for "Transit Ambassadors" proposes to use participants in community service programs to help elderly and disabled

persons learn to use public transportation systems in their communities. Program participants, called "transit ambassadors", would assist these targeted individuals in locating bus stops, understanding how the fare system works, and identifying potential destinations, such as grocery stores, medical facilities, etc. Transit ambassadors would teach individuals how to use public transportation, and how to read maps and time schedules. In addition, transit ambassadors will accompany persons who need such assistance to navigate their way on conventional, fixed route public transportation service.

Assistance may be of a one-time nature to acquaint an individual with public transportation routes and services. Transit Ambassadors may also provide regular or scheduled guide services. The most minimal sort of service the transit ambassador could provide would simply be visiting an individual and providing schedule and fare information, and answering questions about a pending trip or series of trips. The service would include training individuals about their neighborhood and the shops within it, increasing the confidence level for those who then could move around independently and provide overall better security in the affected neighborhoods.

As part of this program, transit ambassadors will assess the local transportation facilities to identify obstacles that prevent disabled and elderly persons from safely and easily traveling on public transportation, and will work with local transportation authorities to remove these obstacles. The transit ambassadors will also work with the local transit authorities to develop and distribute information that will facilitate and encourage the use of public transportation by the elderly and disabled (such as more easily readable bus schedules, community maps showing routes to locations of particular interest, or information on special fares or rates available for the elderly or disabled).

This program also has the potential for developing partnerships with other Federal agencies (such as the Department of Health and Human Services or the Department of Education) to accompany youths to and from Head Start Programs and, in addition, provide assistance to Head Start teachers during class. In such a partnership, transit ambassadors could also be trained as aides on transportation vehicles to and from Head Start facilities/programs. Transit ambassadors could instruct Head Start

children and their parents on the routes to bus stops, and teach the children about proper behavior and safety procedures while riding on a bus. Transit ambassadors could also act as aides to Head Start teachers during the remainder of the day.

2.3.2 Goals and Priorities

Transit Ambassadors will address the following national priorities:

a. Public Safety. By providing escorts and training for elderly and disabled persons, this program will help decrease potential violence to elderly and disabled citizens; transportation assistance for the Head Start program will also increase safety to and from bus stops and on those buses.

b. Health and Human Needs. Transportation assistance for elderly and disabled persons will enable them to get to medical and other facilities more readily and more independently.

c. Mitigate the impact of unfunded mandates. The Americans with Disabilities Act (ADA) requires all public transit systems to provide supplementary door-to-door paratransit service for those individuals who are unable to use even fully accessible public transit. The Transit Ambassador Program will help instill confidence in elderly and disabled persons in the use of conventional public transportation and limit the call for more expensive door-to-door paratransit to individuals with mobility difficulties.

d. Education. Transit ambassador participating in programs with the elderly and disabled will learn about the needs of those populations and will help to integrate them into mainstream society.

In addition, if cooperative partnerships are formed with other Federal agencies such as the Department of Health and Human Services and the Department of Education, the Transit Ambassadors Program will provide aides for Head Start programs and help make children more "school ready." In such a partnership, transit ambassadors will be able to work with children on the bus and in class, and provide information to them and their parents.

2.3.3 Anticipated Outcomes and Results

a. The program will benefit the local community and transit operators. Elderly and disabled citizens will be able to participate in the community. Transit Ambassadors will develop knowledge of needs of the populations served and increase skills for dealing with these populations.

b. Disciplines learned in this program can be carried over into careers in the

medical field, social services, transportation and education.

2.3.4 Funding

Funding for this proposal will be available from the Federal Transit Administration at an anticipated level of up to \$235,000 for program costs. DOT intends to apply for any additional funds needed for program costs, including living allowances, educational awards, health insurance, and child care costs, from the National Service Corporation. It is anticipated that direct funding for the Transit Ambassadors Program may be available from DOT in future years.

2.3.5 DOT Agency Involvement and Expertise Available

The Federal Transit Administration will be the agency within DOT that will implement the Transit Ambassador Program.

2.3.6 DOT Contact

Roger Tate, Federal Transit Administration, Room 6100 A, 400 7th Street SW., Washington, DC 20590, Phone: (202) 366-0235.

2.4 Operation Lifesaver

2.4.1 Description of Program

"Operation Lifesaver" is an active, continuous national public information and education program that works in conjunction with the DOT Federal Railroad Administration. This program provides help in preventing and reducing crashes, injuries and fatalities and in improving driver performance at the nation's 300,000 public and private rail/highway grade crossings. Operation Lifesaver originated in Idaho in 1972 after Union Pacific Railroad and community leaders in the state decided to band together and fight the growing number of rail/highway grade crossing crashes, injuries and fatalities with a public education program. At the end of the first year the rail/highway grade crossing fatality rate dropped a resounding 39 percent.

The program is now national in scope as all states have their own Operation Lifesaver programs. It is at the grassroots level—in the cities, in rural communities, and in the schools—where Operation Lifesaver has been most effective. States have reported fatality reductions at rail/highway grade crossings ranging from 28 percent to 100 percent one year after establishing the program.

There are two concepts through which Operation Lifesaver may be incorporated within the umbrella of the DOT National Service program:

a. The first would use a community service organization to assess the number and location of railroad/street, road, and highway intersections within the defined geographic area. Based upon the data developed, the community service organization would be responsible for developing and presenting an educational program suitable for elementary schools, secondary schools, colleges, civic organizations, service organizations and fraternal groups.

b. The second would address the provision of organizational and administrative assistance to the various state Operation Lifesaver offices through the recruitment and placement of assistant program coordinators. These individuals would enhance the ability of the State office to acquire information and establish geographic databases; organize and plan educational programs and campaigns; coordinate media initiatives and relationships; and systematize internal procedures and processes. This concept involves placement of individuals in single positions in a number of different states, and would be part of a multi-state program that would fall under the national service provisions of the Act. This portion of the program would be implemented incrementally based upon fiscal considerations.

Organizations that could participate in the first concept include community service organizations eligible to participate under the National and Community Service Trust Act (see Section 1.4.1 of the RFP).

Implementation of the second concept would be coordinated through the national Operation Lifesaver headquarters office located in Alexandria, Virginia. This second concept would facilitate individual recruitment of National Service volunteers at the local level and would provide participants with opportunities to provide service to their local communities and states and to participate in the development of viable transportation safety programs.

2.4.2 Goals and Priorities

This program addresses the following national priorities:

a. Education—Participants will be exposed to a variety of project specific tasks and general job skills that could prepare participants for future employment opportunities.

b. Public Safety—Operation Lifesaver assists in promoting public awareness of the dangers associated with rail crossings, trespassing on railroad properties, and improper use of motor vehicles around rail facilities. Further, it

will bring the audiences into contact with local police and other law enforcement agencies, which will open the lines of communication and create opportunities for cooperation.

c. Human Needs—This Program will stimulate awareness of rail and highway safety-related problems within local and State communities and bring people together to address them. The programs will also provide safety training to a wide audience, ranging in age from preschoolers to senior citizens.

d. Environment—Operation Lifesaver has been successful in reducing community environmental hazards associated with rail crossings.

2.4.3 Anticipated Outcomes and Results

a. The utilization of a community service organization would result in benefits to the local communities and provide needed public education in the area of rail safety to the specifically targeted audiences and the general public. As past records have shown, there should be a downward trend in accidents, injuries, and trespasser violations in conjunction with the Operation Lifesaver Program. The statistics developed would be readily available for program evaluation, cost analysis, and community acceptance and adoption.

b. The hiring and placement of assistant administrative coordinators throughout the Operation Lifesaver system would result in better coordination of the program with railroad companies, law enforcement agencies, local and state governments, the various informational media and the general population. The opportunity to function within an established program would enhance the job skills and personal marketability for the participants for future endeavors.

Both concepts will expose the participants to the opportunity to perform community service, and enhance the development of personal qualities, educational values and positive work ethics.

2.4.4 Funding

DOT intends to apply for funding for program costs, including living allowances, educational awards, health insurance, and child care costs, from the National Service Corporation. A budgetary review is ongoing at this time to seek other sources of funding within DOT. The National and Community Service Act will be an item in the Fiscal Year 1996 budget submission of the Federal Railroad Administration, and it is anticipated that direct funding for national service involvement in the

Operation Lifesaver program may be available from DOT in future years.

2.4.5 DOT Agency Involvement and Expertise Available

The Operation Lifesaver and adjunct trespasser programs are addressed by several of the DOT modal administrations, specifically the Federal Railroad Administration (FRA) and the Federal Highway Administration (FHWA).

2.4.6 DOT Contacts

Gordon J. Smith, Federal Railroad Administration, Office of Administration, (202) 366-0589, FAX (202) 366-7439

Bruce George, Highway Rail Crossing and Trespasser Division, Federal Railroad Administration, (202) 366-0533

Mailing Address: Room 8232, 400 7th St. SW., Washington DC 20590

2.5 Hazardous Materials Transportation Emergency Preparedness Assistance

2.5.1 Description of Program

a. *Background.* The DOT Research and Special Programs Administration, Office of Hazardous Materials Safety (OHMS), currently carries out a national safety program to protect against the risks to life, health, property, and the environment inherent in the transportation of hazardous materials by water, air, highway and railroad. OHMS plans, implements, and manages hazardous materials regulatory, enforcement, and outreach programs, and administers a user fee funded grant program to States and Indian tribes for planning and training for hazardous materials emergencies.

The number and type of entities regulated by OHMS have increased dramatically since 1990, when the Hazardous Materials Transportation Act (HMTA) was amended. Prior to 1990, the office had jurisdiction over approximately 40,000 hazardous materials shippers and carriers. In the future, the inclusion of intrastate shippers and carriers will bring an additional 110,000 newly regulated shippers and carriers mandated by the HMTA amendment under the Hazardous Materials Regulations (HMR).

Certain shippers and carriers are required to register with the Department and pay an annual fee. The Hazardous Materials Registration Program, which began in September 1992, funds emergency preparedness grants to States and Indian tribes for training and preparing to respond to hazardous materials emergencies.

The HMTA Grant Program was presented to Congress in 1990 during the legislative process reauthorizing the Hazardous Materials Transportation Act of 1974. Grant funds were first distributed in Fiscal Year 1993. The HMTA grant program is carefully crafted to build upon existing programs and relationships. It has increased the emphasis on improving the capability of communities to plan for the full range of transportation related hazardous materials risks they face.

Forty-seven States are participating in the HMTA grant program—an overwhelming first year response. Fifty-eight grants, totaling approximately \$8.4 million, were given to States, Tribes, and Territories in the first grant budget period. 180,000 emergency responders will be trained with HMTA grant funds in the first year of the program; 81% of these responders are either paid or volunteer firefighters.

The existing grant process begins with each participating State's Governor determining which agency within the State receives the HMTA grant. The selected agency distributes funds in accordance with HMTA grant rules and required certifications, ensuring the assistance is provided to intended recipients. The grant distribution system allows each State's Governor to make decisions on funding based on local factors, and allows DOT to leverage resources, thereby operating the HMTA grant program efficiently. The HMTA grant distribution system is lean, and gives exceptionally responsive service to State grantees.

b. National Service Corps. Under the OHMS's "Hazardous Materials Transportation Emergency Preparedness Assistance" Program, national service funding will be used to employ national service participants as assistants to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and State Emergency Management Agency levels. This Program will reinforce the Nation's Hazardous Materials Transportation Emergency Response/State Emergency Response structure, one of the objectives of the existing HMTA grant program.

Local SERC/LEPC/emergency management national service participants may serve as assistants to prepare local emergency plans, perform hazardous materials commodity flow studies, and coordinate exercise of plans. These jobs, requiring little previous experience, could be learned mainly through on-the-job training.

Use of national service funds to increase the effectiveness of the nationally recognized HMTA grant program would not only help the nation

and localities, but also give national service participants experience in, and access to, an industry which is experiencing growth. The Emergency Planning and Community Right-to-Know Act of 1986, a reaction in part to the Bhopal, India tragedy, created SERCs and LEPCs to plan for emergency response, including feedback and coordination from broadly based local groups; many responsibilities were levied on states and localities with little funding. This program can provide assistance not previously available. Similarly, state emergency management agencies need assistance with hazardous materials planning and training grants.

It is proposed that national service participants be involved as follows:

1. A day in the life of a national service participant might include assignment to an LEPC. For this participant the day might include working under the LEPC chairperson's supervision to gather data at the state police inspection point for a commodity flow study. The participant might use the data while interacting with LEPC members at an evening meeting. As a result of the meeting the LEPC might modify their emergency plan.

2. At other times the participant might distribute material safety data sheets to the public, conduct community outreach meetings, or receive notification of a hazardous materials release and provide support for the SERC/LEPC or the community. At a state emergency information center, the participant might assist the watch officer in preparing and distributing the daily situation report.

3. Daily activities provide on-the-job training. For example, data may have indicated heavy transport of gasoline indicating the need for training in response to tanker incidents. The participant learns from experience the interaction between data, planning, and training. The participant might also be mentored by the members of the LEPC, the response community, or the trucking industry. In this way, the public good is served and the participant receives valuable training.

2.5.2 Goals and Priorities

The proposed program meets all criteria for funding under the President's National Service program; it improves public safety and health, guards the environment, and educates program participants. The program addresses national service priorities while at the same time provides an opportunity for public service and giving participants training that may enable them to gain employment later.

It specifically addresses the following national priorities:

- a. Environment. The program will help eliminate environmental risks through education of communities and through risk preparation/prevention. Development of currently unavailable databases could provide the information especially helpful in accident avoidance and response. Hazardous materials planning and training assistant positions at SERC/LEPCs and HMTA State grantee offices are currently going unfilled.

- b. Education. If students are selected for these positions, this program will meet the "Education" national priority. On-the-job training will provide unparalleled opportunities for individuals to learn skills leading to diplomas or equivalent recognition of accomplishment.

In addition, this program addresses two Department of Transportation Strategic Goals: (1) Promoting safe and secure transportation, and (2) enhancing the environment through wise transportation decisions.

2.5.3 Anticipated Outcomes and Results

Communities and individuals will benefit from national service participation. Participants can contribute to an increased awareness of environmental protection and emergency response. Community outreach, a possible activity for participants, can help involve residents in discussion of issues and formulation of policy that can directly benefit the community.

An ultimate goal of individual programs would be improved emergency response. Schools and community groups can be targets for educational programs, thereby increasing the knowledge level in the community.

2.5.4 Funding

Up to \$60,000 of the Federal share of living allowances for participants may be provided by the Research and Special Programs Administration in DOT. DOT intends to apply for any additional funds needed for program costs, including living allowances, educational awards, health insurance, and child care costs, from the National Service Corporation.

2.5.5 DOT Agencies Involved and Expertise Available

The Office of Hazardous Materials Safety within the Research and Special Programs Administration will be the office in DOT that will implement this Program.

2.5.6 DOT Contact

The primary contact for DOT for the Hazardous Materials Transportation Emergency Preparedness Assistance Program will be:

Charles Rogoff, HMTA Grants Manager,
Office of Hazardous Materials Safety,
the Research and Special Programs
Administration (RSPA). (202) 366-
0001,

The National Service Program contact is:

Jim Kabel, Office of Policy and Program Support, RSPA (202) 366-6714.

2.6 Youth Traffic Safety Education Programs

2.6.1 Description of Program

a. Background and purpose. The DOT National Highway Traffic Safety Administration's program for Youth Traffic Safety Education offers the opportunity to train young volunteers aged 16 to 25 to be proficient in traffic safety and then become positive role models for traffic safety behaviors for both younger children and their young adult peers. The children, youth, and young adult populations are over-represented in fatal motor vehicle crashes and are therefore at very high risk of being involved in potentially life-threatening or debilitating motor vehicle incidents.

In the U.S., injury is the leading cause of death for people ages 1 to 44. Traffic crashes alone are consistently the leading cause of death for persons between the ages of 5 and 34. Many of the deaths and injuries that occur on our roads are not the result of unavoidable incidents. By and large, these consequences are the result of failure to take proper precautions such as wearing safety belts and bicycle helmets as well as unsafe behaviors such as speeding and impaired driving. These losses strike particularly hard on young families and young children.

Attempts to improve chances of survival focusing on injury prevention call for traffic safety programs to increase safe behaviors. Increasing safe behaviors depends largely on educating individuals about precautionary measures and rules of the road such as using child safety seats to transport young children, buckling up all motor vehicle passengers, practicing safe bicycle and pedestrian behaviors, not speeding, and never driving impaired or riding with an impaired driver.

b. Scope of work. This project calls for a two-phase activity for the grantee to train young adult volunteer participants on critical traffic safety issues and to conduct educational activities using trained volunteers to promote highway

safety for children and youth from prekindergarten through eighth grade. The educational activities use peer and cross-age mentoring as a teaching technique that has been found quite effective with this age group. Phase one is the development and conduct of training. Phase two is the program implementation.

Prior to applying, the potential applicant shall conduct a preliminary assessment and problem identification, to the extent possible, of the current status of community traffic fatalities and injuries as well as safety activities and resources, consulting sources such as the state office of highway safety, law enforcement agencies, hospitals, health clinics, and local chapters of other organizations involved with traffic safety efforts such as SAFE KIDS Coalition, Mothers Against Drunk Driving (MADD), and Students Against Driving Drunk (SADD). The state office of highway safety may be able to provide a general outline of the problem and many of the activities underway within a designated area. The applicant shall use the preliminary assessment to help design a complementary plan of educational activities, providing both the preliminary community assessment and the educational activity plan as part of the application.

i. Program Phase One. Phase one will entail completing the preliminary community assessment, finalizing the educational program plan, and developing and implementing the training component. In preparation for dealing with the complex and technical highway safety issues, a training program for community service volunteers including specialized training and experiential learning will be the integral part of the preparation for conducting educational safety activities. The training program will be developed and implemented with the consultation and coordination of the National Highway Traffic Safety Administration ("NHTSA") and community experts corresponding with the educational activity plan. The training program must also be coordinated with and approved by the traffic unit of the local law enforcement department. Ideally, local law enforcement will be represented in training sessions to the extent possible. All participating program volunteers will complete initial training demonstrating a minimum level of knowledge and skills before beginning traffic safety education activities. The training program may extend into the program implementation phase as appropriate for continued instruction and consultation with experts.

ii. Program Phase Two. The grantee will then utilize trained volunteers to implement key traffic safety programs to meet local needs using available resources. Programs should incorporate one or more of the following traffic safety areas: child passenger safety, pedestrian safety, bicycle safety, safety belt use, and alcohol impairment. Several activities may be done concurrently or consecutively for added impact in a given traffic safety area or increased exposure to distinct traffic safety issues. Subjects may also be combined for a more comprehensive traffic-safety message. Suggested activities in the corresponding traffic safety areas include but are not limited to the following:

Child Passenger Safety

• Bounty Program

A Bounty Program utilizes volunteers to work with merchants and others to remove no-longer-safe child safety seats from the reuse and resale markets. No-longer-safe car seats include those manufactured before current standards; no longer containing labeling identifying model and manufacturer; missing parts; containing broken, cracked, frayed, or rusted parts; under recall; or previously involved in a motor vehicle crash. Volunteers could work with local newspapers to publish public service announcements in the classified sections alerting the garage sale market about the program. Safe child car seats are available at low cost in many areas through discount stores, car seat loaner programs, insurance companies, and other sources. Additional child passenger safety activities could include working with local distributors to develop a local shopping guide specifying sites with child safety seat model availability and price lists. A "how to" manual is available from NHTSA to help establish a bounty program. (Can be conducted in conjunction with hospitals, police departments, fire departments, and day care centers.)

Pedestrian Safety

• Pedestrian Safety Elementary Education Program

Two programs are available to reach young children with safe pedestrian information. The "Willy Whistle" program can be conducted in one or two pedestrian safety lessons. Resources include an age appropriate video for children from kindergarten through third grade or fourth through seventh grade and teaching guides with discussion questions, activity ideas, and a parent letter. Both videos teach critical

behaviors needed by young pedestrians to avoid dangerous situations. "Wary Walker" is a pedestrian safety school-based curriculum consisting of five classroom lessons, an outdoor field day, and a two-part parent/child activity workbook to be completed at home by the family. The focus is on teaching elementary school children basic pedestrian skills emphasizing street crossing while encouraging independent thinking, making safe choices, and evaluating themselves and others as pedestrians using a variety of props including instructional videos, worksheets, cartoon characters, a pedestrian safety rap song, and a Map to Safety. (Can be conducted in conjunction with schools.)

• School Crossing Guard Program

Adult school crossing guard programs have been developed to help safely expedite the movement of children to and from school by creating gaps in traffic. Crossing guards act in identified high risk intersections separately from school student safety patrols who assist students on school property. The crossing guard program is used in cities of all sizes and has become an integral part of school crossing protection programs across the country. Most crossing guard programs are organized and administered by local law enforcement units in cooperation and coordination with school authorities and require strict reliability of participants. State or local legislation may establish procedures and guidelines pertaining to school crossing guards which could include minimum age, education requirements, and uniform attire for guards. Training materials available through the American Automobile Association (AAA) and other sources may be used if standard training materials are not already established in a particular locality. (Can be conducted in conjunction with law enforcement and schools. Note that this project can only be implemented if it will not displace other employees.)

Bicycle Safety

• Bicycle Helmet Program

Despite the effectiveness of wearing helmets in preventing death and serious head injury, only a very small percentage of cyclists wear them for many reasons including misperceptions of helmets being uncool, ugly, too hot, and too heavy. Purchasing bicycle helmets may also be cost prohibitive to consumers not fully aware of their potential life-saving benefits. Bicycle videos promoting safe cycling through

increased use of helmets and videos demonstrating the proper fit of helmets are available through the American Academy of Pediatrics and other organizations. Potential program activities could include bicycle helmet demonstrations allowing first-hand helmet use, the distribution of bicycle helmet discount coupons obtained with the cooperation of local merchants or manufacturers, and the development and distribution of local shopping guides specifying area stores with model availability, sizes, and price lists. (Can be conducted in conjunction with parent and teacher organizations, civic groups, and schools.)

• Bicycle Rodeo

Bicycle rodeos are half or full-day events requiring fairly extensive planning and design which teach children of all ages how to ride their bikes safely and correctly. The rodeo allows participants to ride their bicycles while they practice and improve bicycle safety skills and learn about traffic situations while rotating through several activity stations. Some of the skills are also transferable to situations in which children are pedestrians. Complete guides for conducting rodeos are available for assistance. (Can be conducted in conjunction with law enforcement, schools, and youth centers.)

Safety Belts

• School Safety Belt Use Program

Young drivers and passengers have the lowest safety belt use rates of any age group. Their reasons often include not wanting to wrinkle their clothes, not wanting to appear uncool or wimpy in front of friends, and include myths such as "I could never be involved in a crash," "I'd rather be thrown clear from the car in a crash," and "I don't want to be trapped if the car catches on fire." Safety belt use programs can be designed to correct the misperceptions with facts and include activities that will raise awareness about the importance of wearing a safety belt properly every time a person rides in a motor vehicle. Activities can include taking children out to a car to instruct them how to properly buckle up in both the front and back seats and allowing them to practice, conducting a safety belt speed challenge to show that buckling up only takes a couple of seconds that could save a life, demonstrating the effectiveness of safety belts through a carefully designed egg experiment, taking an observational safety belt use survey of people arriving and departing school property, and

having students sign pledge cards to wear safety belts and encourage others to do the same. (Can be conducted in conjunction with schools and student clubs.)

Alcohol

• Teen Courts

Teen courts represent an intervention approach that employs the dramatic role of peer influence responding to youth problem behaviors often prompted by peer pressure, such as underage drinking, impaired driving, and other antisocial behaviors. Teen courts could supplement the traditional juvenile justice system in which volunteers (teens or young adults) could work with the local justice system to implement and administer a teen court system, serving as bailiffs, clerks, prosecuting and defense attorneys, and, in some cases, judges. Volunteers would also coordinate recruiting youth jurors from the community to sit on juries for individual cases. Information on how to set up a teen court is available from NHTSA. On the whole, teen courts help provide a diversion from the juvenile justice system, appear to reduce recidivism, and capitalize on peer influence to alleviate illegal behaviors. Additional alcohol-awareness activism for volunteers could include efforts to utilize youth as court room monitors to collect data and make recommendations to solve problems, conduct intergenerational issue presentations, and use impaired driving victim impact panels in presentations. (Can be conducted in conjunction with juvenile justice system, schools, law enforcement, and Mothers Against Drunk Driving.)

c. Volunteer Participant and Program Requirements. Due to the highly technical nature of the program and the limitation of available funds, this project is designed as a pilot program to train the equivalent of 10 full-time youth or young adult volunteers. Volunteers should be between the ages of 16 and 25, with a high school diploma or its equivalent, working in a single city or community. The volunteers should be proficient speaking the dominant language or languages of the area. Volunteers should be divided into two teams of five with two volunteers designated as team leaders. Team leaders should be full-time volunteers with a college diploma or some college experience. Preference will be given to volunteers, especially team leaders, with experience or interest in education, public safety, public health, recreation, physical education,

marketing, public relations, journalism, or media relations.

Eligible applicants will be required to demonstrate, through a letter of cooperation, the support of the traffic division of the local law enforcement agency for the implementation of the planned program. Additional support organizations might include: Highway safety agencies, emergency medical services units, motor vehicle administration, educational institutions, public health officials, and private industry representatives. The applicant shall also provide both the preliminary community assessment and the educational activity plan as part of the application. The program shall incorporate evaluation measurements to determine the level of success of the program activities.

2.6.2 Goals and Priorities

This program addresses the following national service priorities:

a. **Human Needs.**—Motor vehicle crashes cost the nation nearly \$14 billion in health care expenditures each year. With each serious injury prevented saving approximately \$35,000 in health care costs, as much as \$1 billion could be saved nationally through the prevention of traffic deaths and injuries. U.S. Transportation Secretary Federico Peña has called for stepped-up national efforts to reduce the proportion of alcohol involved traffic crashes to 43 percent and increase safety belt use to 75 percent by 1997 as part of President Clinton's health care initiative and year 2000 objectives.

b. **Education.**—Traffic safety education for children and youth ages 3 through 13 (prekindergarten through grade 8) aims to increase school readiness and further early childhood development. Before children are able to learn in school, they must be able to arrive at school safely each day. With traffic incidents as the leading cause of death and disability for school age children, they face a risk every day in their transport to and from school and other activities.

c. **Public Safety.**—Through better education and peer mentoring, traffic-related crimes can be reduced.

2.6.3 Anticipated Outcomes and Results

Young adult volunteers as mentors can make a constructive contribution to a national and community traffic safety problem while gaining practical learning experiences. The objective of these efforts is to improve the quality of life for young citizens by raising public awareness, reducing the severity and frequency of traffic safety problems, and

providing highway safety experiences which could lead to related future career field choices. This program will allow volunteers to work cooperatively with law enforcement and other organizations within a designated community developing a positive, visible, outcome-oriented relationship to decrease death and injury due to motor vehicle crashes. The educational program will expose young children to appropriate behaviors which can become habits they will model to others and will practice to help keep themselves and others safe now and in the future. If the program proves beneficial to the community and agency, future expansion of a refined program with an increased number of participants may be explored.

2.6.4 Funding

Funding available from DOT for program development, implementation, and administration is \$50,000. Application will be made to the National Service Corporation for any additional program costs, living allowance, education awards, health insurance, and child care costs as appropriate for participating volunteers. It is anticipated that direct funding of the Youth Traffic Safety Education Programs may be available from DOT in future years.

2.2.5 DOT Agency Involvement and Expertise Available

NHTSA will act as the project monitor working directly with the grantee to develop and implement a traffic safety training program through the local law enforcement department and facilitate additional state and community contacts with other organizations interested in and working on similar efforts. NHTSA may also provide access to additional materials, training, technical assistance, and data as appropriate. In addition to its headquarters staff, NHTSA has ten regional offices that work directly with the states to implement highway safety programs to reduce motor vehicle crashes including related fatalities, injuries, and economic loss.

2.2.6 DOT Contact

Ms. Susan Gorcowski, National Highway Traffic Safety Administration, Office of Occupant Protection, 400 7th Street, SW., NTS-11, Washington, DC 20590, (202) 366-2712/FAX (202) 366-2766.

3. Submission of Proposals

3.1 Content and Format for Proposals

Each proposal submitted to DOT must be in the format and must contain the

information set forth in the application form attached as Appendix A to this RFP. DOT may need to seek additional information from applicants as a result of changes in the proposed regulations issued by the National Service Corporation or to more fully clarify and define specific proposals.

3.2 Address; Number of Copies; Deadline for Submission

Any eligible organization (as defined in Section 1.4.1 of this RFP) may submit one or more proposals for consideration by DOT. Each proposal may involve activities under a single DOT Program or may combine related activities under more than one of the DOT Programs set forth in Section 2 of this RFP.

Applications should be double sided, double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus two bound copies, should be submitted. All pages should be numbered and the specific DOT Program or Programs to be addressed should be identified at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission.

Proposals should be submitted to: Brenda L. Harris, Office of Small and Disadvantaged Business Utilization, Department of Transportation, 400 7th Street S.W., Room 9414, Washington, D.C. 20590.

Proposals must be received at DOT no later than March 23, 1994, 4 p.m. EST.

3.3 Coordination With State Community Service Plan

The proposed regulations issued under the National and Community Service Trust Act require that all community service projects be coordinated with their state community service plan in order to assure that the projects build on existing programs and that they are not duplicative.

Any service organization submitting a proposal for a DOT program must show evidence that the proposal has been reviewed and approved by the community service commission for the state(s) in which the project will be performed.

In addition, DOT requests that each proposal include a preliminary evaluation by the state on national and community service for the state in which the project is to be performed (the "state commission"). An evaluation form to be completed by the state commission is included as "Attachment 6" to the attached application form. The evaluation by the state commissions are

not mandatory and are not binding on DOT. However, DOT believes that any information from the state commissions would be extremely helpful in our review and, therefore, we strongly encourage all applicants to obtain an evaluation from the state commission.

4. Selection Criteria

4.1 General Criteria

The following criteria and weights will be used by DOT to select national and community service proposals:

1. Need (10%).

DOT will take into consideration the extent to which both the overall program and its particular projects will address needs important to the community and be conducted in areas of need as defined in the National and Community Service Trust Act. These areas of need are:

a. Communities designated by the Federal government or states as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people.

b. Areas that are environmentally distressed.

c. Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation.

d. Areas adversely affected by reduction in Defense spending or the closure or realignment of military installations.

e. Areas that have unemployment rates greater than the national average unemployment for the most recent 12 months for which satisfactory data are available.

2. Program Design (40%).

DOT will consider the quality of the program based on: the potential impact of using proposed national service participants to meet the community needs being addressed; inclusion of a clear and compelling mission statement; identification of specific objectives and indicators of success; development of an effective recruitment, selection, and training plan for staff and participants, including recruitment of participants and staff from the community to be served; ability to provide appropriate supervision, counseling, service-learning and other education opportunities, and outplacement to participants; the involvement of participants and community residents in the design, operation, and leadership of the program; development of a sound plan for continually improving the program based on self-assessment and

monitoring of community and participant satisfaction with work performed; inclusion of an appropriate organization and staffing plan; and the program's cost-effectiveness in achieving identified outcomes, including per participant cost.

3. Organizational Capacity (30%).

DOT will consider organizational capacity based on: the quality of the leadership of the national service program; the past performance of the organization or program; the organization's connection to the community; the extent to which the program builds on existing programs; evidence of strong and broad-based community support for the program; and availability of additional funding sources for the program.

An application proposing the replication of an existing program will also be evaluated based on the success of the program in its original site, including the results of any evaluation undertaken; the program's analysis of the strengths and weaknesses of the original program; reasons for selecting the replication site and discussion of adjustments needed for adaptation to a new site; and the qualification of the leaders of the program at the new site.

4. Sustainability (10%).

DOT will consider the ability of the program to sustain itself beyond the period of support from DOT or from the National Service Corporation as evidenced by strong and broad-based community support; presence of multiple or private funding sources; and cost-effectiveness. Additional consideration will be given to programs that significantly exceed the regional match with non-Federal funds.

5. Innovation and Replication (10%).

DOT will consider the degree to which needs coincide to program design, the innovative aspects of the program, and the appropriateness of replicating the program in the future.

4.2 Priority Consideration

In addition to the criteria on which individual applications will be rated, DOT may give priority consideration to all or some of the following issues:

1. *Early Start Date.* DOT is interested in programs that will be able to start up quickly after completing an appropriate planning phase (ideally by September of 1994).

2. *Participant Diversity.*

DOT seeks a broadly diverse participant pool that includes a large representation of young adults; a mixture of individuals who have not attended college and those with college education experience; approximately equal numbers of men and women;

individuals of all races and ethnicities; and individuals with physical and cognitive disabilities.

3. *Location.*

While DOT will attempt to assure that programs funded are geographically diverse, at the same time, for the first year of funding, DOT may give priority consideration to fund programs in any or all of the areas of greatest need as determined by criteria set forth in the regulations issued under the National and Community Service Trust Act (see "Need" in Section 4.1. "General Criteria," of this RFP).

4. *Matching Funds in Excess of Requirements.* Priority consideration will be given to any proposals that provide funding from other sources in excess of the required match amounts (see Section 5.3, "Matching Funds," in this RFP).

5. *Overall Compliance and Consistency with the National and Community Service Trust Act and related regulations and all other applicable laws and regulations.*

6. *Ability to Achieve Transportation-Related Goals.*

DOT is particularly interested in programs that will address one or more of the following transportation-related goals:

a. Tying America together through an effective intermodal transportation system;

b. Promoting safe and secure transportation;

c. Actively enhancing our environment through wise transportation decisions;

d. Putting people first in our transportation system by making it relevant and accessible to users.

4.3 Priorities for Specific DOT Programs

For each specific DOT Program, priority consideration will be given for proposals with the following characteristics:

a. *Priorities for Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities Program:*

1. Proposal's balance between work experience, basic and life skills, education, training, and support services.

2. Ability to adequately oversee and supervise crews of youths.

3. Demonstrated ability to network with other organizations and proposed coordination with and use of other available organizational resources.

4. Demonstration of how participation will address currently unmet needs in community.

b. *Priorities for Transit Ambassadors Program:*

1. Ability to deal with the elderly, disabled, and Head-Start populations;
 2. Ability to deal with minor emergency medical situations, or to provide training in this area;
 3. Knowledge of the types of transportation and the schedules available in the community, such as bus, subway, light rail, and taxis;
 4. Procedures for summoning (such as a two-way communication) emergency medical services and police for assistance;
 5. Understanding of the community lifestyles;
 6. Knowledge of the layout of the community being served, for example, major intersections, street lights, and traffic patterns.
 7. Knowledge of the location of destination points such as medical facilities, supermarkets, recreational facilities, etc.
- c. Priorities for Operation Lifesaver Program:
1. Knowledge of railroad and road network in geographical areas.
 2. Demonstrated ability to network with other organizations, including local law enforcement units and proposed coordination and collaboration with other organizations.
 3. Ability to coordinate and implement a training and certification program, along with local law enforcement departments, and appropriate education departments.
 4. Feasibility of the proposed approach or work plan and the extent to which the project addresses traffic safety objectives.
 5. Administrative capabilities and staff expertise required to successfully complete the proposed project.
 6. Past and present organizational experience in the performance of similar projects.
 7. Ability to provide sound evaluative information.
- d. Priorities for Hazardous Materials Transportation Assistance Program:
1. Feasibility and utility of work program planned for National Service participants.
 2. Ability of program to assist local agencies responsible for hazardous materials planning and training.
 3. Ability of program to address the National Service priorities of Environment and Education, and the DOT Strategic Goals of promoting safe and secure transportation and enhancing the environment through wise transportation decisions.
 4. Ability of program to address currently unmet hazardous materials needs.
 5. Demonstrated strength of current state or local planning and response

structure to effectively use national service participation to its full advantage.

e. Priorities for Youth Traffic Safety Education Programs:

1. Knowledge of basic traffic safety issues and status of related state and community efforts within designated locality.
2. Demonstrated ability to network with other organizations including local law enforcement units and proposed coordination and collaboration with other organizations.
3. Ability to coordinate and implement a training and certification program along with local law enforcement departments.

4.4 *Preferences Applying to Urban Youth Corps Programs*

Preferences will be given to the following types of projects if urban youth corps are used to implement the projects:

- a. Projects that will provide long-term public benefits
- b. Projects that will instill in the participant a work ethic and a sense of public responsibility.
- c. Projects that will be labor intensive.
- d. Projects that can be planned and initiated promptly.
- e. Projects that will provide academic, experiential, or community education opportunities.

5. Funding

5.1 *Direct Funding from DOT*

Funds appropriated to DOT agencies will be available to partially finance initial national and community service projects in some of the five DOT programs in fiscal year 1994 (see individual discussions on funding in the individual DOT Program descriptions set forth in Section 2). These funds also may be allocated to finance portions of projects involving activities in more than one program area.

Appropriations for fiscal year 1995, which begins October 1, 1994, are not expected to be enacted until September 1994, and it is not possible to verify the availability of follow-on funding at this time. However, it is anticipated that direct funding of all DOT national and community service Programs identified in this RFP may be available from DOT in future years.

Depending on the nature of the proposal and the DOT Program to be implemented, it may be necessary for DOT funding to be given to State or local agencies, which will in turn pass the funding through to the service organization implementing the projects.

DOT officials will advise and assist a service organization in arranging such coordination if its proposal is selected, and this coordination should not be viewed as an obstacle to the submission of an application at this time.

Other restrictions on the use of Federal funds are discussed in Section 5.4 below.

5.2 *National Service Corporation Funding*

DOT will submit a multi-program application containing all of the selected proposals and related partnership agreements to the National Service Corporation in order to request funding for the remaining program costs that cannot be covered by direct funding from DOT and matching funds from the service organization. Any funding provided by the National Service Corporation will come from the funds earmarked for Federal agencies. Since there is no guarantee that DOT will receive funding from the National Service Corporation, a proposal accepted by DOT ultimately may not be fully funded or funded at all if DOT's request for funding from the National Service Corporation is not granted.

5.3 *Matching Funds*

Each selected applicant must provide matching funds equal to at least 25% of the cost of the program. Where authorized, other federal, state or local sources (not including funds provided directly by DOT or the National Service Corporation) may be counted as matching funds. In-kind contributions, including facilities, equipment, goods or services, may also be counted as matching funds. (In-kind contributions to be used as a match in more than one program must be divided between the programs in proportion to use.) Note that a preference will be given to proposals that provide the match through non-federal sources and matches that exceed the minimum match requirement.

5.4 *Restrictions on Use of Federal and Corporation Funds*

a. Restrictions on Benefits

No more than 85% of the living stipend for participants may be paid from federal sources (including funds received from the National Service Corporation and any other federal funds received, including DOT funds). No more than 85% of the costs of the most affordable health care policy that provides minimum benefits may be paid from with National Service Corporation funds. Payment of the 15% of the living stipend from non-federal sources and

15% of health care benefits from non-Corporation sources will be included as part of the overall match for the program.

b. Restrictions on Administrative Costs

Not more than 5% of the National Service Corporation funds may be used to pay for administrative costs. Administrative costs are costs associated with the overall administration of the program. Such costs include the following: (1) Indirect costs (i.e., costs identified with two or more cost objectives but not identified with a particular cost objective) as described in applicable provisions of Office of Management and Budget Circulars that relate to indirect costs; (2) costs for financial, accounting, or contracting functions; (3) costs for insurance that protects the entity that operates the program; and (4) costs related to the evaluation of the program; and (5) costs for salaries and benefits of staff who recruit, train, place, or supervise participants.

Particular costs such as those associated with staff who perform both administrative and program functions may be prorated between administrative costs and costs directly related to program operations.

c. Restrictions on Equipment Purchases.

Not more than 10% of National Service Corporation funds may be used to purchase equipment to be used for programmatic operation.

d. Compliance with OMB Circulars

Programs must comply with all applicable Office of Management and Budget circulars for grant management, including Circulars A-133, A-128 and A-110, and with all applicable Federal, State and local laws.

Appendix A—Application Form for Proposals for the Department of Transportation National and Community Service Program

Proposals for the DOT National and Community Service Program should contain all of the following information and should be submitted in the following format. DOT may need to seek additional information from applicants as a result of changes in the proposed regulations issued by the National Service Corporation or to more fully clarify and define specific proposals.

Applications should be double sided, double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus two bound copies, should be submitted. All pages should be numbered and the specific DOT Program or Programs to be addressed should be identified at the top of each page. All documentation, attachments, or other

information pertinent to the application should be included in a single submission, forwarded directly to the address listed below. Proposals should be submitted to: Brenda L. Harris, Office of Small and Disadvantaged Business Utilization, Department of Transportation, 400 7th Street SW., room 9410, Washington, DC 20590.

Proposals must be received by DOT no later than March 23, 1994, 4 p.m. EST.

1. *Title page* (to be completed on the attached form identified as "Attachment 1"), along with a Table of Contents for the proposal.

2. *Application summary page*, providing a one page overview of the following:

a. Identification of which of the five DOT Programs the applicant intends to implement.

b. The specific needs to be met, particularly as they relate to the national priorities identified for the individual DOT Program(s).

c. Key elements of the program design.

d. Recruitment goals, including the percentage of participants (if any) to be drawn from the national recruitment system established by the National Service Corporation.

e. Description of the administering organization and identification of primary program partners.

3. *Program mission statement and annual objectives* (to be completed on the attached form identified as "Attachment 2"). The National Service Corporation has identified three goals of National Service:

a. *Community service.* Meeting community needs by getting things done through direct and demonstrable service in education, public safety, human needs, and the environment.

b. *Participant development.* Positively impacting participants by developing leadership skills, fostering active, productive citizenship, and enhancing educational opportunities.

c. *Community building.* Strengthening communities by bringing together both institutions and individuals to cooperate in affecting lasting and constructive change.

Each applicant will need to articulate a program mission statement that expresses the program's vision and must specify primary objectives to be achieved with respect to each of these three goals. (Applicants should complete three separate forms to address each goal.) More specific directions can be found on the back of the form.

4. *Program narrative.* In approximately 10 pages, organized and labeled in the stipulated categories, provide the following information in a narrative form with as much specificity as possible.

a. *DOT program to be addressed.* Identify the DOT Program or Programs to be implemented (see section 2 of the RFP).

b. *Needs to be met and appropriateness for national service.* Identify the nature of the specific needs to be met by the proposed national service program, including how and why these needs are appropriately or uniquely addressed by a national service program.

(i) Needs

—Identify the specific needs that the program will address.
—Explain how these needs relate to the priorities and goals of the selected DOT Program.

(ii) Process

—Describe the process by which the needs were identified.
—Explain who was involved in identifying the needs.
—Explain the extent to which the residents of the community to be served were involved in the needs assessment.

c. *Programs design.* Describe the concept and design for the program, including the nature of specific service activities to be performed by participants and how these activities address the identified needs and meet the program objectives.

(i) Program concept.

—Explain the basic concept of the program.
—Describe how the program will be structured.
—Describe where it will be located.
—Describe any institutional or programmatic collaborations or partnerships that will be involved in operating the program, including the extent to which the program builds on existing infrastructure.
—Explain how the program will be cost-effective and how participants will be fully and effectively utilized.

(ii) Service activities.

—Describe the projects or activities that the participants will conduct.
—Explain how these projects or activities will result in direct, measurable service that addresses the identified needs.
—Describe a typical week in the life of program participants, giving concrete examples of the types of activities or duties participants will perform. (Please note that projects must do more than just keep participants busy, offer temporary solutions, or provide free labor to organizations.)
—State the length of time required to complete the projects or activities (must be at least one year and cannot be more than three years)
—State an estimated date when the activities could begin. (Note that DOT will inform applicants as to whether they have been selected to receive DOT funding and/or to be included in DOT's application to the National Service Corporation prior to April 15, 1994, and anticipates that notification of awards of National Service Corporation funds will occur in May or June of 1994.)

(iii) Relation to need.

—Explain how the service activities respond to the identified needs.

(iv) Participant training and support.

—Explain how participants will be trained, supported, or otherwise prepared for their assignments.
—Describe the key elements of the participant training, in-service education, or service-learning curriculum employed to improve participants' skills; prepare them for placement, and foster positive civic values, and promote an ongoing interest in community service. (Note that the program

must, in a non-partisan manner, encourage participants to vote.)

(v) *Participant placement and supervision.*

- Explain how participants will be placed (in teams or individually) and matched with assignments.
- Describe how service sponsors or host-sites will be oriented and prepared for that placement.
- Explain how participants will be supervised.
- Outline the standards of conduct for participants (all community and national service programs will be required to establish a standard of conduct to be stringently enforced.)

(vi) *Nondisplacement.*

- Explain what steps have been taken to ensure that no displacement or supplantation of other employees will occur as a result of the project, or the project will not result in other employees not being hired or not receiving promotions. Include a summary of any discussions or contacts with labor organizations in related fields of work. The written concurrence of any local labor organization representing employees engaged in the same or substantially similar work must be obtained.

d. *Participant profile, recruitment strategy, and benefits.* Provide a description of the total number (full- or part-time) of participants to be recruited in the program, including the expected characteristics, attributes or skills of participants. Describe the benefits these participants will receive.

(i) *Number and characteristics of participants.*

- State the expected number and characteristics of participants, including racial or ethnic background, socio-economic status, gender, and educational attainment.
- If the program will recruit fewer than 20 participants, please explain why this smaller number is appropriate to the purpose and design of the program.

(ii) *Participant recruitment.*

- Explain the methods that will be used or the strategies undertaken to recruit participants.
- Explain what measures will be taken to recruit diverse participants based on economic background, race, ethnicity, age, gender, marital status, education levels, and disabilities.

(iii) *Participant selection.*

- Explain the methods or strategy that you will use to select participants.
- Describe selection criteria, including minimum qualifications for participants.
- Identify any specialized skills that participants will be required to possess in order to carry out service assignments.

(iv) *Participant benefits.*

- Identify the benefits that the participants will receive. (Note that all participants must receive health benefits and, if needed, child care.)
- Describe the amount of the living allowance provided to each participant. (Note that the living allowance must be at

least \$7,440 for fiscal year 1994 for full-time participants and must be at least \$3,960 for each part-time participant, and cannot exceed twice these amounts.)

- Describe the amount of the educational awards to be provided to each participant. (Note that proposals should provide for participants to receive educational awards (either from the National Service Corporation or from some other source) in an amount of \$4,725 for one full-time term of service or \$2,360 for one part-time term of service, for up to two terms of service.)
- Describe how national service educational awards will be apportioned among program participants if not provided to all participants. (In general, the distribution should treat equally all participants doing the same or essentially similar work. Distribution based solely on economic needs of participants is not encouraged.)
- Describe any alternative post-service benefits that might be used (e.g., tuition credits at an institution of higher education or transition assistance).

(v) *Participant welfare.*

- Describe what measures will be taken to ensure the safety and well-being of participants while working on service projects.

e. *Internal Evaluation and Monitoring Activities.* Describe internal evaluation and monitoring activities.

(i) *Internal evaluation and monitoring.*

- Explain how you will monitor progress toward your program objectives (Note that monitoring approaches such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and customer participant surveys are encouraged).
- Explain how you will assess, on an ongoing basis, the quality of services and the satisfaction of both the participants and the individuals or institutions served.
- Explain how you will collect required descriptive and demographic data (e.g., reporting requirements will include data regarding the characteristics of participants and data regarding services to be conducted in areas of economic or environmental distress.)

(ii) *Previous evaluations.*

- If your proposal is to replicate an existing program in other areas, state whether the original program has been evaluated.
- Explain who conducted the evaluation and describe the results of the evaluation regarding community and participant impact.
- If the original program has not been evaluated, explain what evidence exists of successful performance or of a track record to demonstrate its appropriateness for replication or expansion.

f. *Institutional and personnel information.* Provide a description of the administering organization's past experience and institutional capacity to operate or coordinate a program comparable to the program(s) proposed, including the organization's ability to recruit and train staff.

(i) *Principal staff.*

- Describe the background, experience and major accomplishments of the program

director and principal staff, and how their qualifications relate to their duties in and responsibilities for the proposed programs. (Attach resumes if appropriate.)

- If the staff has not yet been hired, explain what qualifications the candidates must fulfill.
- Give a name, address, and telephone number of a contact person for the program who can address any questions about the program.

(ii) *Training.*

Describe what kind of orientation and training, if any, will be provided for the staff.

(iii) *Institutional strengths.*

Explain what institutional resources or expertise the administering organization(s) provide that will contribute to the overall success of the program.

g. *Achievement of Transportation Goals.*

- (i) *DOT community service goals and objectives.*
Explain how the program will meet any of the following transportation-related community service goals:

- Tie America together through an effective intermodal transportation system;
- Promote safe and secure transportation;
- Actively enhance our environment through wise transportation decisions;
- Put people first in our transportation system by making it relevant and accessible to users.

(ii) *Consultation with State DOTs and local MPOs.*

- Consultation with your local Metropolitan Planning Organization ("MPO") (or State Department of Transportation if you have no local MPO) is highly recommended. Explain in what manner you have consulted with the State DOT and local MPO in developing your proposal. (For information concerning the contact person for your local Metropolitan Planning Organization, please call Ms. Susan Gaskins at 202-366-5781.)
- Explain in what way you will involve State DOTs and local MPOs and/or keep them informed as the program progresses.
- For projects to be performed under the "Rehabilitation, Reclamation, and Beautification of Transportation-Related Facilities" Program, explain what coordination has been conducted with the organization having authority over the relevant transportation facility (such as the State Department of Transportation, the local MPO, the transit authority, etc.) to determine that the project is acceptable.

(iii) *DOT expertise.*

Explain to what extent you will use expertise or rely on information provided by the Federal DOT, your State DOT, or other local transportation agency.

5. *Budget form page and budget narrative.*

Complete the provided budget form identified as "Attachment 3." A separate budget form must be completed for each proposal. A budget narrative should be attached to the form with containing any necessary explanatory information. Applicants must identify either on the form or in an attached narrative the source of its matching funds and whether it has a firm commitment for those funds.

If activities under two or more DOT Programs are combined in a single proposal, separate budget forms must be completed to show program costs for each DOT Program, along with a separate aggregate budget form for the entire proposal.

6. *Assurances Signature Form*. Complete the attached form identified as "Attachment 4."

7. *Certification Signature Form*. Complete the attached form identified as "Attachment 5."

8. *State Coordination and Evaluation Form*.

The proposed regulations issued under the National and Community Service Trust Act require that all community service projects be coordinated with their state community service plan in order to assure that the

projects are building on existing programs and that they are not duplicative. Any community service organization submitting a proposal for a DOT Program must show evidence that the proposal has been reviewed and approved by the community service commission for the state in which it is located. Evidence of coordination can be shown by completion of the attached evaluation form (identified as "Attachment 6") by the state community service commission, by written correspondence from the state community service commission, or by documentation of a meeting with the state community service commission.

In addition, DOT also asks that each proposal include a preliminary evaluation of the project by the state commission on national and community service for the state

in which the project will be performed (the "state commission"). An evaluation form to be completed by the state commission is attached ("Attachment 6"). Evaluations by the state commissions are optional and are not binding on DOT. However, DOT believes that any information from the state commissions would be extremely helpful in our review, and therefore strongly encourages all applicants to obtain an evaluation from their state commission.

9. *Standard Form 424* (Request for Federal Assistance). Complete the attached Standard Form 424 identified as "Attachment 7."

Please be sure that all forms have been signed by an authorized official who can legally represent the organization.

BILLING CODE 4910-62-P

<p>7. Area(s) to be Served: _____ _____ _____ <input type="radio"/>Urban <input type="radio"/> or <input type="radio"/> Suburban <input type="radio"/> or <input type="radio"/> Rural</p>	<p>8. Participants: # of Full-time Participants _____ # of Part-time Participants _____ # of Full-time Participants Needing Educational Awards _____ # of Part-time Participants Needing Educational Awards _____ # of Unfunded Participants _____ # of Participants Needing Child Care _____</p>
<p>9. Budget: DOT and Corporation Funds Requested: YR 1 _____ YR 2 _____ YR 3 _____ Total Budget Amount: YR 1 _____ YR 2 _____ YR 3 _____</p>	<p>10. Program operates in an area of need as identified by the Corporation: <input type="radio"/>Yes <input type="radio"/> or <input type="radio"/> No Which one? _____</p>
<p>11. Project Duration Start Date _____ End Date _____ Number of Program Terms _____</p>	

12. **Certification:**

The applicant certifies to the best of his/her knowledge and belief that the data in this application are true and correct and that the filing of the application has been duly authorized by the governing body of the applicant and that the applicant will comply with the assurances required of applicants if the assistance is approved.

Name: _____ Signature: _____
 Title: _____ Phone: _____ Date: _____

Applicant Name: _____
 Program Name: _____

Mission Statement and Annual Objectives

(Directions on reverse side)

What is your program's mission statement?

Each application must include statements of primary objectives in three areas: Community, Community Building, and Participant Development. Please use a separate copy of this form to describe your objectives in each area (i.e., Community Service, Community Building, Participant Development). In the case of community services, also use a separate form for each priority area, if you are working on more than one (i.e. education, environment, etc.).

This page applies to: Community Service

- Education
- Environment
- Participant Development
- Community Building

- Public Safety
- Human Needs

What are your annual objectives in the area checked above? List your three primary objectives.

A.

B.

C.

DIRECTIONS

The Mission Statement should express the program's vision with regard to the three key goals of national service -- meeting community needs, strengthening communities, and developing participant citizenship and skills. Here you should indicate the ultimate impacts that you wish to achieve -- "reduce violence in schools," "improve the academic achievement of young people," "develop more skilled and more dedicated citizens," and the like. Please be aware that to demonstrate the impact of national service grants, the Corporation may assess your program's success in achieving its mission, but you will not be responsible for this type of evaluation. Your mission statement should therefore be geared to the most ambitious goals you believe that you can achieve, even if you do not believe you can measure them on your own.

Your Annual Objectives should be derived from your mission statement and should reflect as directly as possible your desired impacts. You will be responsible for assessing your success in achieving your annual objectives. These should be quantitative wherever possible and, in all cases, demonstrable. Each objective should address only one activity, include only one result, and provide at least one indicator of quality or customer satisfaction. For example: "To assist 500 homebound elderly to live independently with 80% of the involved elderly indicating that they could not live independently without this assistance."

To the extent possible, programs should develop outcome objectives that indicate real changes in the performance or activities of communities or individuals: in a tutoring program, level of improved academic achievement; in a safe schools program, percent of reduction in school violence; in a homelessness program, number of transitions to permanent housing. The Corporation recognizes, however, that impacts are often hard to measure and difficult to assign specifically to one intervention. In these cases, other indicators of success, such as staff satisfaction, may be more appropriate. The Corporation encourages programs to develop innovative ways to demonstrate impacts, such as customer surveys and before/after videotapes, along with the more traditional measures such as test scores, graduation rates, and staff satisfaction rates. As a rule, programs should seek to establish the most ambitious objectives whose achievement they will be able to clearly demonstrate.

Example objectives follow. They represent only a suggested form for such objectives; you are encouraged to be both creative and realistic as you design objectives for your own program.

Community Impact Examples

Education

- To provide an average of five hours of tutoring weekly to each of 200 junior high school students, with 50% improved test performance and 80% teacher satisfaction.

Human Services

- To rehabilitate 20 low-income housing units, achieving "significant improvement" ratings from 85% of neighborhood residents polled after project completion.

Environment

- To construct 10 miles of hiking trails, obtaining 85% "excellent" ratings on the trails from trail users surveyed after completion.

Public Safety

- To provide 2000 hours of violence prevention patrols in 10 high-violence schools, resulting in a 33% decline in violence.

Community-Building Examples

- To form partnerships with 5 companies as reflected by co-sponsored activities and substantial involvement by company personnel.

- To build program capacity by forming partnerships with 3 community-based organizations as demonstrated by co-sponsored projects and use of shared resources.

Participant Development Examples

- To develop a sustained commitment to education in 60% of participants, as demonstrated by continued work in the field of education during the next year.

- To improve citizenship of 80% of participants, as evidenced by continued commitment to improving their community.

ATTACHMENT 3

National Service Programs Budget Form

o Aggregate
o Program

Rehabilitation, reclamation and beautification of transportation-related facilities

Please attach a Budget Narrative to this page.

	Total Total Program Costs	Match Other Federal/ State/Local/ Private Funds	DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs			
• Living Allowance (may not exceed 85% of CNCS funds)			
• Education Awards (to be held in trust by the CNCS)			
• Health Care (may not exceed 85% of CNCS funds)			
• Child Care			
• Training and Education			
• Uniforms			
• FICA and Workers' Compensation			
• Other (please specify in Budget Narrative)			
Subtotal			
B. Staff			
• Salaries			
• Benefits			
• Training			
• Other (please specify in Budget Narrative)			
Subtotal			
C. Operational			
• Travel/Transportation			
• Supplies			
• Equipment			
• Other (please specify in Budget Narrative)			
Subtotal			
D. Internal Evaluation/Monitoring			
E. Administration (may not exceed 5% of Corporation funds)			
TOTAL (in dollar amounts)	\$ _____	= _____	= _____
Percentages (100% - Match% = CNCS + DOT%)	%	%	100%

ATTACHMENT 3

National Service Programs Budget Form

o Aggregate

o Program

Transportation Ambassadors - accessing transportation services for elderly disabled, and children in Head Start programs

Please attach a Budget Narrative to this page.

	Total Program Costs	Match Other Federal/ State/Local/ Private Funds	DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs			
• Living Allowance (may not exceed 85% of CNCS funds)	_____	_____	_____
• Education Awards (to be held in trust by the CNCS)	_____	_____	_____
• Health Care (may not exceed 85% of CNCS funds)	_____	_____	_____
• Child Care	_____	_____	_____
• Training and Education	_____	_____	_____
• Uniforms	_____	_____	_____
• FICA and Workers' Compensation	_____	_____	_____
• Other (please specify in Budget Narrative)	_____	_____	_____
Subtotal	_____	_____	_____
B. Staff			
• Salaries	_____	_____	_____
• Benefits	_____	_____	_____
• Training	_____	_____	_____
• Other (please specify in Budget Narrative)	_____	_____	_____
Subtotal	_____	_____	_____
C. Operational			
• Travel/Transportation	_____	_____	_____
• Supplies	_____	_____	_____
• Equipment	_____	_____	_____
• Other (please specify in Budget Narrative)	_____	_____	_____
Subtotal	_____	_____	_____
D. Internal Evaluation/Monitoring			
E. Administration (may not exceed 5% of Corporation funds)			
TOTAL (in dollar amounts)	\$ _____	_____	_____
Percentages (100% - Match% = CNCS + DOT%)	_____ %	_____ %	100%

ATTACHMENT 3

National Service Programs Budget Form

oAggregate

oProgram

Operation Lifesaver - making rail/highway crossings safe

Please attach a Budget Narrative to this page.

	Total Total Program Costs	Match Other Federal/ State/Local/ Private Funds	DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs			
• Living Allowance (may not exceed 85% of CNCS funds)			
• Education Awards (to be held in trust by the CNCS)			
• Health Care (may not exceed 85% of CNCS funds)			
• Child Care			
• Training and Education			
• Uniforms			
• FICA and Workers' Compensation			
• Other (please specify in Budget Narrative)			
Subtotal	\$ _____		
B. Staff			
• Salaries			
• Benefits			
• Training			
• Other (please specify in Budget Narrative)			
Subtotal	\$ _____		
C. Operational			
• Travel/Transportation			
• Supplies			
• Equipment			
• Other (please specify in Budget Narrative)			
Subtotal	\$ _____		
D. Internal Evaluation/Monitoring			
E. Administration (may not exceed 5% of Corporation funds)			
TOTAL (in dollar amounts)	\$ _____		
Percentages (100% - Match% = CNCS + DOT%)	_____ %	_____ %	100%

ATTACHMENT 3

o Aggregate

National Service Programs Budget Form

o Program

Nonroad Materials Transportation Assistance

Please attach a Budget Narrative to this page.

	Total Total Program Costs	Match Other Federal/ State/Local/ Private Funds	DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs			
• Living Allowance (may not exceed 85% of CNCS funds)			
• Education Awards (to be held in trust by the CNCS)			
• Health Care (may not exceed 85% of CNCS funds)			
• Child Care			
• Training and Education			
• Uniforms			
• FICA and Workers' Compensation			
• Other (please specify in Budget Narrative)			
Subtotal			
B. Staff			
• Salaries			
• Benefits			
• Training			
• Other (please specify in Budget Narrative)			
Subtotal			
C. Operational			
• Travel/Transportation			
• Supplies			
• Equipment			
• Other (please specify in Budget Narrative)			
Subtotal			
D. Internal Evaluation/Monitoring			
E. Administration (may not exceed 5% of Corporation funds)			
TOTAL (in dollar amounts)	\$		
Percentages (100% - Match% = CNCS + DOT%)		%	100%

ATTACHMENT 3

National Service Programs Budget Form

o Aggregate
o Program

Youth traffic safety education programs

Please attach a Budget Narrative to this page.

	Total Total Program Costs	Match Other Federal/ State/Local/ Private Funds	DOT and Corporation (CNCS) Funds Requested from the DOT and the Corporation
A. Participant Support Costs			
• Living Allowance (may not exceed 85% of CNCS funds)			
• Education Awards (to be held in trust by the CNCS)			
• Health Care (may not exceed 85% of CNCS funds)			
• Child Care			
• Training and Education			
• Uniforms			
• FICA and Workers' Compensation			
• Other (please specify in Budget Narrative)			
Subtotal	\$ _____	_____	_____
B. Staff			
• Salaries			
• Benefits			
• Training			
• Other (please specify in Budget Narrative)			
Subtotal	\$ _____	_____	_____
C. Operational			
• Travel/Transportation			
• Supplies			
• Equipment			
• Other (please specify in Budget Narrative)			
Subtotal	\$ _____	_____	_____
D. Internal Evaluation/Monitoring			
E. Administration (may not exceed 5% of Corporation funds)			
TOTAL (in dollar amounts)	\$ _____	_____	_____
Percentages (100% - Match% = CNCS + DOT%)	_____ %	_____ %	100%

ATTACHMENT 4

Assurances

All recipients of Federal funding are required to assure that the recipient:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900; Subpart F).
- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of disability; (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the National and Community Service Act of 1990, as amended; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a and 276a-77), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for Federally assisted construction sub-agreements.
- Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires the recipients in a special flood hazard area to participate in the program and to purchase flood

insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

- Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
- Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

- Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular A-133. Audits of Institutions of Higher Learning and other Non-profit Institutions.

- Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

In addition, all recipients of Corporation assistance under this application are required to assure that the recipient:

- Will keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation.
- Will not use the assistance to replace State and local funding streams that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.
- Will use the assistance only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of the program.
- Will comply with the Notice, Hearing, and Grievance Procedures found in § 176 of the Act.
- Will comply with the nondisplacement rules found in § 177(b) of the Act. Specifically, an employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the employer using an AmeriCorps participant; a service opportunity shall not be created that will infringe on the promotional opportunity of an employed individual; an AmeriCorps participants shall not perform any services or duties or engage in activities that (1) would otherwise be performed by an employee as part of the employee's assigned duties, (2) will supplant the hiring of employed workers, (3) are services or duties with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures; or (4) have been performed by or were assigned to any presently employed worker, an employee who recently resigned or was discharged, an employee who is on leave, an employee who is on strike or is being locked out, or an employee who

is subject to a reduction in force or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

Assurances - Signature

By signing this assurances page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the attached Assurances.

NOTE: This form must be signed and included in the application.

Organization Name

Project Name

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT 5

Certifications

Before completing certification, please read Certification Instructions on the following page.

Certification - Debarment, Suspension, and Other Responsibility Matters. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(1). The applicant certifies to the best of its knowledge and belief, that it and its principals:

(a). Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency,

(b). Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property,

(c). Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification, and

(d). Have not within a three-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause or default;

(2). Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation to this application.

Certification - Drug-Free Workplace. This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or

debarment (see 34 CFR Part 85, Section 85.615 and 85.620). The grantee certifies that it will provide a drug-free workplace by:

(1). 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;

(2). Establishing a drug-free awareness program to inform employees about -

(a) the dangers of drug abuse in the workplace,
(b) the grantee's policy of maintaining a drug-free workplace,

(c) any available drug counseling, rehabilitation, and employee assistance programs, and

(d) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3). 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 (1);

(4). Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will

(a) abide by the terms of the statement, and
(b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(5). Notifying the Corporation within ten days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction;

(6). Taking one of the following actions, within 30 days of receiving notice under subparagraph (4)(b) with respect to any employee who is so convicted--

(a) Taking appropriate personnel action against such an employee, up to and including termination; or

(b) 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;

(7). Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

Certification - Lobbying Activities

As required by Section 1352, Title 31 of the US Code, the applicant certifies that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal 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;

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Certification - Signature

Before You Start. Before completing certification, please read Certification Instructions.

NOTE: This form must be signed and included in the application.

Signature. By signing this Certification page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications set forth above. The three Certifications are:

- Certification: Debarment, Suspension, and Other Responsibility Matters
- Certification: Drug-Free Workplace
- Certification: Lobbying Activities

Organization Name

Project Name

Name and Titled of Authorized Representative

Signature

Date

Certification Instructions

By signing the Certification Signature Page on the previous page, the applicant certified that it will agree to perform all actions and support all intentions stated in the Certifications.

Signing the Certification Page

- 1. Inability to Certify.** The inability of a person to provide the certification required below will not necessarily result in denial of a grant. The applicant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Corporation determination whether to enter into this transaction. However, failure of the applicant to furnish a certification or an explanation shall disqualify such applicant for a grant.
- 2. Erroneous Certification.** The certification in this clause is a material representation of fact upon which reliance was placed when the Corporation determined to enter into this transaction. If it is later determined that the applicant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Corporation may terminate this transaction for cause or default.
- 3. Notice of Error in Certification.** The applicant shall provide immediate written notice to the Corporation to whom this proposal is submitted if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4. Definitions.** The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. An applicant shall be considered a "prospective primary participant in a covered transaction" as defined in the rules implementing Executive Order 12549. You may contact the Corporation for assistance in obtaining a copy of those regulations.
- 5. Certification Requirement for Subgrant Agreements.** The applicant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Corporation.

6. Certification Inclusion in Subgrant Agreements. The applicant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the Corporation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. Certification of Subgrant Principals. A grantee may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A grantee may decide the method and frequency by which it determines the eligibility of its principals. Each grantee may, but is not required to, check the Nonprocurement List.

8. Prudent Person Standard. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a grantee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Non-Certification in Subgrant Agreements. Except for transactions authorized under paragraph 6 of these instructions, if a grantee knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ATTACHMENT 6

DEPARTMENT OF TRANSPORTATION
NATIONAL AND COMMUNITY SERVICE PROGRAM

THE FOLLOWING CRITERIA SHOULD BE USED BY STATE COMMISSIONS IN EVALUATING PROGRAM PROPOSALS FOR CONSIDERATION BY THE DEPARTMENT OF TRANSPORTATION

(This evaluation is a recommendation only and is not binding on the Department of Transportation)

On a scale from one to five, with five (5) being the highest, please rate each program proposal by placing a check (✓) in the appropriate column.

<u>CRITERIA</u>	<u>5</u>	<u>4</u>	<u>3</u>	<u>2</u>	<u>1</u>	<u>N/A</u>	<u>COMMENTS</u>
Responsiveness to the National Service Criteria	-	-	-	-	-	-	
Responsiveness to the technical requirements of the proposal	-	-	-	-	-	-	
Staff resources and qualifications	-	-	-	-	-	-	
Organizational experience and capability	-	-	-	-	-	-	
Demonstrated ability in meeting community needs	-	-	-	-	-	-	
Program potential for sustainability	-	-	-	-	-	-	
Responsiveness to the Program Proposal as reflected in the proposal	-	-	-	-	-	-	

Please check (✓) the appropriate column based on the criteria below.

CRITERIA	EXCELLENT	GOOD	FAIR	POOR	N/A
Commission's past working relationship with national service organizations (NSO) as it relates to performance of the NSOs	_____	_____	_____	_____	_____

_____ has consulted and
(Name of Organization)
 coordinated with the State Commission on National and Community Service for _____
(State)
 with respect to its proposal for a DOT Community and National Service Program. The commission finds that the proposal
 is consistent with the State Plan, and that it builds on existing programs and does not duplicate efforts.

Date: _____ Signature: _____

Name: _____

Position: _____

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: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 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 <u>only</u> 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. |
| 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. | 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. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 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. |
| 7. | Enter the appropriate letter in the space provided. | 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.) |
| 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. | | |

SF 424 (REV 4-88) Back

Reader Aids

Federal Register

Vol. 59, No. 36

Wednesday, February 23, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4547-4778.....	1
4779-5070.....	2
5071-5312.....	3
5313-5514.....	4
5515-5696.....	7
5697-5928.....	8
5929-6212.....	9
6213-6530.....	10
6531-6864.....	11
6865-7192.....	14
7193-7628.....	15
7629-7892.....	16
7893-8118.....	17
8119-8380.....	18
8381-8516.....	22
8517-8822.....	23

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.

1 CFR

305.....	6213
310.....	6213

3 CFR

Proclamations:	
6648.....	5591
6649.....	5593
6650.....	8114

Executive Orders:

12250 (Supplemented by EO 12898).....	7629
12875 (See EO 12898).....	7629
12896.....	5515
12897.....	5517
12898.....	7629
12899.....	8113

Administrative Orders:

Presidential Determinations:	
No. 94-8 of January 5, 1994.....	7893
No. 94-14 of February 1, 1994.....	5931

Memorandums:

January 8, 1994.....	5071
January 17, 1994.....	8513
January 29, 1994.....	5929

5 CFR

293.....	5223
317.....	6593
351.....	5223
410.....	6593
412.....	6593
430.....	5223
432.....	5223
451.....	5223
511.....	5223
530.....	5223
531.....	5223
536.....	5223
540.....	5223
575.....	5223
591.....	5223
595.....	5223
733.....	5313
771.....	5223
2635.....	4779

Proposed Rules:

300.....	8419
772.....	7909

7 CFR

58.....	5933
271.....	5697
272.....	5697
273.....	5697
301.....	6531, 7895
723.....	6865
911.....	5073

915.....	5073
967.....	6867
993.....	8517
1007.....	6868
1464.....	6865
1924.....	6869, 8518
1930.....	6869
1944.....	6869, 7193

Proposed Rules:

61.....	6914
1007.....	5132
1011.....	7665
1093.....	5132
1094.....	5132
1096.....	5132
1099.....	5132
1106.....	6915
1108.....	5132
1124.....	8546
1131.....	6916
1135.....	8546
1499.....	6916
1945.....	5737

8 CFR

Proposed Rules:	
74a.....	5533
103.....	5740
214.....	5533
286.....	7227

9 CFR

320.....	6897
----------	------

Proposed Rules:

78.....	6593
306.....	6929
318.....	6929
381.....	6929

10 CFR

1.....	5519
21.....	5519
30.....	5519
32.....	5519
50.....	5519
55.....	5934

Proposed Rules:

19.....	5132, 6792
20.....	4868, 5132, 6792
21.....	6792
26.....	6792
51.....	6792
70.....	6792
71.....	6792, 8143
73.....	6792
74.....	6792
76.....	6792
95.....	6792
474.....	5336

12 CFR

34.....	6531
---------	------

225.....6531	785.....6524	11.....5142	31.....6217
226.....6532	Proposed Rules:	381.....5142	602.....4799, 4831
231.....4780	768.....6528	19 CFR	Proposed Rules:
303.....7194	770.....6528	12.....5082	1.....4876, 4878, 5370
323.....6531	771.....6528	102.....5082	52.....5161
564.....6531	772.....6528	134.....5082	27 CFR
567.....4785	773.....6528	206.....5087	178.....7110
722.....6531	774.....6528	207.....5087	Proposed Rules:
1627.....5939	775.....6528	Proposed Rules:	178.....7115
Proposed Rules:	776.....6528	4.....5362	28 CFR
3.....8420	777.....6528	20 CFR	42.....6559
25.....5138	778.....6528	10.....8529	511.....5924
32.....6593	779.....6528	404.....6468, 8530, 8532	524.....6856
208.....8420	785.....6528	416.....8530, 8532, 8536	551.....5514
212.....7909	786.....6528	621.....5484	600.....5321
228.....5138	787.....6528	655.....5484, 5486	603.....5321
230.....5536	788.....6528	21 CFR	Proposed Rules:
261a.....5548	789.....6528	5.....5316, 5317	551.....5926
325.....8420	790.....6528	74.....7635, 7636, 8507	29 CFR
345.....5138	791.....6528	172.....53170	504.....5484, 5486
563e.....5138	799.....6528	177.....5947	1601.....5708
567.....8420	16 CFR	178.....5704	1910.....6126
630.....5341	244.....8527	331.....5060	1915.....6126
701.....8424	305.....5699	343.....5068	1917.....6126
741.....8424	412.....8527	430.....8132	1918.....6126
13 CFR	Proposed Rules:	436.....8132	1926.....6126
122.....5940	14.....6605	441.....8132	1928.....6126
123.....6213	17 CFR	442.....8397	2619.....7210
Proposed Rules:	1.....5082, 5525, 5700	444.....8397	2625.....8539
107.....5552	3.....5315	448.....8397	2676.....7210
108.....8425	4.....5082	455.....8397, 8399	30 CFR
120.....8425	5.....5315	520.....5705	56.....8318
14 CFR	7.....5316	524.....5104, 5705	57.....8318
23.....8119	9.....5701	558.....8133	58.....8318
25.....7199, 7202	10.....5700, 5701	900.....6899	70.....8318
39.....4789, 5074, 5078, 6215, 6533, 6535, 6537, 6538, 6542, 6545, 6897, 7208, 7897, 7899, 7901, 7903, 7904, 7907, 8129, 8381, 8383, 8385, 8388, 8390, 8393, 8394, 8519, 8520	11.....5701	Proposed Rules:	72.....8318
61.....7380	19.....5702	Ch. I.....6934	913.....4832
63.....7380	21.....5702	73.....5363	915.....5709
65.....7380	30.....5702	74.....5363	Proposed Rules:
71.....5080, 5520, 5521, 6217, 6830, 8131, 8396, 8521, 8522, 8523	31.....5703	123.....7235	840.....6227
91.....6547	32.....5703	164.....5153	842.....6227
95.....5080, 6548	33.....5526	168.....5363	843.....6227
97.....5522, 5523, 8524, 8525	100.....5526	172.....5363	31 CFR
121.....7380	140.....5527	173.....5363	348.....5723
135.....7380	143.....5527	182.....5363	500.....5696
139.....7118	145.....5527	184.....5363	550.....5105
Proposed Rules:	148.....5528	351.....5226	580.....8134
Ch. I.....5554	150.....5528	352.....6606	Proposed Rules:
33.....5356	155.....5528	356.....6084	800.....7666
39.....4869, 4870, 4873, 4875, 5139, 5359, 5361, 5554, 5964, 5965, 5966, 5968, 6603, 6933, 7228, 7231, 7233, 7913, 7914, 8145	156.....5703	700.....6606	32 CFR
65.....7412	166.....5529	740.....6606	199.....8401
71.....4978, 5556, 5740, 8041, 8147, 8148, 8149, 8565, 8566, 8567, 8568	180.....5529	872.....6935	228.....5948
121.....5741, 7412, 7614, 8570	190.....5704	1240.....7235	254.....7213
129.....5741	200.....5942	22 CFR	706.....7216, 7217
135.....5741, 7412	202.....5942	503.....5706	33 CFR
15 CFR	203.....5942	24 CFR	100.....5322, 5950
770.....6524	230.....5942	87.....5320	110.....5951
771.....6524	239.....5942	905.....5321, 7638	117.....5953, 8408
	240.....5942	962.....7638	161.....117, 5323
	249.....5942	970.....5321	165.....5324, 5950, 5951, 5954, 7640, 8409, 8410
	249b.....5942	984.....7638	Proposed Rules:
	259.....5942	3500.....6506	117.....5970, 8428
	269.....5942	Proposed Rules:	150.....8096
	274.....5942	232.....5157	151.....7237, 8086
	275.....5942	247.....5155	154.....7237
	279.....5942	880.....5155	155.....7237
	Proposed Rules:	881.....5155	34 CFR
	240.....7917, 8368, 8379	883.....5155	363.....8330
	249.....7917, 8368	26 CFR	
	18 CFR	1.....4791, 4799, 4831	
	157.....5946		
	Proposed Rules:		
	Ch. I.....7952		

369.....8330	716.....5956	Proposed Rules:	390.....8748
371.....8330	763.....5236	16.....7614	391.....7484, 8748
373.....8330		25.....7668, 8100	392.....7484
374.....8330	Proposed Rules:	160.....7668	393.....8748
375.....8330	50.....5164	503.....6610	395.....7484, 8748
376.....8330	52.....5370,	514.....4885, 5974	396.....8748
377.....8330	5371, 5374, 5742, 6608,	580.....5974	571.....6903, 7643
378.....8330	8150, 8578	581.....4885, 5974	653.....7572
379.....8330	55.....5745		654.....7532
380.....8330	61.....5674	47 CFR	1002.....4843
381.....8330	63.....4879, 5868, 8429	1.....8413	1051.....6221
385.....8330	81.....5374, 6608, 8150	73.....6220,	1053.....6221
387.....8330	141.....6332	7908, 8414, 8415, 8416,	1207.....5110
389.....8330	156.....5971, 6712	8417	1249.....5110
390.....8330	165.....6712	76.....6901	1312.....4843, 6221
Proposed Rules:	180.....5972, 8581	80.....7714	
396.....8350	228.....7952	Proposed Rules:	Proposed Rules:
Ch. VI.....5560	266.....8583	2.....5166	40.....7367
600.....6446	430.....4879	15.....8162	192.....5168
602.....6227	437.....8150	21.....7961, 7964	199.....7614
667.....6227	704.....6610	68.....5166	219.....7482, 7614
668.....8044		73.....6230, 6231, 7237, 7239,	382.....7528, 7614
682.....8044		7668, 7669, 7908, 7966, 8163	391.....5376
		76.....8162	653.....7614
36 CFR		90.....7239	
1253.....6899, 6900	41 CFR		50 CFR
Proposed Rules:	101-38.....5962	48 CFR	17.....4845, 5306, 5494, 5499,
223.....4879	Proposed Rules:	52.....8041	5820, 7968, 8138
261.....7880	101-41.....8151	225.....5335	32.....6680, 6686
262.....7880	201-1.....4978	252.....5335	216.....8417
1220.....8150	201-3.....4978	525.....5484	228.....5111
	201-20.....4978	552.....5484	611.....7647, 7656
38 CFR	101-26.....8587	904.....6221	641.....6588
3.....5106, 6218, 6901	201-39.....4978, 8588	925.....6221	642.....5963
14.....6564		952.....6221	651.....5128
Proposed Rules:	42 CFR	970.....5529, 6221	652.....6221
3.....5161, 6607	400.....6570	Proposed Rules:	672.....5736, 6222, 6912, 7647
	410.....6570	Ch. 5.....8589	675.....6222, 7656, 8142
39 CFR	413.....6570	9.....8108	676.....7647, 7656
233.....5326	435.....8138	14.....7714	681.....6912
3001.....8539	436.....8138	15.....5750, 8108	Proposed Rules:
Proposed Rules:	440.....8138	31.....5750	17.....4887, 4888, 5311, 5377,
111.....8575	489.....6570	42.....5750, 8108	7968, 8163, 8165, 8450
3001.....8576	Proposed Rules:	46.....5750	625.....5384, 8592
	405.....6937	52.....5750	644.....5978
40 CFR	417.....8429, 8435	516.....5561	646.....5562
9.....8411	421.....8446	538.....8590	649.....8451
52.....5327,	433.....4880	552.....5561, 6231, 8590	651.....5563, 6232
5330, 5332, 5724, 5955,	489.....6228	871.....6942	661.....4895
6219, 7218, 7222, 7223,	43 CFR	912.....5751	671.....8595
8542	4700.....7642	952.....5751	676.....5979
60.....5107, 5955, 8134	Public Land Orders:	970.....5751	685.....4898
63.....7224	7028.....7226	1819.....5974	
80.....7716	44 CFR	1846.....7966	
8*.....5332	64.....5726	1852.....5974, 7966	
117.....8683	65.....5727, 5728, 5730		
180.....4834, 8135	67.....5731, 5732	49 CFR	
185.....5108	403.....8412	40.....7340	
186.....4834, 5108	Proposed Rules:	192.....6579	
261.....5725, 8362	67.....5747, 5748	195.....6579	
271.....7641, 8544	45 CFR	199.....7426	
300.....5109, 8724	233.....4835	207.....6585	
302.....8683	46 CFR	219.....7448	
355.....8683	15.....4839	350.....5262	
712.....5956		382.....7484	

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 22, 1994

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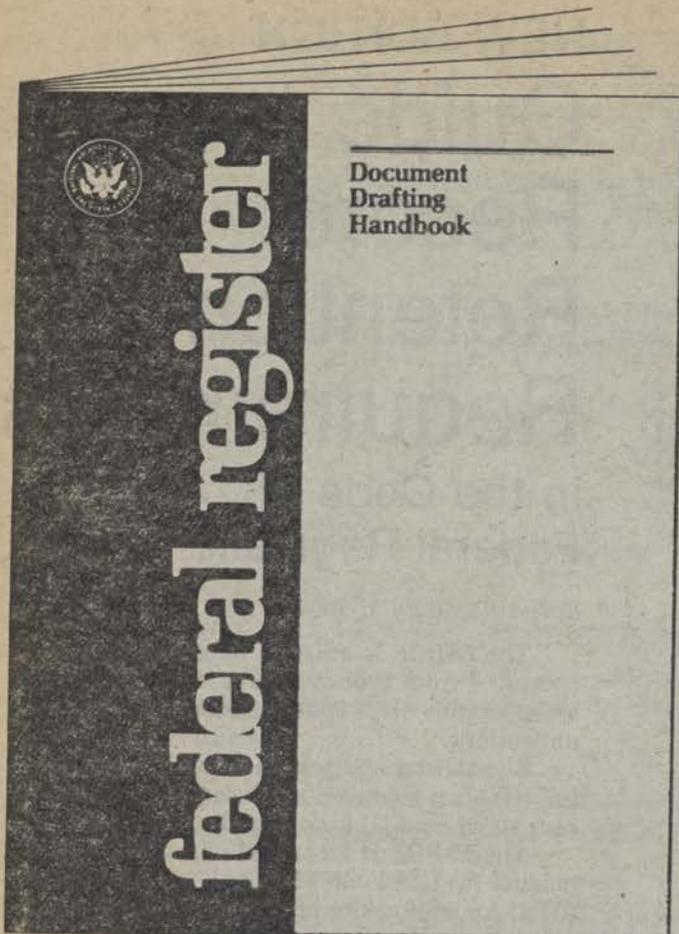
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