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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: March 16 at 9:00 am
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

TUCSON, AZ

WHEN: March 23 at 9:00 am
WHERE: University of Arizona Medical School, DuVal Auditorium, 1501 N. Campbell Avenue, Tucson, AZ
RESERVATIONS: Federal Information Center 1–800–359–3997 or in the Tucson area, call 602–290–1616

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WHEN: March 30 at 9:00 am
WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA
RESERVATIONS: Federal Information Center 1–800–726–4995

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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–15 of February 18, 1994

Eligibility of Eritrea To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(1) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act as amended (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of Eritrea will strengthen the security of the United States and promote world peace.

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

William J. Clinton

THE WHITE HOUSE,
Washington, February 18, 1994.

Billing code 3195–01–M

Justification for Presidential Determination of Eligibility of Eritrea To Be Furnished Military Assistance Under the Foreign Assistance Act of 1961, and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishing of such articles and services to the country concerned will "strengthen the security of the United States and promote world peace."

The United States has a significant security interest in the stability of newly founded Eritrea, which borders Sudan and occupies a strategic position on the Red Sea. Eritrea's security directly affects the stability of its neighbor and former ruler, Ethiopia. Moreover, Israel, Egypt, and Saudi Arabia all benefit from Eritrean stability in a region threatened by Islamic fundamentalism.

Eritrea gained its independence after a thirty year war against Ethiopian central authority and a United Nations-monitored referendum in April, 1993. Among the devastating consequences of this war is the remainder of over 500,000 anti-personnel land mines throughout the country. These land mines seriously hinder the government's efforts to reconstruct Eritrean society and the economy.

One of the Department's newly developed demining programs centers on the dispatch of U.S. military Special Operations Forces personnel to teach local instructors demining techniques. We have selected Eritrea to be the pilot country for this program because of the urgent need and a combination of favorable factors.

- Eritrea currently is politically stable. We believe that Eritrea will continue to enjoy political stability for the foreseeable future.

- The conditions are more favorable for detecting mines in the open terrain of this semi-arid country than in more forested countries.

- Eritrea has an educated work force. In addition, many Eritreans speak either Italian or English, which will facilitate the work of our Special Forces trainers.

- All sectors of Eritrean society, especially the Eritrean Government, recognize the gravity of the land mine situation. They are anxious to give us their complete cooperation for the demining program.

- Currently, no other organization or country is contributing to Eritrean demining. This program will garner the United States considerable good will, and will help establish a productive and cooperative security assistance relationship with Eritrea.

Providing defense articles and services to Eritrea pursuant to Foreign Assistance Act and Arms Export Control Act authorities will further our long-term goals of promoting stability both in Eritrea and in the strategic Horn of Africa, thereby strengthening the security of the United States and promoting world peace.

[FR Doc. 94–5034
Filed 3–1–94; 2:20 pm]
Billing code 4710–10–M

Presidential Documents

Proclamation 6651 of March 1, 1994

National Poison Prevention Week, 1994

By the President of the United States of America

A Proclamation

Keeping families healthy is an integral part of strengthening our Nation's future. It is the cornerstone in America's efforts to provide security for every one of our citizens. Yet, in this great Nation of wisdom and unparalleled potential, the American Association of Poison Control Centers estimates that almost one million American children are exposed to potentially poisonous medicines and household chemicals each year. This single statistic is appalling, but it is also correctable, for we are certain in the knowledge that accidental poisonings are preventable. This week, we recognize that it is one of our duties as a society to do everything in our power to prevent injuries and deaths caused by poisoning.

As the United States observes the 33rd National Poison Prevention Week, we are able to celebrate some small, but significant, triumphs. That the number of childhood deaths from poisoning annually has declined from 450 to 49 over the past thirty years is a testament to the dedicated efforts of countless citizens actively involved with poison control programs across the country. National requirements of child-resistant packaging for medicines have helped to limit dangerous exposure. Poison control centers, pharmacies, and public health centers have worked together to distribute vital information regarding poison prevention to our families and communities, and these measures have, indeed, saved lives.

If we are to end the tragedy of childhood poisonings once and for all, we must continually remind ourselves to take the basic steps necessary to prevent this occurrence in our own homes. Safety measures, such as using child-resistant packaging correctly and keeping potentially harmful substances out of children's reach, can mean the difference between health and injury, between life and death. During this week, we must seek to educate ourselves and others about all the ways we can work to avoid this kind of senseless loss. America's parents must take primary responsibility for this effort. Our Nation's children deserve no less.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 20, 1994, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to prevent accidental poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–5072
Filed 3–1–94; 4:17 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Thursday, March 3, 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 905

[Docket No. FV93-905-4-FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Gift Fruit Exemption Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule that relaxed the handling requirements which permit handlers to increase shipments of gift packages of Florida citrus fruit to individuals and distributors, under specific conditions. This rule will enable handlers to ship greater quantities of gift fruit to meet market needs.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This 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 rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 11,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee) met November 16, 1993, and unanimously recommended this action. The committee meets prior to and during each season to review the rules and regulations effective on a continuous basis for citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Section 905.140 (7 CFR 905.140) provides the terms and conditions under which handlers can ship fruit in gift packages exempt from handling regulations in effect under §§ 905.52 and 905.53 of the order. Certain gift fruit packages are exempted from such regulations, since they contain fruit of mixed varieties and non-fruit items, and thus, would not meet the grade and size requirements of the handling regulations. Prior to the effective date of the interim rule (58 FR 65538, December 15, 1993), handlers could only ship one or two gift packages per day exempt from such regulations, depending on the circumstances, to individuals and distributors. The interim final rule increased the number of gift packages of fruit which handlers can ship under this exemption provision, enabling handlers to ship an unlimited number of packages of gift fruit to individuals and distributors, provided certain safeguards are met by the handler of the fruit. These safeguards specify that each gift package must be individually addressed to the person using the fruit, and that gift packages shipped to any gift fruit distributor must either be individually addressed or marked "not for resale".

The interim final rule was effective on December 9, 1993, and published in the **Federal Register** (58 FR 65538, December 15, 1993). The interim final rule provided a 30-day comment period ending January 14, 1994, and no comments were received.

This final rule reflects the committee's and the Department's appraisal of the need to relax the

exemption provisions for gift fruit shipments as specified. Such relaxation will enable handlers to ship more packages of gift fruit to meet consumer needs, exempt from grade and size requirements issued under the order. This action is in the interest of producers, handlers, distributors, and consumers, and is expected to increase returns to Florida citrus fruit growers. The Department's view is that this action will have a beneficial impact on Florida citrus fruit producers and handlers, since it will permit the industry to make additional gift fruit available to meet consumer needs.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the relaxation as set forth below will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending 7 part 905, which was published in the **Federal Register** at 58 FR 65538, December 15, 1993, is adopted as a final rule without change.

Dated: February 24, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–4819 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 907 and 908

[FV93–907–4FIR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Suspension of Form 8 and Form 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing reporting requirements prescribed under the California-Arizona navel and Valencia orange marketing orders. The marketing orders regulate the handling of navel and Valencia oranges grown in Arizona and designated parts of California and are administered locally by the Navel and Valencia Orange Administrative Committees (committees). This rule suspends language in the orders and in the orders' rules and regulations to discontinue the use of Form 8 (Certificate of Assignment of Allotment) and Form 3 (Daily Manifest Report of Oranges Subject to Allotment). These changes reduce the burden of information collection requirements currently provided for under the marketing orders.

EFFECTIVE DATE: April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, hereinafter referred to as the "orders." These orders are 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 is issuing this rule in conformance with Executive Order 12866.

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

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

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

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

There are approximately 140 handlers of navel oranges and 125 handlers of Valencia oranges who are subject to regulation under the respective marketing order and approximately 3,750 producers of navel oranges and 3,700 producers of Valencia oranges in the regulated areas. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of California-Arizona navel and Valencia oranges may be classified as small entities.

This rule finalizes two changes in the reporting requirements prescribed under the California-Arizona orange marketing orders. This rule suspends language in the orders and in the orders' rules and regulations to discontinue the use of Form 8 (Certificate of Assignment of Allotment) and Form 3 (Daily Manifest Report of Oranges Subject to Allotment). These changes were unanimously recommended by the committees.

An interim final rule on this issue was published in the **Federal Register** (59 FR 1268, January 10, 1994), with an effective date of January 10, 1994. That rule suspended §§ 907.58, 907.71, 908.58, and 908.71 of the orders, and §§ 907.112, 907.141, 908.112, and

908.141 of the rules and regulations in effect under the orders. That rule provided a 30-day comment period which ended February 9, 1994. No comments were received.

Sections 907.58 and 908.58 of the navel and Valencia orange marketing orders specify that, for the handling of oranges other than by rail car (primarily truck shipments), handlers issue to the consignee an assignment of allotment certificate covering each quantity of oranges so handled. Sections 907.112 and 908.112 of the orders' rules and regulations require handlers to submit such information on Form 8. Handlers are also required to segregate the information on Form 8 by size of oranges shipped and destination (i.e., U.S. and Alaska or Canada).

Since the inception of the orders, the committees have utilized Form 8 primarily for tracking and verifying truck shipments of oranges that were subject to volume regulation. However, with the volume regulation features of the orders suspended (58 FR 53,114; October 14, 1993), the committees believe that continued submission of Form 8 creates an additional burden on handlers that is unnecessary.

According to the committees, many handlers have long questioned the value of Form 8 (commonly referred to in the industry as "the daily truck ticket") during periods of no volume regulation. Shipment information from Form 8 is transferred to Form 4 (Weekly Report). Handlers maintain their own manifest records of these shipments and, without weekly volume regulation, Form 4 provides similar data with the exception of number of cartons shipped by size. The committees plan on requesting size information from handlers as needed on a voluntary basis and anticipate revising the weekly Form 4 at a later time to provide for the collection of size information.

Thus, the committees believe that continued submission of Form 8, particularly during periods of no volume regulation, is not necessary. Accordingly, the committees have recommended suspending §§ 907.58 and 908.58 of the orders and §§ 907.112 and 908.112 of the orders' rules and regulations so that Form 8 will be discontinued.

The second change that the committees recommended concerns Form 3 (Daily Manifest Report of Oranges Subject to Allotment). Currently, §§ 907.71 and 908.71 of the orange orders provide that handlers furnish to the committees information regarding cartons of oranges handled, segregated by size, within 24 hours of shipment. Handlers must also indicate whether the shipments were destined to points in the U.S. and Alaska or Canada. Sections 907.141 and 908.141 of the orders' rules and regulations require handlers to submit this information for rail car shipments on Form 3.

The information collected on Form 3 is similar to the information collected on Form 8 described earlier, but pertains to rail car shipments rather than truck shipments. Again, this information has historically been utilized primarily for tracking and verifying shipments of oranges that were subject to volume regulation. However, with the volume regulation features of the orders suspended, the committees believe that continued submission of Form 3, like Form 8, creates an additional burden on handlers that is unnecessary. Handlers are also required to submit similar information on rail car shipments on the weekly Form 4. As with size information pertaining to truck shipments, the committees plan on requesting size information from handlers for rail car shipments on a voluntary basis until the weekly Form 4 is appropriately revised.

Like Form 8, the committees believe that continued submission of Form 3, particularly during periods of no volume regulation, is not necessary. Accordingly, the committees have recommended suspending §§ 907.71 and 908.71 of the orders and §§ 907.141 and 908.141 of the orders' rules and regulations so that Form 3 will be discontinued.

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

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0581–0116 for navel oranges and 0581–0121 for Valencia oranges. This rule reduces the reporting burden on approximately 265 handlers of navel and Valencia oranges who have been completing Form 8, taking about .40 hour to complete each report. This rule also reduces the reporting burden on about 80 orange handlers who ship by rail at some point during a season and utilize Form 3, taking about 0.20 hours to complete each report.

After consideration of all relevant material presented, the information and recommendations submitted by the committees, and other information, it is found that the provisions detailed in the interim final rule, at this time, do not tend to effectuate the declared policy of the Act. Therefore, this rule finalizes the interim final rule, without change, as published in the **Federal Register** (59 FR 1268, January 10, 1994).

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

2. Accordingly, the interim final rule amending 7 CFR part 907, which was published at 59 FR 1268 on January 10, 1994, is adopted as a final rule without change.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

3. Accordingly, the interim final rule amending 7 CFR part 908, which was published at 59 FR 1268 on January 10, 1994, is adopted as a final rule without change.

Dated: February 24, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4821 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 917

[Docket No. FV92–917–1]

Fresh Pears and Peaches Grown in California; Suspension of the Pear Provisions and Certain Nomination Provisions, and Referendum Order Under Marketing Order No. 917

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension and referendum order.

SUMMARY: This rule suspends all the provisions applicable to pears and certain nomination provisions under Federal Marketing Order (M.O.) No. 917. This rule also directs that a referendum be conducted among eligible pear producers in California to determine whether they favor continuance of the pear provisions under M.O. 917. This

suspension is being implemented because the California Bartlett pear industry is now using a California State pear program, and is no longer using the pear provisions under M.O. 917.

EFFECTIVE DATE: The suspension becomes effective April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5127, or Terry Vawter, California Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act; and of § 917.42 (b) of Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears and peaches grown in California, hereinafter referred to as the order.

The order authorizes minimum grade, maturity, quality, and size requirements; container size, pack, and marking requirements; and reporting and special purpose shipment requirements. The order also provides for the establishment of production and marketing research, market development, and paid advertising.

The referendum will be conducted in accordance with the procedure for the conduct of referenda to determine whether continuation of the order's pear provisions is favored by producers, who during the representative period were engaged, in the State of California, in the production of pears covered by the order. The procedure applicable to the referenda is the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et seq.*). The representative production period for the conduct of such referendum is hereby determined to be June 1, 1994, through November 30, 1994. The referendum will be conducted within the period beginning December 1, 1994, and ending February 15, 1995.

The Department is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 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 the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are about 45 California pear handlers subject to regulation under the order, and about 300 producers of pears in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. A majority of these handlers and producers may be classified as small entities.

This rule indefinitely suspends all of the pear provisions in the order, along with the rules and regulations issued thereunder, including: (1) Provisions pertaining to the administration of the order, including committee nominations and selections; (2) the establishment of grade, size, quality, maturity, pack and container, and inspection requirements; (3) the issuance of administrative rules and regulations related to exemptions and special purpose shipments; and (4) information collection and reporting requirements. The pear provisions being suspended are in §§ 917.4, 917.15, 917.20, 917.21, 917.24, 917.25, 917.26, 917.28, 917.29, 917.34, and 917.35 of the order; and in §§ 917.100, 917.121, 917.143, 917.149, 917.176, 917.179, and 917.461 of the rules and regulations issued thereunder.

This rule also suspends certain provisions in § 917.18 pertaining to nomination of Control Committee members, to enable the Control Committee to continue to function with only peach members upon suspension of the order's pear provisions. Since the pear provisions are being suspended, there is no need for the pear industry members to serve on the Control Committee.

The Pear Commodity Committee (committee) unanimously recommended suspension of most of the pear provisions under the order, because such provisions are no longer needed. The California Bartlett pear industry is now functioning under the California Pear Marketing Program (State pear program), and is no longer using the pear order provisions. The State pear program, developed by the California Bartlett pear industry and the California Department of Food and Agriculture, is similar to the Federal pear program.

The committee recommended suspension, not termination, of the order's pear provisions to provide the California Bartlett pear industry with an opportunity to review operations under the State pear program for an indefinite period of time. The committee wants to maintain the option of reactivating the Federal pear program, if the State pear program does not operate satisfactorily. The California pear industry will have the opportunity to examine the effectiveness of the State pear program until the end of the 1994 marketing season. At that time, the Department will conduct a referendum of eligible pear producers to determine whether they favor continuance of the Federal pear program.

The Secretary of Agriculture (Secretary) has the authority to conduct a continuance referendum to determine whether producers affected by a marketing order favor continuance of their order. The Secretary has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs.

The Secretary would consider termination of the order's pear provisions if less than two-thirds of the pear producers voting in the referendum and producers of less than two-thirds of the volume of pears represented in the

referendum, favor continuance. In evaluating the merits of continuance versus termination, the Secretary would consider the results of the continuance referendum, other relevant information concerning the operation of the order's pear provisions, and the relative benefits and disadvantages to producers, handlers, and consumers. Through such analysis, the Secretary would determine whether continued existence of the order's pear provisions would tend to effectuate the declared policy of the Act.

In any event section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers favor termination, and that majority produced for market more than 50 percent of the commodity covered by the order.

In the event the Secretary terminates the order's pear provisions, the Control Committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of any and all the funds and property in its possession, or under its control, including claims for any funds unpaid or property not delivered.

Upon termination, the said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

Any person to whom funds, property, or claims have been transferred or delivered, shall be subject to the same obligation imposed upon the committee and upon the trustees.

After a statement of total claims and debts, any remaining funds held in the reserve account will be returned, on a pro rata basis, to those pear handlers who paid assessments under the order during the 1991–92 fiscal period.

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 et seq.) to determine whether continuance of the order's pear provisions regulating the handling of pears is approved or favored by producers who during the representative period were engaged in the production of such pears grown in California.

The referendum agents of the Secretary to conduct the referendum are hereby designated as Kurt J. Kimmel and Terry Vawter, California Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: 209–487–5901.

Ballots will be mailed to all pear producers of record. Ballots may also be obtained at County Extension Service Offices, or by contacting the California Marketing Field Office. Copies of the order may also be obtained by contacting the California Marketing Field Office.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), information and collection requirements for pears under the order have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581–0080). The ballot material to be used in the referendum herein ordered has been submitted to and approved by OMB, and it has been estimated that it will take an average of 30 minutes to read and complete the ballot for each of the approximately 300 producers who elect to participate in the voluntary referendum balloting.

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

After consideration of all relevant material presented, including the committee's recommendations, and other available information, it is found and determined that the pear provisions in the order and the rules and regulations issued thereunder, along with certain provisions in § 917.18 pertaining to the nomination of members to the Control Committee, do not tend to effectuate the declared policy of the Act at this time, and that such provisions should be suspended. It is further found that suspending all the rules and regulations pertaining to pears issued under the order will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

1. The authority citation for 7 CFR part 917 is revised to read as follows:

Authority: 7 U.S C. 601–674.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.4 [Suspended in part]

2. In § 917.4 the words ", and (b) all varieties of pears except Beurre Hardy, Beurre D'Anjou, Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau" are suspended.

§ 917.15 [Suspended in part]

3. In § 917.15 the words "§ 917.21 through" are suspended.

§ 917.18 [Suspended in part]

4. In § 917.18, paragraph (a) the words "The number of remaining members which each respective commodity committee shall be entitled to nominate shall be based upon the proportion that the previous three fiscal period's shipments of the respective fruit is of the total shipments of all fruit to which this part is applicable during such periods. In the event provisions of this part are terminated as to any one fruit, nominations of members to the Control Committee shall be composed of representatives of the remaining two fruits. The apportionment shall be determined as aforesaid. In the event provisions of this part are terminated as to any two fruits, the members of the commodity committee of the remaining fruit shall have all the powers, duties, and functions given to the Control Committee under this part and sections of this part pertaining to the designation of the Control Committee shall be terminated." are suspended.

§ 917.20 [Suspended in part]

5. In § 917.20 the words "a Pear Commodity Committee and" are suspended.

§ 917.21 [Suspended]

6. Section 917.21 is suspended in its entirety.

§ 917.24 [Suspended in part]

7. In § 917.24, paragraph (a) the words "§ 917.21 and" are suspended, and in paragraph (c) the words "A grower nominated for membership on the Pear Commodity Committee must have produced at least 51 percent of the pears shipped by him during the previous fiscal period, or he must represent an organization which produced at least 51 percent of the pears shipped by it during such period." are suspended.

§ 917.25 [Suspended in part]

8. In § 917.25 the words "§ 917.21 through" are suspended.

§ 917.26 [Suspended in part]

9. In § 917.26 the words "§ 917.21 through" and the words "§ 917.21 and" are suspended.

§ 917.28 [Suspended in part]

10. In § 917.28 the words "§ 917.21 through", and the word", 917.21" are suspended.

§ 917.29 [Suspended in part]

11. In § 917.29, paragraph (b) the words "of the Pear Commodity Committee and" and the word "each" are suspended.

§ 917.34 [Suspended in part]

12. In § 917.34, paragraph (k) the words "§ 917.21 and" are suspended.

§ 917.35 [Suspended in part]

13. In § 917.35, paragraph (a) the words "and Pear" and the word "each" are suspended everywhere they appear.

§ 917.100 [Suspended in part]

14. In § 917.100 the words "pears and" are suspended.

§ 917.121 [Suspended]

15. Section 917.121 is suspended in its entirety.

§ 917.143 [Suspended in part]

16. In § 917.143, paragraph (b) introductory text and paragraphs (b)(1), (b)(2), and (b)(4) the words "pears and" are suspended, and in paragraph (b)(3) the words "200 pounds of pears and" are suspended.

§ 917.149 [Suspended]

17. Section 917.149 is suspended in its entirety.

§ 917.176 [Suspended]

18. Section 917.176 is suspended in its entirety.

§ 917.179 [Suspended in part]

19. In § 917.179 the words "§ 917.176 and" and the words "pears and" are suspended.

§ 917.461 [Suspended]

20. Section 917.461 is suspended in its entirety.

Dated: February 24, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4822 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1094

[DA–94–06]

Milk in the New Orleans-Mississippi Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends, for 23 months, the 45 percent delivery requirement for a plant operated by a cooperative association that is located within the New Orleans-Mississippi marketing area. The suspension was requested by Gulf Dairy Association, Inc., which operates a manufacturing plant at Kentwood, Louisiana. The association states that without the suspension it will be forced to make inefficient qualifying shipments of milk merely to keep the milk of its producers qualified for pooling under the order.

EFFECTIVE DATE: March 3, 1994 through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued January 3, 1994; published January 10, 1994 (59 FR 1307).

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. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order 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 date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New Orleans-Mississippi marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on January 10, 1994 (59 FR 1307), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice, and other available information, it is hereby found and determined that for the period commencing with publication of this document in the **Federal Register** and extending through December 31, 1995, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1094.7(c), the words "45 percent or more of the".

Statement of Consideration

The order will suspend through December 1995 the 45 percent delivery requirement for a cooperative association plant that is located in the New Orleans-Mississippi marketing area.

Gulf Dairy Association, Inc., which operates a manufacturing plant at Kentwood, Louisiana, that is regulated under Order 94, submitted the suspension request. The cooperative stated that because of the present 45 percent delivery requirement applicable to a cooperative association that wishes to qualify a manufacturing plant for pooling, it has had to shift some of its producers to neighboring Greater Louisiana (Order 96) pool plants to keep its Kentwood plant qualified as a pool

plant under Order 94. It indicated that Order 96 requires that six days' production of a producer must be received at pool plants each month in order to qualify the milk for pooling by diversion to a nonpool plant. Accordingly, it has had to move the milk of selected producers to Order 96 pool plants six days per month. Since this milk is not actually needed by these pool plants, the cooperative has then had to back-haul the milk to its Kentwood manufacturing plant for processing. The problem is now particularly acute, according to the cooperative, because two Order 94 pool plants have notified Gulf Dairy Association that they will no longer purchase milk from them after February 1, 1994.

Gulf Dairy Association noted that the problem it is experiencing could be resolved through the proposed merger of milk orders that is now under consideration by the Department. It urged that the proposed suspension be effective pending the completion of that proceeding.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the New Orleans-Mississippi marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1094

Milk marketing orders.

For the reasons set forth in the preamble, effective March 3, 1994, through December 31, 1995, Title 7, Part 1094, is amended as follows:

PART 1094—MILK IN THE NEW ORLEANS–MISSISSIPPI MARKETING AREA

1. The authority citation for 7 CFR part 1094 continues to read as follows:

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

§ 1094.7 [Temporarily suspended in part]

2. In § 1094.7(c), the words "45 percent or more of the" are suspended.

Dated: February 24, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4820 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 1994–2]

Recordkeeping and Reporting by Political Committees; Best Efforts

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On October 27, 1993 (58 FR 57725), the Commission published the text of revised regulations implementing the requirement of the Federal Election Campaign Act (FECA) that treasurers of political committees exercise their best efforts to obtain, maintain and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. The Commission announces that these rules are effective as of March 3, 1994.

EFFECTIVE DATE: March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR 104.7(b), which implement 2 U.S.C. 432(i), were transmitted to Congress on October 22, 1993. Thirty legislative days expired in the Senate on February 4, 1994 and in the House of Representatives on February 11, 1994.

Announcement of Effective Date: 11 CFR 104.7(b), as published at 58 FR 57725 is effective as of March 3, 1994.

Dated: February 25, 1994.

Danny L. McDonald,

Vice Chairman.

[FR Doc. 94–4812 Filed 3–2–94; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–32; Amendment 39–8843; AD 94–05–05]

Airworthiness Directives; Teledyne Continental Motors Models C75, C85, C90, C125, C145, O–200, O–300, and GO–300 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) Models C75, C85, C90, C125, C145, O–200, O–300, and GO–300 series reciprocating engines, that requires inspection of the cylinder rocker shaft bosses for cracks, and inspection of the cylinder rocker shaft for looseness and replacement, if necessary, with a serviceable part. This amendment is prompted by reports of cracked or improperly repaired cylinder rocker shaft bosses. The actions specified by this AD are intended to prevent engine power loss and engine failure.

EFFECTIVE DATE: May 2, 1994.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Teledyne Continental Motors (TCM) Models C75, C85, C90, C125, C145, O–200, and O–300 series reciprocating engines was published in the **Federal Register** on June 2, 1993 (58 FR 31348). That action proposed to require fluorescent penetrant or etching inspections of the cylinder rocker shaft bosses for cracks, and dimensional

inspections of the cylinder rocker shaft bosses for looseness, at the next overhaul, in accordance with TCM Overhaul Manual Form X–30013, dated June 1982, applicable to TCM Models C125, C145, and O–300 series engines; and TCM Overhaul Manual Form X–30010, dated January 1984, applicable to TCM Models C75, C85, C90, and O–200 series engines. If the cylinder rocker shaft bosses are cracked, the cylinder must be replaced. Modified cylinders must be further inspected for cracks that may have been introduced during the repair process. Cylinders with loose rocker shafts must be replaced with serviceable cylinders, or modified by installing bushings.

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

One commenter states that the AD should require compliance at the next 100 hour or annual inspection, whichever occurs first. The commenter further states that the AD should require visual inspection for wear, broken bosses, or loose bushings at the earlier compliance time because cylinders with cracked bosses or loose bushing will likely fail before the cylinder requires overhaul. The FAA does not concur. Service Difficulty Reports and engineering analysis do not indicate that the shorter compliance time is necessary, and the comment did not include any data as a basis for the shorter compliance time. Furthermore, it is unlikely that a visual inspection without disassembly could detect cracks or looseness in the cylinder rocker shaft bosses.

The commenter further states that the TCM GO–300 series engines should be included in the AD. Production of new cylinders has been standardized by manufacturing the TCM GO–300 type cylinder only for use on all C–75 through C–145, as well as the O–200 and O–300 series engines. The commenter maintains that used GO–300 cylinder assemblies may find their way onto other engines. The GO–300 shares nearly identical valve train components with the other engines and is subject to the same type of rocker boss wear and possible failures. The FAA concurs. The GO–300 cylinders have been added to the applicability paragraph of this AD.

The commenter further states that TCM Service Bulletin (SB) No. M73–13 specifies a minimum edge thickness for the center rocker bosses only. The commenter argues that this requirement for minimum thickness should be redefined to be a minimum thickness anywhere on any boss because many cylinders have bosses with adequate material on the edges of the center bosses, but very little material between the edges. The commenter concludes by stating that outer bosses, also require close scrutiny for thickness, and if an outer boss fails, the center boss will likely be overloaded and also fail. The FAA does not concur. The center bosses are thinner by design and will therefore wear to the limit sooner than the outer bosses. If the center bosses have the correct edge to wall thickness, then the outer bosses will be correct also.

The commenter further states that consideration should be given to securing rocker boss repair bushings with a dowel pin to prevent rotation after installation. The commenter argues that any lack of concentricity between bushing ID and OD can severely overload bosses if one or more bushings rotate after installation. The FAA does not concur. If the repair is accomplished correctly, the bushing will be pressed in and this press fit will prevent rotation.

The commenter further states that when performing inspections for cracked bosses on cylinders that have been removed from the engine, dye penetrant inspection should be allowed in addition to the fluorescent penetrant inspection. The commenter maintains that dye penetrant inspection is quite effective and reliable when properly performed and is in widespread use by approved cylinder head repair facilities. The FAA concurs. Dye penetrant inspection has been added to the AD as an option for compliance. In addition, the FAA has added industry-accepted procedures to the AD for performing dye penetrant, fluorescent penetrant, and etching inspections in order to standardize the method of inspection.

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

The FAA estimates that 35,600 engines installed on aircraft of U.S. registry would be affected by this AD, approximately 20,000 four-cylinder engines and 15,600 six-cylinder engines. The FAA estimates that it will take approximately one-half work hour per cylinder to inspect or install the bushings, and that the average labor rate is $55 per work hour. Required parts will cost approximately $11 per cylinder. Based on these figures, the cost impact of the AD for four-cylinder engines is estimated to be $154 per engine, the cost impact of the AD for six-cylinder engines is estimated to be $231 per engine, and the total cost impact of the AD on U.S. operators is estimated to be $6,683,600.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–05–05 Teledyne Continental Motors: Amendment 39–8843. Docket 92–ANE–32.

Applicability: Teledyne Continental Motors (TCM) Model C75, C85, C90, C125, C145, O–200, O–300, and GO–300 series reciprocating engines installed on but not limited to American Champion models 7BCM, 7CCM, 7EC, S7DC, S7CCM, 7EC,

S7EC, 7FC, 7JC, and 7ECA; Cessna Models 120, 140, 150, 170, 172, 172A–H, and 175; Luscombe Models 8E, 8F, and T–8F; Maule Models Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4–210, M–4–210C, M–4–210S, M–4–210T, and M–5–210C; Piper Models PA–18 and PA–19; Swift Models GC–1A and GC–1B; Univair (Erco) Models 415–D, E, and G; Univair (Forney) Models F–1 and F–1A; Univair (Alon) Model A–2 and Univair (Mooney) Model M–10 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power loss and engine failure, accomplish the following:

(a) At the next cylinder or engine overhaul after the effective date of this AD, inspect the cylinder rocker shaft bosses for cracks using one of the following methods, and if cracked replace with a serviceable cylinder:

Note: Certain cylinder cracks may be repaired by FAA-approved repair stations specifically rated to do those repairs.

(1) Fluorescent penetrant inspection, as follows:

(i) The penetrant shall be a nontoxic, noncorrosive, highly fluorescent liquid capable of penetrating fine discontinuities and, for aluminum castings, conforming to Aerospace Material Specification (AMS) 3156. If a darkened enclosure is not used for examination, AMS 3157 penetrant shall be used.

(ii) The emulsifier shall be composed of suitable oil or oil-like components together with such additives as are necessary to provide a stable, nontoxic, noncorrosive, oil-miscible, oil-emulsifying solution. Emulsifier shall not be used when AMS 3156 is used.

(iii) The developer shall be a highly absorbent, nonfluorescent and nontoxic powder, capable of being used dry or a similar powder capable of being suspended in water. When the suspension is used, the powder shall be thoroughly mixed with water to a concentration, unless otherwise permitted, of not less than 0.2 lb per gallon and a uniform distribution maintained by mechanical agitation.

(iv) The penetrant, the emulsifier (if used) and the developer shall be checked as often as necessary to maintain proper control. The penetrant shall be discarded if it shows a noticeable loss in penetrating power or marked contamination or when wax begins to form on the sides of the tank and dip basket.

(v) A darkness booth or a similar darkness area with a filtered black light shall be provided. The black light shall be at least equal to that produced by a 100 watt mercury vapor projection spot lamp equipped with a filter to transmit wave lengths of between 3200 and 4000 Angstrom units and absorb substantially all visible light. The intensity of the light at normal working distance shall be as specified by the purchaser but in no case shall be lower than 580 micro-watts per square centimeter as measured with an appropriate black light meter.

(vi) All parts shall be cleaned and dried in such a manner as to leave them free from grease, oil, soaps, alkalies and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(vii) Parts shall be immersed in the penetrant or shall be sprayed or brushed with the penetrant and shall be allowed to remain immersed in the penetrant or to stand for sufficient time to allow satisfactory penetration into all discontinuities. This time shall, unless otherwise specified, not be less than 5 minutes. The time for immersion or standing will depend upon the character and fineness of the discontinuities, the effectiveness of penetration increasing with time. Parts may be resprayed or re-immersed after standing to increase sensitivity and aid in removal of penetrant.

(viii) Parts shall be removed from the penetrant and cleaned thoroughly using a medium which will remove penetrant from the surface of parts; washing with water shall be used when the penetrant is water washable or when an emulsifying agent is applied to surfaces of parts to render the penetrant water washable. When emulsifiers are used, the parts shall be dipped in the emulsifier and removed slowly for draining or shall be sprayed with emulsifier and drained. Unless otherwise specified, the combined dipping and draining time shall be 1 to 5 minutes. When other than water washable penetrants are used, the penetrant shall be removed with a suitable cleaner or a suitable cleaner and lint-free cloths. During cleaning, the parts may be viewed under a suitable black light to ensure removal of the penetrant from the subrace of the part. Excessive cleaning which would remove the penetrant from discontinuities shall be avoided.

(ix) When a wet developer is used, the developer shall be applied to the parts, immediately after washing, by immersing the parts in the tank containing the water-suspended powder or by spraying or flowing the suspension onto the parts. The suspension shall be suitably agitated either during or immediately prior to application to parts. Immersed parts shall be removed from the wet developer; excess developer shall be allowed to drain off all parts. Special care shall be taken to remove excess developer from pockets, recesses, holes, threads, and corners so that the developer will not mask indications.

(x) When a dry developer or no developer is used, the parts shall be dried as thoroughly as possible by exposure to clean air. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Excessive drying time or part temperatures higher than 80°C (180°F) should be avoided to prevent evaporation of the penetrant.

(xi) When a dry developer is used, the developing powder shall be applied uniformly over the areas of the parts to be inspected by either dusting or powder-box immersion.

(xii) After sufficient time has been allowed to develop indications, parts shall be examined under a black light. Examination shall be made in a darkened enclosure unless AMS 3157 penetrant is used, in which case examination may be made under normal shop lighting but shaded from direct sunlight.

(xiii) When greater sensitivity is desired, the parts may be heated to 65°–85°C (150°–185°F) before immersion in the penetrant and/or before black light examination. To prevent evaporation, preheated parts shall remain fully immersed in the penetrant until cooled.

(xiv) Parts shall be cleaned, as necessary, to remove penetrant and developer.

(xv) Interpretation of the indications revealed by this inspection procedure and final disposition of the parts shall be the responsibility of only qualified personnel having experience with fluorescent penetrant inspection.

(xvi) Parts having discontinuities (cracks) shall be rejected.

(2) Dye penetrant inspection, as follows:

Note: Military Specification MIL–I–6866 and American Society of Testing Materials specifications ASTM E1417–93 and E165–9 contain additional information on dye penetrant inspection processes.

(i) *Preparation:* clean and dry all parts in such a manner as to leave the surfaces free from grease, oil, soaps, alkalies, and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(ii) *Penetrant Application Procedure:* after preparation, spray or brush the parts with the penetrant, and allow to stand for not less than 5 minutes. The effectiveness of the penetrant increases if left standing for a longer time, as the penetrant will reach finer discontinuities.

(iii) *Penetrant Cleaning:* clean the parts thoroughly using a medium which will remove penetrant from the surfaces of parts; wash with water when the penetrant is water soluble. When other than water soluble penetrants are used, the penetrant shall be removed with a suitable cleaner. Avoid excessive cleaning which would remove the penetrant from discontinuities.

(iv) *Drying:* dry the parts as thoroughly as possible. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Avoid excessive drying time or drying temperatures above 75°C (165°F) to prevent excessive evaporation of the penetrant. If heat is used for drying parts, cool parts to approximately 50°C (120°F) before proceeding to the developing procedure.

(v) *Developing:* apply the developer to the dry parts as lightly and as evenly as possible, using as thin a coating of developer as is possible. A translucent film is adequate. Mix wet developer by agitation immediately prior to applying it. After applying the developer, take care that no penetrant indication is disturbed or obliterated in subsequent handling.

(vi) *Examination:* examine the developed penetrant indications in accordance with the dye penetrant manufacturer's instructions. Examine parts for indications of discontinuities open to the surface.

(vii) *Final cleaning:* clean the parts following the inspection to remove penetrant and developer.

Note 1: *Caution:* because of differences among penetrants, take care to ensure that the final cleaner, the penetrant, the penetrant remover, and the developer are suitable for use with each other.

Note 2: *Caution:* all penetrant materials should be kept as free from moisture as possible.

Note 3: *Caution:* most penetrants, cleaning agents, and developer suspensions are low flash point material; use caution to prevent fires.

(3) Etching inspection, as follows:

(i) For TCM C75, C85, C90, and O–200 series engines, in accordance with paragraph 13–7 of TCM Overhaul Manual Form X–30010, dated January 1984.

(ii) For TCM C125, C145, O–300, and GO–300 series engines, in accordance with paragraphs 5(b)(1), 5(b)(2), and 5(b)(3) of TCM Overhaul Manual Form X–30013, dated June 1982.

(b) At the next cylinder or engine overhaul after the effective date of this AD, dimensionally inspect cylinders for looseness of the rocker shaft in accordance with page 22, paragraph 5, and Table IX of TCM Overhaul Manual Form X–30013, dated June 1982, for TCM Models C125, C145, O–300, and GO–300 series engines; page 75, paragraph 13–6, and the dimensions table in paragraph 13–8 of TCM Overhaul Manual Form X–30010, dated January 1984, for TCM Models C75, C85, C90, and O–200 series engines; as applicable.

(1) Cylinders that do not exhibit dimensional looseness of the rocker shaft beyond the limits specified in the applicable TCM overhaul manual may be returned to service.

(2) For cylinders that exhibit dimensional looseness of the rocker shaft, beyond the limits specified in the applicable TCM overhaul manual, accomplish the following:

(i) Replace with a serviceable cylinder; or

(ii) Install bushings in accordance with the instructions on page 27 of TCM Overhaul Manual, Form X–30013, dated June 1982, for TCM Models C125, C145, O–300, and GO–300 series engines; or the instructions on page 85 of TCM Overhaul Manual Form X–30010, dated January 1984, for TCM Models C75, C85, C90, and O–200 series engines; as applicable.

(iii) After repairing a cylinder perform an additional inspection of the cylinder rocker shaft bosses for cracks using fluorescent penetrant, dye penetrant, or etching methods, and replace, if necessary, with a serviceable cylinder.

(c) Thereafter, at each subsequent cylinder or engine overhaul, reinspect cylinder rocker bosses and rocker shafts in accordance with paragraphs (a) and (b) of this AD.

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

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

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

(f) This amendment becomes effective on May 2, 1994.

Issued in Burlington, Massachusetts, on February 18, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–4837 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Parts 300, 302, 303, 325, and 385

49 CFR Parts 1, 7, 8, and 28

[OST Docket No. 1; Amdt. 1–261]

Organization and Delegation of Powers and Duties; Delegations to the Assistant Secretary for Transportation Policy, to the Assistant Secretary for Aviation and International Affairs, to the Assistant to the Secretary and Director of Public Affairs, and to the Assistant General Counsel for Environmental, Civil Rights, and General Law

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document amends the relevant regulations which contain delegations of authority to the Assistant Secretary for Policy and International Affairs. The title of the delegatee has been changed either to the Assistant Secretary for Transportation Policy or to the Assistant Secretary for Aviation and International Affairs, as appropriate, because a new Assistant Secretary position has been created. This rule is necessary to clarify which current delegations apply to the new Assistant Secretary for Transportation Policy and which apply to the new Assistant Secretary for Aviation and International Affairs.

This document also amends the relevant regulations which contain delegations of authority to the Assistant Secretary for Public Affairs. The title of the delegatee has been changed to the Assistant to the Secretary and Director of Public Affairs to reflect the new title of the head of that Office. Finally, this document also amends the relevant regulations which contain all remaining delegations of authority that should have been transferred in an earlier reorganization from the Assistant Secretary for Public Affairs to the Office of the General Counsel. These latter authorities are hereby delegated to the Assistant General Counsel for Environmental, Civil Rights, and General Law.

EFFECTIVE DATE: This rule becomes effective March 3, 1994.

FOR FURTHER INFORMATION CONTACT: John T. Peak, Office of the Assistant Secretary for Transportation Policy at (202) 366–5416, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement at (202) 366–9306, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On October 27, 1993, the Secretary of Transportation approved a reorganization of the Office of the Secretary by creating a new position of Assistant Secretary for Transportation Policy and a new position of Assistant Secretary for Aviation and International Affairs. The title of the Assistant Secretary for Public Affairs was also changed by this reorganization to the Assistant to the Secretary and Director of Public Affairs. Thus, it is necessary to amend the relevant parts of the CFR in order to: (1) Clarify which current CFR delegations apply to the new Assistant Secretary for Transportation Policy and which apply to the new Assistant Secretary for Aviation and International Affairs; (2) reflect the new title of the head of the Office of Public Affairs; and (3) bring certain other provisions of 49 CFR part 7 into conformity with 49 CFR 1.57b, now entitled, Delegations to the Assistant General Counsel for Environmental, Civil Rights, and General Law. Until now, all of these CFR parts have referred either to the Assistant Secretary for Policy and International Affairs, or to the Assistant Secretary for Public Affairs. A summary of the CFR parts affected follows.

One CFR part (44 CFR part 403), which places restrictions on transportation movements and the transportation of goods to North Korea or the Communist-controlled area of Vietnam, is jointly administered by the Department of Transportation and the Department of Commerce. This part will be the subject of joint agency rulemaking at a later date.

14 CFR parts 300, 302, 303, 325 and 385 are procedural and organizational regulations concerning aviation economic proceedings. All references to the Assistant Secretary for Policy and International Affairs are being changed to the Assistant Secretary for Aviation and International Affairs, and a minor editorial change is being made to § 302.22a(b)(1).

49 CFR part 1 describes the organization of the Department of Transportation and provides for the performance of duties imposed upon, and the exercise of powers vested in, the Secretary of Transportation by law. Delegations to the Assistant Secretary for Policy and International Affairs are being transferred to the Assistant Secretary for Transportation Policy and to the Assistant Secretary for Aviation and International Affairs, as appropriate. Delegations to the Assistant Secretary for Public Affairs are being transferred to the Assistant to the Secretary and Director of Public Affairs. Further, §§ 1.22 and 1.23 are being revised not only to reflect the structure and responsibilities of the Office of the Secretary as a result of these delegations, but also to reflect the structure and responsibilities of the Office as a result of earlier reorganizations. Finally, minor editorial changes are being made to §§ 1.43(c) and 1.65(c).

49 CFR part 7 implements the Freedom of Information Act, and prescribes rules governing the availability to the public of records of the Department of Transportation. Consistent with the delegation of authority to the Assistant General Counsel for Environmental, Civil Rights, and General Law in 49 CFR 1.57b, references to the Assistant Secretary for Public Affairs in part 7 are being changed to the Assistant General Counsel for Environmental, Civil Rights, and General Law. A minor editorial change is also being made to § 7.53(c).

49 CFR part 8 sets forth procedures for the classification and declassification of national security information and material. Authority to classify information is being transferred from the Assistant Secretary for Policy and International Affairs to both the Assistant Secretary for Transportation Policy and the Assistant Secretary for Aviation and International Affairs, and a minor editorial change is being made to § 8.11(b)(1).

Finally, 49 CFR part 28 carries out provisions of existing law that prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies, including this Department. Certain compliance procedures for which the Assistant Secretary for Policy and International Affairs was responsible will now be the responsibility of the Assistant Secretary for Transportation Policy.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

In consideration of the foregoing, and under the authority of 49 U.S.C. 322, parts 300, 302, 303, 325 and 385 of title 14 and parts 1, 7, 8, and part 28 of title 49, Code of Federal Regulations, are amended as follows:

TITLE 14—AERONAUTICS AND SPACE

§§ 300.0, 302.1, 302.22a, 303.02, 325.7, 325.8, 385.1, 385.13, 385.14 [Amended]

1. In chapter II of 14 CFR, the words "Assistant Secretary for Policy and International Affairs" are revised to read "Assistant Secretary for Aviation and International Affairs" wherever they appear in the following places:

a. Section 300.0,
b. Section 302.1(a),
c. Section 302.22a (b) introductory text, (b)(1), (c), and (d),
d. Section 303.02(b),
e. Section 325.7(c),
f. Section 325.8(b),
g. Section 385.1, in the definition of "Reviewing Official",
h. Section 385.13(vv)(4),
i. Section 385.14 (b), (e), (cc)(4), and (kk).

§ 302.22a [Amended]

2. In subchapter B of 14 CFR, make the following amendments: a. In § 302.22a(b)(1), the word "carrier" is revised to read "career".

List of Subjects

49 CFR Part 1

Authority delegations (Government agencies)Organization and functions (Government agencies).

49 CFR Part 7

Freedom of information.

49 CFR Part 8

Classified information.

49 CFR Part 28

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Handicapped.

TITLE 49—TRANSPORTATION

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

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

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322.

5. The authority citation for part 8 continues to read as follows:

Authority: E.O. 11652 (37 FR 5209), National Security Council Directive of May 17, 1972 (37 FR 10053), and secs. 3 and 9 of the Department of Transportation Act (49 U.S.C. 1652 and 1657).

6. The authority citation for part 28 continues to read as follows:

Authority: 29 U.S.C. 794.

§§ 1.45, 1.48 and 28.170 [Amended]

7. In subtitle A of 49 CFR, the words "Assistant Secretary for Policy and International Affairs" are revised to read "Assistant Secretary for Transportation Policy" wherever they appear in the following places:

a. Section 1.45(e)(2),
b. Section 1.48(cc),
c. Section 28.170(i).

§§ 1.43 and 1.47 [Amended]

8. In subtitle A of 49 CFR, the words "Assistant Secretary for Policy and International Affairs" are revised to read "Assistant Secretary for Aviation and International Affairs" wherever they appear in the following places:

a. Section 1.43(c),
b. Section 1.47(p)(2).

§§ 1.65 and 8.11 [Amended]

9. In subtitle A of 49 CFR, the words "Assistant Secretary for Policy and International Affairs;" are revised to read "Assistant Secretary for Transportation Policy; Assistant Secretary for Aviation and International Affairs;" wherever they appear in the following places:

a. Section 1.65(c)(1),
b. Section 8.11(b)(1).

§§ 7.11, 7.53 and 7.97 [Amended]

10. In subtitle A of 49 CFR, the words "Assistant Secretary for Public Affairs" are revised to read "Assistant General Counsel for Environmental, Civil Rights, and General Law" wherever they appear in the following places:

a. Section 7.11,
b. Section 7.53(c),
c. Section 7.97(e).

11. 49 CFR Subtitle A is amended as follows:

a. Section 1.22 is revised to read as follows:

§ 1.22 Structure.

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the following, all of which report directly to the Secretary: The Associate Deputy Secretary and Director, Office of Intermodalism; the Executive Secretariat; the Board of Contract Appeals; the Departmental Office of Civil Rights; the Office of

Intelligence and Security; and the Office of Public Affairs. The Assistant Secretaries, the General Counsel, and the Inspector General also report directly to the Secretary.

(b) *Office of the Assistant Secretary for Transportation Policy.* This Office is composed of the Offices of Environment, Energy and Safety; and Economics.

(c) *Office of the Assistant Secretary for Aviation and International Affairs.* This Office is composed of the Offices of International Transportation and Trade; International Aviation; and Aviation Analysis.

(d) *Office of the General Counsel.* This Office is composed of the Offices of Environmental, Civil Rights, and General Law; International Law; Litigation; Legislation; Regulation and Enforcement; the Board for Correction of Military Records; and Aviation Enforcement and Proceedings.

(e) *Office of the Assistant Secretary for Budget and Programs.* This Office is composed of the Offices of Programs and Evaluation; and Budget.

(f) *Office of the Assistant Secretary for Governmental Affairs.* This Office is composed of the Offices of Congressional Affairs; and Intergovernmental and Consumer Affairs.

(g) *Office of the Assistant Secretary for Administration.* This Office is composed of the Offices of Personnel; Management Planning; Information Resource Management; Administrative Services and Property Management; Hearings; Acquisition and Grant Management; Security; Financial Management; and Administrative Systems Development.

(h) *Office of the Inspector General.* The duties and responsibilities of the Office of Inspector General are carried out by the Assistant Inspector General for Auditing; the Assistant Inspector General for Investigations; the Assistant Inspector General for Policy, Planning, and Resources; and the Assistant Inspector General for Inspections and Evaluations.

b. Section 1.23 is revised to read as follows:

§ 1.23 Spheres of primary responsibility.

(a) *Secretary and Deputy Secretary.* Overall planning, direction, and control of departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in departmental programs, transportation research and technology, commercial space transportation, intelligence and security, and public affairs.

(b) *Associate Deputy Secretary and Director, Office of Intermodalism.* Assists the Secretary and Deputy Secretary in carrying out a variety of executive and managerial policies, programs and initiatives. Focal point within the Federal Government for coordination of intermodal transportation policy which brings together departmental intermodal perspectives, advocates intermodal interests, and provides secretarial leadership and visibility on issues that involve or affect more than one operating administration.

(c) *General Counsel.* Legal services as the chief legal officer of the Department, legal advisor to the Secretary and the Office of the Secretary; final authority within the Department on questions of law; professional supervision, including coordination and review, over the legal work of the legal offices of the Department; drafting of legislation and review of legal aspects of legislative matters; point of coordination for the Office of the Secretary and Department Regulations Council; advice on questions of international law; exercise of functions, powers, and duties as Judge Advocate General under the Uniform Code of Military Justice (Chapter 47 of Title 10, U.S.C.) with respect to the United States Coast Guard; advice and assistance with respect to uniform time matters; ensures uniform departmental implementation of the Freedom of Information Act (5 U.S.C. 552); responds to requests for records of the Office of the Secretary including the Office of the Inspector General, under that statute; review and final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3); promotion and coordination of efficient use of Departmental legal resources; recommendation, in conjunction with the Assistant Secretary for Administration, of legal career development programs within the Department; review and final action on application for correction of military records of the United States Coast Guard.

(d) *Assistant Secretary for Transportation Policy.* Principal policy advisor to the Secretary and the Deputy Secretary. Public policy development, coordination, and evaluation for all aspects of transportation, with the goal of making the Nation's transportation resources function as an integrated national system; evaluation of private transportation sector operating and economic issues; evaluation of public transportation sector operating and economic issues; regulatory and legislative initiatives and review; energy, environmental, disability, and safety policy and program development and review; and transportation infrastructure assessment and review.

(e) *Assistant Secretary for Aviation and International Affairs.* Public policy assessment and review; private sector evaluation; international transportation and transport-related trade policy and issues; regulatory and legislative initiatives and review of maritime/shipbuilding policies and programs; transport-related trade promotion; coordination of land transport relations with Canada and Mexico; technical assistance and science and technology cooperation; international visitors' programs; economic regulation of the airline industry; and essential air service program.

(f) *Assistant Secretary for Budget and Programs.* Preparation, review and presentation of Department budget estimates; liaison with OMB and Congressional Budget and Appropriations Committees; departmental financial plans, apportionments, reapportionments, reprogrammings, and allotments; program and systems evaluation and analysis; program evaluation criteria; program resource plans; analysis and review of legislative proposals and one-time reports and studies required by the Congress; budgetary and selected administrative matters relating to the Immediate Office of the Secretary.

(g) *Assistant Secretary for Governmental Affairs.* Coordination of legislative and non-legislative relationships; congressional affairs; communications and coordination with Federal, State and local governments, industry and labor, and with citizens and organizations representing consumers.

(h) *Assistant Secretary for Administration.* Organization; delegations of authority; personnel ceiling control; management studies; personnel management; acquisition and grant management (except for the responsibility listed for the Office of Small and Disadvantaged Business Utilization in this section); information resource management; financial management; development and implementation of a Departmental Accounting and Financial Information System (DAFIS); property management information; security; computer support; telecommunications; and administrative support services for the Office of the Secretary and certain other components of the Department.

(i) *Inspector General.* Conduct, supervise, and coordinate audits and investigations, review existing and proposed legislation and make

recommendations to the Secretary and Congress (Semiannual reports) concerning their impact on the economy and efficiency of program administration, or the prevention and detection of fraud and abuse; recommend policies for and conduct, supervise, or coordinate other activities of the Department for the purpose of promoting economy and efficiency in program administration, or preventing and detecting fraud and abuse.

(j) *Executive Secretary.* Central facilitative staff for the Immediate Office of the Secretary and the Secretarial Officers.

(k) *Board of Contract Appeals.* Conducts trials and issues final decisions, which are appealable to the United States Court of Appeals for the Federal Circuit, on appeals from contracting officer decisions under contracts awarded by the Department and its constituent administrations in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601 et seq.; sits as the Contract Adjustment Board with plenary authority to grant extraordinary contractual relief in accordance with 50 U.S.C. 1431–1435 and Executive Order 10789 (3 CFR, 1954–1958 comp., p. 426), as amended; hears and decides all contractor and subcontractor debarment, suspension, or ineligibility cases pursuant to the Federal Acquisition Regulation, 48 CFR 9.402; judges serve as "neutrals" under the Administrative Dispute Resolution Act, 5 U.S.C. 581 et seq., in contract-related matters; and performs such other adjudicatory functions assigned by the Secretary as are consistent with the duties and responsibilities of the Board as set forth in 41 U.S.C. 601 et seq.

(l) *Departmental Office of Civil Rights.* DOT director of equal employment opportunity; Departmentwide compliance officer; Title VI (Civil Rights Act of 1964) coordinator; Departmentwide compliance with related laws, Executive Orders, regulations, and policies, and formal complaints of discrimination.

(m) *Office of Small and Disadvantaged Business Utilization.* Responsible for the Department's implementation and execution of the functions and duties under sections 8 and 15 of the Small Business Act, as amended, (15 U.S.C. 637 and 644), and for other departmental small and disadvantaged business policy direction.

(n) *Office of Commercial Space Transportation.* Focal point within the Federal Government for private sector space launch contacts and licensing related to commercial expendable launch vehicle operations and for promotion and encouragement of commercial expendable launch vehicle industry.

(o) *Office of Intelligence and Security.* Focal point within the Department of Transportation for intelligence and security matters which affect the safety of the traveling public.

(p) *Office of Public Affairs.* Focal point for public information and departmental relations with the news media, the general public, and selected special publics.

§ 1.25 [Amended]

c. In § 1.25(b), the words "Assistant Secretary for Policy and International Affairs" are revised to read "Assistant Secretary for Transportation Policy and the Assistant Secretary for Aviation and International Affairs, as appropriate,".

d. Section 1.26 is amended by revising paragraph (a) to read as follows:

§ 1.26 Secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or in the case of a vacancy, until a successor is appointed:

(1) Deputy Secretary.

(2) General Counsel.

(3) Assistant Secretary for Transportation Policy.

(4) Assistant Secretary for Aviation and International Affairs.

(5) Assistant Secretary for Governmental Affairs.

(6) Assistant Secretary for Budget and Programs.

(7) Associate Deputy Secretary.

(8) Saint Lawrence Seaway Development Corporation Administrator.

(9) Assistant Secretary for Administration.

* * * * *

§ 1.43 [Amended]

e. In § 1.43(c), the phrase "§ 1.56a" is revised to read "§ 1.56b".

f. Section 1.56 is revised to read as follows:

§ 1.56 Delegations to the Assistant Secretary for Transportation Policy.

The Assistant Secretary for Transportation Policy is delegated authority to:

(a) Establish policy and maintain oversight of implementation of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) within the Department of Transportation.

(b) Oversee the implementation of section 4(f) of the Department of Transportation Act of 1969 (49 U.S.C. 303).

(c) Represent the Secretary of Transportation on various interagency boards, committees, and commissions to include the Architectural and Transportation Barriers Compliance Board and the Advisory Council on Historic Preservation.

(d) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (49 U.S.C. 307) relating to safety fitness of an applicant, decide on requests to intervene or appear before administrative agencies to present the views of the Department subject to concurrence by the General Counsel.

(e) Carry out the functions vested in the Secretary by section 656 of the Department of Energy Organization Act (42 U.S.C. 7266) which pertains to planning and implementing energy conservation matters with the Department of Energy. Serves as the Department's principal conservation officer.

g. Section 1.56a is revised to read as follows:

§ 1.56a Delegations to the Assistant Secretary for Aviation and International Affairs.

The Assistant Secretary for Aviation and International Affairs is delegated authority to:

(a) Represent the Secretary of Transportation on various interagency boards, committees, and commissions to include the Trade Policy Review Group and the Trade Policy Staff Committee.

(b) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (49 U.S.C. 307) relating to safety fitness of an applicant, decide on requests to intervene or appear before administrative agencies to present the views of the Department subject to concurrence by the General Counsel.

(c) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Orders T–1 and T–2 (44 CFR chapter IV) under the Act of September 8, 1950, as amended (50 U.S.C. app. 2061 *et seq.*) and Executive Order No. 10480 (3 CFR, 1949–1953 comp., p. 962), as amended.

(d) Serve as Department of Transportation member of the Interagency Group on International Aviation, and pursuant to Executive Order No. 11382 (3 CFR, 1966–1970 comp., p. 691), as amended, serve as Chair of the Group.

(e) Serve as second alternate representing the Secretary of Transportation to the Trade Policy Committee as mandated by

Reorganization Plan No. 3 of 1979 (5 U.S.C. app. at 1381 (1988)) and Executive Order No. 12188 (3 CFR, 1980 comp., p. 131), as amended.

(f)(1) As supplemented by 14 CFR part 385, as limited by paragraph (f)(2) of this section, and except as provided in §§ 1.53(g), 1.57(a), and 1.61(d) of this title, carry out the functions transferred to the Department from the Civil Aeronautics Board under the following statutes:

(i) 49 U.S.C. app. 1551(b); and

(ii) Section 4(a)(1) through (4), (6), and (8) through (10) of the Civil Aeronautics Board Sunset Act of 1984 (49 U.S.C. app. 1553(a)(1) through (4), (6), and (8) through (10)).

(2) Insofar as the delegation in this paragraph (f) authorizes review of decisions of the Designated Senior Career Official in the Office of the Assistant Secretary for Aviation and International Affairs under § 1.56b of this title, the authority is limited to approving any such decision or remanding it for reconsideration by the Designated Senior Career Official, with a full written explanation of the basis for the remand.

(g) Carry out the functions vested in the Secretary by the following subsections of section 1115 of the Federal Aviation Act of 1958, as amended, which relates to the security of foreign airports:

(1) Subsection 1115(e)(1), in coordination with the General Counsel, and the Federal Aviation Administrator; and

(2) Subsection 1115(e)(3), in coordination with the General Counsel, the Federal Aviation Administrator, the Assistant Secretary for Governmental Affairs, and the Assistant Secretary for Administration.

(h) Carry out the following statutory provisions relating to consumer protection:

(1) Section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (49 U.S.C. app. 1553(a)(5)) relating to enforcement of the Consumer Credit Protection Act;

(2) Sections 101(3) (relating to relieving certain carriers from provisions of the Federal Aviation Act), 204 (relating to taking such actions and issuing such regulations as may be necessary to carry out responsibilities under the Act), 404 (relating to enforcing the duty of carriers to provide safe and adequate service), 407(a) (relating to requiring the production of information), 407(e) (relating to entering carrier property, and inspecting records), 411 (relating to determining whether any carrier or ticket agent is engaged in unfair or deceptive practices or unfair methods of competition), and 416 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301(3), 1324, 1374, 1377 (a) and (e), 1381, and 1386) as appropriate to the consumer protection functions in this paragraph.

h. A new § 1.56b is added to read as follows:

§ 1.56b Delegations to the Designated Senior Career Official, Office of the Assistant Secretary for Aviation and International Affairs.

The Designated Senior Career Official in the Office of the Assistant Secretary for Aviation and International Affairs is delegated exclusive authority to make decisions in all hearing cases to select a carrier for limited-designation international route authority, and in any other case that the Secretary designates, under the authority transferred to the Department from the Civil Aeronautics Board described in §§ 1.56a(f) and 1.61(d) of this title; this includes the authority to adopt, reject or modify recommended decisions of administrative law judges.

§ 1.57b [Amended]

i. In § 1.57b, the heading "Delegations to the Associate General Counsel" is revised to read "Delegations to the Assistant General Counsel for Environmental, Civil Rights, and General Law".

§ 1.63 [Amended]

j. In § 1.63, the words "Assistant Secretary for Public Affairs" are revised to read "Assistant to the Secretary and Director of Public Affairs" where they appear in the heading and the introductory text.

§ 1.65 [Amended]

k. In § 1.65(c) introductory text, the word "of" after the word "Authority" in the first sentence is revised to read "to".

§ 8.11 [Amended]

l. In § 8.11(b)(1), the word "Under" is revised to read "Deputy".

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

Federico Peña,

Secretary of Transportation.

[FR Doc. 94–4247 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F–0023]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2′-(1,2-ethenediyldi-4,1-phenylene)bis(benzoxazole) as an optical brightener for food-contact polymers. This action is in response to a petition filed by Eastman Chemical Co., Eastman Kodak Co.

DATES: Effective on March 3, 1994; written objections and requests for a hearing by April 4, 1994.

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

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 11, 1991 (56 FR 5415), FDA announced that a food additive petition (FAP 1B4240) had been filed by Eastman Chemical Co., Eastman Kodak Co., P.O. Box 511, Kingsport, TN 37662, proposing that the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 2,2′-(1,2-ethenediyldi-4,1-phenylene)bis(benzoxazole) as an optical brightener for food-contact polymers. Subsequently, after a company reorganization, Eastman Chemical Co. is no longer part of Eastman Kodak Co.; it is now referred to only as Eastman Chemical Co.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for

inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 4, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * * * * * *	
2,2'-(1,2-Ethenediyldi-4,1-phenylene) bis(benzoxazole) (CAS Reg. No. 1533–45–5).	For use as an optical brightener for all polymers at a level not to exceed 0.025 percent by weight of polymer. The finished polymer shall contact foods only of the types identified in Table 1 of § 176.170(c) of this chapter, under categories I, II, IV–B, VI–A, VI–B, VII–B, and VIII at temperatures not to exceed 275 °F.
* * * * * * *	

Dated: February 24, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–4915 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 91F–0439]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of cobalt aluminate as a colorant in all polymers intended to contact food. This action is in response to a petition filed by The Shepherd Color Co.

DATES: Effective March 3, 1994; written objections and requests for a hearing by April 4, 1994.

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

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1991 (56 FR 65907), FDA announced that a food additive petition (FAP 2B4296) had been filed by The Shepherd Color Co., P.O. Box 465627, Cincinnati, OH 45246, proposing that the food additive regulations be amended in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of cobalt aluminate as a colorant in all polymers intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 4, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by adding new item 6 in the "Limitations" column for the entry "Cobalt aluminate" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * * * * * *	
Cobalt aluminate	For use only: * * * 6. At levels not to exceed 5 percent by weight of all polymers except those listed under limitations 1 through 5 of this item. The finished articles are to contact food under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: February 22, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–4800 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8526]

RIN 1545–AN97

Certificates of Compliance with Income Tax Laws by Departing Aliens

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations that exempt certain alien students, industrial trainees, and exchange visitors from the requirement of obtaining a certificate of compliance with income tax laws before departing the United States. This action is necessary because of changes to the applicable tax laws made by the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATE: This regulation is effective March 3, 1994.

This regulation applies to departures after April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph (202–622–3880, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1991, the IRS published a notice of proposed rulemaking in the **Federal Register** (56 FR 3061) by cross reference to temporary regulations (56 FR 3034) that proposed amendments to the Income Tax Regulations under section 6851 of the Internal Revenue Code of 1986. These regulations implemented section 1001(d) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342. Comments responding to the notice of proposed rulemaking were received but no public hearing was requested or held. After consideration of the written comments, the IRS adopts the proposed regulations as revised by this Treasury decision.

Explanation of Provisions

The regulations exempt certain alien students, industrial trainees, and exchange visitors, and their spouses and children, from the requirement of obtaining a certificate of compliance with the U.S. income tax laws before they depart the United States. Aliens exempt from the requirements are those admitted to the United States solely on an F–1, F–2, H–3, H–4, J–1, or J–2 visa, who have received no gross income from U.S. sources other than: (1) Allowances to cover expenses incident to study in the United States, (2) the value of any services or accommodations furnished incident to that study, (3) income derived in accordance with the employment authorizations in 8 CFR 274a.12(b) and (c) that apply to the alien's visa or (4) interest on deposits described in section 871(i)(2)(A). Furthermore, aliens admitted solely on an M–1 or M–2 visa who have received no gross income other than that derived in accordance with the employment authorization in 8 CFR 274a.12 (c)(6) or described in

section 871(i)(2)(A) are also exempt from the requirement.

Comments received were very positive. Accordingly, the regulations adopt the provisions of the notice of proposed rulemaking, with only minor changes. In response to a comment, the words "or training" are added immediately after the word "study" in § 1.6851–2(a)(2)(ii) (A) (*1*) and (*2*) to clarify that the regulations apply to payments incident to training as well as study. In addition, a commentator suggested that the exemption should apply to amounts, such as travel allowances, that may be received by students or trainees when not physically present in the United States. These regulations clarify that such amounts are covered by the exemption as well, assuming that the other requirements of the regulations have been met. The final regulations also provide that the exemption covers amounts received that are exempt from United States taxation under section 871(i)(2)(A), relating to certain interest on deposits.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Thomas L. Ralph of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by removing the entry for "Section 1.6851–2T" and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6851–2 also issued under 26 U.S.C. 6851(d). * * *

§ 1.6851–2T [Removed]

Par. 2. Section 1.6851–2T is removed.

Par. 3. Section 1.6851–2 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 1.6851–2 Certificates of compliance with income tax laws by departing aliens.

(a) * * *

(2) * * *

(ii) *Alien students, industrial trainees, and exchange visitors.* A certificate of compliance shall not be required, and examination as to United States income tax liability shall not be made, upon the departure from the United States or any of its possessions of—

(A) An alien student, industrial trainee, or exchange visitor, and any spouse and children of that alien, admitted solely on an F–1, F–2, H–3, H–4, J–1 or J–2 visa, who has received no gross income from sources inside the United States other than—

(*1*) Allowances to cover expenses incident to study or training in the United States (including expenses for travel, maintenance, and tuition);

(*2*) The value of any services or accommodations furnished incident to such study or training;

(*3*) Income derived in accordance with the employment authorizations in 8 CFR 274a.12(b) and (c) that apply to the alien's visa; or

(*4*) Interest on deposits described in section 871(i)(2)(A); or

(B) An alien student, and any spouse or children of that alien admitted solely on an M–1 or M–2 visa, who has received no gross income from sources inside the United States other than income derived in accordance with the employment authorization in 8 CFR 274a.12(c)(6) or interest on deposits described in section 871(i)(2)(A).

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–4781 Filed 3–2–94; 8:45 am]

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26 CFR Parts 1 and 602

[TD 8520]

RIN 1545–AR15

Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code. The regulations provide guidance with respect to: Eligibility for a carryover allocation; procedures for electing an appropriate percentage month; the general public use requirement; utility allowances to be used in determining gross rent; and the inclusion of the cost of certain services in gross rent. The regulations incorporate and expand upon the guidance provided by Notice 89–1, 1989–1 C.B. 620, and Notice 89–6, 1989–1 C.B. 625. This information will assist State and local housing credit agencies and taxpayers in complying with the requirements of section 42. The regulations affect taxpayers that apply for or claim the low-income housing tax credit and State and local housing credit agencies.

DATES: These regulations are effective May 2, 1994.

For dates of applicability of these regulations, see § 1.42–12.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wilson (202) 622–3040 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1102. The estimated annual burden per State or local government respondent/recordkeeper varies from 18.60 hours to 51.63 hours, with an estimated average of 39.61 hours. The estimated annual burden for all other respondent/recordkeepers varies from 1.90 hours to 6.20 hours, with an estimated average of 4.50 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the

Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On December 29, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (57 FR 61852) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986, as amended. These amendments provide guidance on several requirements of the low-income housing tax credit and incorporate and expand upon the guidance provided by Notices 89–1 and 89–6.

Written comments responding to the notice of proposed rulemaking were received. A public hearing was scheduled for February 16, 1993, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. However, the IRS received no requests to speak at the public hearing by the designated date. On February 8, 1993, the IRS published a notice (58 FR 7497) cancelling the public hearing on the proposed regulations. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Carryover Allocations

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only to the extent that the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency).

Under section 42(h)(1)(E), an allocation may be made to a qualified building that has not yet been placed in service, provided the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation (a carryover allocation). Section 42(h)(1)(E)(ii) defines a qualified building as any building that is part of a project if the taxpayer's basis in the project (as of the close of the calendar year of the allocation) is more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation). For these purposes, the taxpayer's basis equals the taxpayer's basis in land and depreciable property. See 2 H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. II–82 (1988), 1988–3 C.B. 572. A carryover allocation may also be made to a multiple-building project under section 42(h)(1)(F).

Commentators requested clarification on when a carryover allocation is treated as if it had never been made. The final regulations clarify that only a failure to satisfy a requirement of section 42(h)(1) (E) or (F) that must be satisfied by the close of the calendar year of allocation will cause a carryover allocation to be treated as if it had not been made.

The proposed regulations provide that a taxpayer does not have carryover-allocation basis in a project unless, by the close of the calendar year of allocation, the taxpayer is the owner, for federal income tax purposes, of land or depreciable real property expected to be part of the project. The final regulations do not explicitly contain this requirement. After further consideration, the IRS believes that satisfaction of the requirements of § 1.42–6 is sufficient to ensure that a taxpayer intends to complete a qualified low-income housing project. For example, if a taxpayer has basis in land or depreciable property that is reasonably expected to be part of a project and the requirements of § 1.42–6 are otherwise satisfied, the taxpayer has carryover-allocation basis with respect to the land or depreciable property. This basis includes all items that are properly capitalizable with respect to the land or depreciable property. Thus, notwithstanding the rule in Notice 89–1 to the contrary, a nonrefundable downpayment for, or an amount paid to acquire an option to purchase, land or depreciable property may be included in carryover-allocation basis if properly capitalizable into the basis of land or depreciable property that is reasonably expected to be part of a project.

Commentators objected to the exclusion of credit application fees from carryover-allocation basis and requested that the final regulations permit these fees to be included in carryover-allocation basis. On further consideration, it appears that an absolute prohibition against the inclusion of application fees (and compliance monitoring fees, which were also not included) in carryover-allocation basis is not warranted. Accordingly, the final regulations subject credit application and compliance monitoring fees to the same standards imposed upon other fees under the regulations. For example, if a fee is properly capitalizable as part of the taxpayer's basis in land or depreciable property that is reasonably expected to be part of a project, the fee is included in carryover-allocation basis.

Verification of Basis

The proposed regulations provide verification requirements and procedures that an Agency must follow to ensure that the minimum basis requirement that is required to be met by the close of the year of allocation is, in fact, met. A commentator suggested that the basis verification requirements are too burdensome to Agencies and that Agencies lack the expertise to verify the costs includible in basis. The IRS does not expect Agencies to audit projects or make legal determinations. Rather, the proposed regulations provide that an Agency may verify the basis requirement by requiring the taxpayer to obtain a certification from an attorney or certified public accountant that the taxpayer has incurred the minimum required basis by the close of the calendar year of allocation. Accordingly, the final regulations adopt the basis verification requirement of the proposed regulations.

Requirements for Making Carryover Allocations

The proposed regulations provide guidance on the information needed for carryover allocation documents. A commentator suggested that the final regulations clarify whether a newly constructed building that receives an allocation of credit in different calendar years must have a separate Form 8609 for each allocation and, if so, whether the same building identification number (B.I.N.) should be used.

The final regulations clarify that, in this and similar situations, a separate Form 8609 is necessary for both allocations and that the B.I.N. assigned to the building for the first allocation also is used for the subsequent allocation.

Use by the General Public

The legislative history of section 42 provides that residential rental units must be for use by the general public. Residential rental units are not for use by the general public, for example, if the units are provided only for members of a social organization or provided by an employer for its employees. The proposed regulations provide an exception for an employer-provided resident manager unit that is a facility reasonably required by a project.

Commentators suggested that the exception for a resident manager unit be expanded to include a unit occupied by a full-time maintenance person. After

further review, IRS the Service and the Treasury have concluded that the reference to a resident manager unit in the proposed regulations was inappropriate because the general public use requirement only applies to residential rental units. A unit that is occupied by a full-time resident manager or a full-time maintenance person is not a residential rental unit but is a facility reasonably required by a project. See Rev. Rul. 92–61, 1992–2 C.B. 7. Accordingly, the final regulations remove the reference to a resident manager unit.

Utility Allowances

A commentator suggested that the final regulations provide that in areas where there is a utility allowance increase without a corresponding increase in area median gross income, an owner may adjust the rent upwards so that rent receipts do not decrease below the minimum rent floor of section 42(g)(2)(A). Because a change of this nature requires an amendment to the statute, the final regulations do not adopt this suggestion.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Christopher J. Wilson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.42–6, 1.42–8, 1.42–9, 1.42–10, 1.42–11, and 1.42–12 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–6 is added, § 1.42–7 is added and reserved, and §§ 1.42–8 through 1.42–12 are added to read as follows:

§ 1.42–6 Buildings qualifying for carryover allocations.

(a) *Carryover allocations.* A carryover allocation is an allocation that meets the requirements of section 42(h)(1) (E) or (F). If the requirements of section 42(h)(1) (E) or (F) that are required to be satisfied by the close of the calendar year are not satisfied, the allocation is treated as if it had not been made. For example, if the taxpayer's basis in the project as of the close of the calendar year of allocation is not more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the year of allocation, the carryover allocation is not valid and is treated as if it had not been made.

(b) *Carryover-allocation basis*—(1) *In general.* Subject to the limitations of paragraph (b)(2) of this section, a taxpayer's basis in a project for purposes of section 42(h)(1) (E)(ii) or (F) (carryover-allocation basis) is the taxpayer's adjusted basis in land or depreciable property that is reasonably expected to be part of the project, whether or not these amounts are includible in eligible basis under section 42(d). Thus, for example, if the project is to include property that is not residential rental property, such as commercial space, the basis attributable to the commercial space, although not includible in eligible basis, is includible in carryover-allocation basis. The adjusted basis of land and depreciable property is determined under sections 1012 and 1016, and generally includes the direct and indirect costs of acquiring, constructing, and rehabilitating the property. Costs otherwise includible in carryover-allocation basis are not excluded by reason of having been incurred prior to the calendar year in which the carryover allocation is made.

(2) *Limitations*—For purposes of determining carryover-allocation basis under paragraph (b)(1) of this section, the following limitations apply.

(i) *Taxpayer must have basis in land or depreciable property related to the project.* A taxpayer has carryover-allocation basis to the extent that it has basis in land or depreciable property and the land or depreciable property is reasonably expected to be part of the project for which the carryover allocation is made. This basis includes all items that are properly capitalizable with respect to the land or depreciable property. For example, a nonrefundable downpayment for, or an amount paid to acquire an option to purchase, land or depreciable property may be included in carryover-allocation basis if properly capitalizable into the basis of land or depreciable property that is reasonably expected to be part of a project.

(ii) *High cost areas.* Any increase in eligible basis that may result under section 42(d)(5)(C) from a building's location in a qualified census tract or difficult development area is not taken into account in determining carryover-allocation basis or reasonably expected basis.

(iii) *Amounts not treated as paid or incurred.* An amount is not includible in carryover-allocation basis unless it is treated as paid or incurred under the method of accounting used by the taxpayer. For example, a cash method taxpayer cannot include construction costs in carryover-allocation basis unless the costs have been paid, and an accrual method taxpayer cannot include construction costs in carryover-allocation basis unless they have been properly accrued. See paragraph (b)(2)(iv) of this section for a special rule for fees.

(iv) *Fees.* A fee is includible in carryover-allocation basis only to the extent the requirements of paragraph (b)(2)(iii) of this section are met and—

(A) The fee is reasonable;

(B) The taxpayer is legally obligated to pay the fee;

(C) The fee is capitalizable as part of the taxpayer's basis in land or depreciable property that is reasonably expected to be part of the project;

(D) The fee is not paid (or to be paid) by the taxpayer to itself; and

(E) If the fee is paid (or to be paid) by the taxpayer to a related person, and the taxpayer uses the cash method of accounting, the taxpayer could properly accrue the fee under the accrual method of accounting (considering, for example, the rules of section 461(h)). A person is a related person if the person bears a relationship to the taxpayer specified in sections 267(b) or 707(b)(1), or if the person and the taxpayer are engaged in trades or businesses under common

control (within the meaning of subsections (a) and (b) of section 52).

(3) *Reasonably expected basis.* Rules similar to the rules of paragraphs (a) and (b) of this section apply in determining the taxpayer's reasonably expected basis in a project (land and depreciable basis) as of the close of the second calendar year following the calendar year of the allocation.

(4) *Examples.* The following examples illustrate the rules of paragraphs (a) and (b) of this section.

Example 1. (i) *Facts.* C, an accrual-method taxpayer, receives a carryover allocation from Agency, the state housing credit agency, in September of 1993. As of that date, C has not begun construction of the low-income housing building C plans to build. However, C has owned the land on which C plans to build the building since 1985. C's basis in the land is $100,000. C reasonably expects that by the end of 1995, C's basis in the project of which the building is to be a part will be $2,000,000. C also expects that because the project is located in a qualified census tract, C will be able to increase its basis in the project to $2,600,000. Before the close of 1993, C incurs $150,000 of costs for architects' fees and site preparation. C properly accrues these costs under its method of accounting and capitalizes the costs.

(ii) *Determination of carryover-allocation basis.* C's $100,000 basis in the land is includible in carryover-allocation basis even though C has owned the land since 1985. The $150,000 of costs C has incurred for architects' fees and site preparation are also includible in carryover-allocation basis. The expected increase in basis due to the project's location in a qualified census tract is not taken into account in determining C's carryover-allocation basis. Accordingly, C's carryover-allocation basis in the project of which the building is a part is $250,000.

(iii) *Determination of whether building is qualified.* C's reasonably expected basis in the project at the close of the second calendar year following the calendar year of allocation is $2,000,000. The expected increase in eligible basis due to the project's location in a qualified census tract is not taken into account in determining this amount. Because C's carryover-allocation basis is more than 10 percent of C's reasonably expected basis in the project of which the building is a part, the building for which C received the carryover allocation is a qualified building for purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section.

Example 2. (i) *Facts.* D, an accrual-method taxpayer, receives a carryover allocation from Agency, the state housing credit agency, on September 11, 1993. As of that date, D has not begun construction of the low-income housing building D plans to build and D does not have basis in the land on which D plans to build the building. In 1993, D incurs some costs related to the planned building, including architects' fees. However, at the close of 1993, these costs do not exceed 10 percent of D's reasonably expected basis in the project.

(ii) *Determination of whether building is qualified.* Because D's carryover-allocation basis is not more than 10 percent of D's reasonably expected basis in the project of which the building is a part, the building for which D received a carryover allocation is not a qualified building for purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section. The carryover allocation to D is not valid, and is treated as if it had not been made.

(c) *Verification of basis by Agency—*(1) *Verification requirement.* An Agency that makes a carryover allocation to a taxpayer must verify that, as of the close of the calendar year of allocation, the taxpayer has incurred more than 10 percent of the reasonably expected basis in the project (land and depreciable basis).

(2) *Manner of verification.* An Agency may verify that a taxpayer has incurred more than 10 percent of its reasonably expected basis in a project by obtaining a certification from the taxpayer, in writing and under penalty of perjury, that the taxpayer has incurred by the close of the calendar year of the allocation more than 10 percent of the reasonably expected basis in the project. The certification must be accompanied by supporting documentation that the Agency must review. Supporting documentation may include, for example, copies of checks or other records of payments. Alternatively, an Agency may verify that the taxpayer has incurred adequate basis by requiring that the taxpayer obtain from an attorney or certified public accountant a written certification to the Agency, that the attorney or accountant has examined all eligible costs incurred with respect to the project and that, based upon this examination, it is the attorney's or accountant's belief that the taxpayer has incurred more than 10 percent of its reasonably expected basis in the project by the close of the calendar year of the allocation.

(3) *Time of verification.* An Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the calendar year of allocation or within a reasonable time after the close of the calendar year of allocation. The Agency will need to verify basis in order to accurately complete the Form 8610, Annual Low-Income Housing Credit Agencies Report, for the calendar year. If certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify before the Form 8610 is filed that the taxpayer has satisfied the basis requirement for a carryover allocation, the allocation is treated as if it had not been made and the carryover allocation document should not be filed with the Form 8610.

(d) *Requirements for making carryover allocations—*(1) *In general.* Generally, an allocation is made when an Agency issues the Form 8609, Low-Income Housing Credit Allocation Certification, for a building. See § 1.42–1T(d)(8)(ii). An Agency does not issue the Form 8609 for a building until the building is placed in service. However, in cases where allocations of credit are made pursuant to section 42(h)(1)(E) (relating to carryover allocations for buildings) or section 42(h)(1)(F) (relating to carryover allocations for multiple-building projects), Form 8609 is not used as the allocating document because the buildings are not yet in service. When an allocation is made pursuant to section 42(h)(1) (E) or (F), the allocating document is the document meeting the requirements of paragraph (d)(2) of this section. In addition, when an allocation is made pursuant to section 42(h)(1)(F), the requirements of paragraph (d)(3) of this section must be met for the allocation to be valid. An allocation pursuant to section 42(h)(1) (E) or (F) reduces the state housing credit ceiling for the year in which the allocation is made, whether or not the Form 8609 is also issued in that year.

(2) *Requirements for allocation.* An allocation pursuant to section 42(h)(1) (E) or (F) is made when an allocation document containing the following information is completed, signed, and dated by an authorized official of the Agency—

(i) The address of each building in the project, or if none exists, a specific description of the location of each building;

(ii) The name, address, and taxpayer identification number of the taxpayer receiving the allocation;

(iii) The name and address of the Agency;

(iv) The taxpayer identification number of the Agency;

(v) The date of the allocation;

(vi) The housing credit dollar amount allocated to the building or project, as applicable;

(vii) The taxpayer's reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year in which the allocation is made;

(viii) The taxpayer's basis in the project (land and depreciable basis) as of the close of the calendar year in which the allocation is made and the

percentage that basis bears to the reasonably expected basis in the project (land and depreciable basis) as of the close of the second following calendar year;

(ix) The date that each building in the project is expected to be placed in service; and

(x) The Building Identification Number (B.I.N.) to be assigned to each building in the project. The B.I.N. must reflect the year an allocation is first made to the building, regardless of the year that the building is placed in service. This B.I.N. must be used for all allocations of credit for the building. For example, rehabilitation expenditures treated as a separate new building under section 42(e) should not have a separate B.I.N. if the building to which the rehabilitation expenditures are made has a B.I.N. In this case, the B.I.N. used for the rehabilitation expenditures shall be the B.I.N. previously assigned to the building, although the rehabilitation expenditures must have a separate Form 8609 for the allocation. Similarly, a newly constructed building that receives an allocation of credit in different calendar years must have a separate Form 8609 for each allocation. The B.I.N. assigned to the building for the first allocation must be used for the subsequent allocation.

(3) *Special rules for project-based allocations*—(i) *In general.* An allocation pursuant to section 42(h)(1)(F) (a project-based allocation) must meet the requirements of this section as well as the requirements of section 42(h)(1)(F), including the minimum basis requirement of section 42(h)(1)(E)(ii).

(ii) *Requirement of section 42(h)(1)(F)(i)(III).* An allocation satisfies the requirement of section 42(h)(1)(F)(i)(III) if the Form 8609 that is issued for each building that is placed in service in the project states the portion of the project-based allocation that is applied to that building.

(4) *Recordkeeping requirements*—(i) *Taxpayer.* When an allocation is made pursuant to section 42(h)(1) (E) or (F), the taxpayer must retain a copy of the allocation document and file an additional copy with the Form 8609 that is issued to the taxpayer for a building after the building is placed in service. The taxpayer need only file a copy of the allocation document with the Form 8609 for the building for the first year the credit is claimed. However, the Form 8609 must be filed for the first taxable year in which the credit is claimed and for each taxable year thereafter throughout the compliance period, whether or not a credit is claimed for the taxable year.

(ii) *Agency.* The Agency must retain a copy of the allocation document and file the original with the Agency's Form 8610 that accounts for the year the allocation is made. The Agency must also retain a copy of the Form 8609 that is issued to the taxpayer and file the original with the Agency's Form 8610 that reflects the year the form is issued.

(5) *Separate procedure for election of appropriate percentage month.* If a taxpayer receives an allocation under section 42(h)(1) (E) or (F) and wishes to elect under section 42(b)(2)(A)(ii) to use the appropriate percentage for a month other than the month in which a building is placed in service, the requirements specified in § 1.42–8 must be met for the election to be effective.

(e) *Special rules.* The following rules apply for purposes of this section.

(1) *Treatment of partnerships and other flow-through entities.* With respect to taxpayers that own projects through partnerships or other flow-through entities (e.g., S corporations, estates, or trusts), carryover-allocation basis is determined at the entity level using the rules provided by this section. In addition, the entity is responsible for providing to the Agency the certification and documentation required under the basis verification requirement in paragraph (c) of this section.

(2) *Transferees.* If land or depreciable property that is expected to be part of a project is transferred after a carryover allocation has been made for a building that is reasonably expected to be part of the project, but before the close of the calendar year of the allocation, the transferee's carryover-allocation basis is determined under the principles of this section and section 42(d)(7). See also Rev. Rul. 91–38, 1991–2 C.B. 3 (see § 601.601(d)(2)(ii)(*b*) of this chapter). In addition, the transferee is treated as the taxpayer for purposes of the basis verification requirement of this section, and therefore, is responsible for providing to the Agency the required certifications and documentation.

§ 1.42–7 Substantially bond-financed buildings. [Reserved]

§ 1.42–8 Election of appropriate percentage month.

(a) *Election under section 42(b)(2)(A)(ii)(I) to use the appropriate percentage for the month of a binding agreement*—(1) *In general.* For purposes of section 42(b)(2)(A)(ii)(I), an agreement between a taxpayer and an Agency as to the housing credit dollar amount to be allocated to a building is considered binding if it—

(i) Is in writing;

(ii) Is binding under state law on the Agency, the taxpayer, and all successors in interest;

(iii) Specifies the type(s) of building(s) to which the housing credit dollar amount applies (i.e., a newly constructed or existing building, or substantial rehabilitation treated as a separate new building under section 42(e));

(iv) Specifies the housing credit dollar amount to be allocated to the building(s); and

(v) Is dated and signed by the taxpayer and the Agency during the month in which the requirements of paragraphs (a)(1) (i) through (iv) of this section are met.

(2) *Effect on state housing credit ceiling.* Generally, a binding agreement described in paragraph (a)(1) of this section is an agreement by the Agency to allocate credit to the taxpayer at a future date. The binding agreement may include a reservation of credit or a binding commitment (under section 42(h)(1)(C)) to allocate credit in a future taxable year. A reservation or a binding commitment to allocate credit in a future year has no effect on the state housing credit ceiling until the year the Agency actually makes an allocation. However, if the binding agreement is also a carryover allocation under section 42(h)(1) (E) or (F), the state housing credit ceiling is reduced by the amount allocated by the Agency to the taxpayer in the year the carryover allocation is made. For a binding agreement to be a valid carryover allocation, the requirements of paragraph (a)(1) of this section and § 1.42–6 must be met.

(3) *Time and manner of making election.* An election under section 42(b)(2)(A)(ii)(I) may be made either as part of the binding agreement under paragraph (a)(1) of this section to allocate a specific housing credit dollar amount or in a separate document that references the binding agreement. In either case, the election must—

(i) Be in writing;

(ii) Reference section 42(b)(2)(A)(ii)(I);

(iii) Be signed by the taxpayer;

(iv) If it is in a separate document, reference the binding agreement that meets the requirements of paragraph (a)(1) of this section; and

(v) Be notarized by the 5th day following the end of the month in which the binding agreement was made.

(4) *Multiple agreements*—(i) *Rescinded agreements.* A taxpayer may not make an election under section 42(b)(2)(A)(ii)(I) for a building if an election has previously been made for the building for a different month. For example, assume a taxpayer entered into a binding agreement for allocation of a

specific housing credit dollar amount to a building and made the election under section 42(b)(2)(A)(ii)(I) to apply the appropriate percentage for the month of the binding agreement. If the binding agreement subsequently is rescinded under state law, and the taxpayer enters into a new binding agreement for allocation of a specific housing credit dollar amount to the building, the taxpayer must apply to the building the appropriate percentage for the elected month of the rescinded binding agreement. However, if no prior election was made with respect to the rescinded binding agreement, the taxpayer may elect the appropriate percentage for the month of the new binding agreement.

(ii) *Increases in credit.* The election under section 42(b)(2)(A)(ii)(I), once made, applies to any increase in the credit amount allocated for a building, whether the increase occurs in the same or in a subsequent year. However, in the case of a binding agreement (or carryover allocation that is treated as a binding agreement) to allocate a credit amount under section 42(e)(1) for substantial rehabilitation treated as a separate new building, a taxpayer may make the election under section 42(b)(2)(A)(ii)(I) notwithstanding that a prior election under section 42(b)(2)(A)(ii)(I) is in effect for a prior allocation of credit for a substantial rehabilitation that was previously placed in service under section 42(e).

(5) *Amount allocated.* The housing credit dollar amount eventually allocated to a building may be more or less than the amount specified in the binding agreement. Depending on the Agency's determination pursuant to section 42(m)(2) as to the financial feasibility of the building (or project), the Agency may allocate a greater housing credit dollar amount to the building (provided that the Agency has additional housing credit dollar amounts available to allocate for the calendar year of the allocation) or the Agency may allocate a lesser housing credit dollar amount. Under section 42(h)(7)(D), in allocating a housing credit dollar amount, the Agency must specify the applicable percentage and maximum qualified basis of the building. The applicable percentage may be less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer under section 42(b)(2)(A)(ii)(I). Whether the appropriate percentage is the appropriate percentage for the 70-percent present value credit or the 30-percent present value credit is determined under section 42(i)(2) when the building is placed in service.

(6) *Procedures*—(i) *Taxpayer.* The taxpayer must give the original notarized election statement to the Agency before the close of the 5th calendar day following the end of the month in which the binding agreement is made. The taxpayer must retain a copy of the binding agreement and the election statement and must file an additional copy of each with the taxpayer's Form 8609, Low-Income Housing Credit Allocation Certification, for the first taxable year in which credit is claimed for the building.

(ii) *Agency.* The Agency must file with the Internal Revenue Service the original of the binding agreement and the election statement with the Agency's Form 8610, Annual Low-Income Housing Credit Agencies Report, that accounts for the year the allocation is actually made. The Agency must also retain a copy of the binding agreement and the election statement.

(7) *Examples.* The following examples illustrate the provisions of this section. In each example, X is the taxpayer, Agency is the state housing credit agency, and the carryover allocations meet the requirements of § 1.42–6 and are otherwise valid.

Example 1. (i) In August 1993, X and Agency enter into an agreement that Agency will allocate $100,000 of housing credit dollar amount for the low-income housing building X is constructing. The agreement is binding and meets all the requirements of paragraph (a)(1) of this section. The agreement is a reservation of credit, not an allocation, and therefore, has no effect on the state housing credit ceiling. On or before September 5, 1993, X signs and has notarized a written election statement that meets the requirements of paragraph (a)(3) of this section. The applicable percentage for the building is the appropriate percentage for the month of August 1993.

(ii) Agency makes a carryover allocation of $100,000 of housing credit dollar amount for the building on October 2, 1993. The carryover allocation reduces Agency's state housing credit ceiling for 1993. Due to unexpectedly high construction costs, when X places the building in service in July 1994, the product of the building's qualified basis and the applicable percentage for the building (the appropriate percentage for the month of August 1993) is $150,000, rather than $100,000. Notwithstanding that only $100,000 of credit was allocated for the building in 1993, Agency may allocate an additional $50,000 of housing credit dollar amount for the building from its state housing credit ceiling for 1994. The appropriate percentage for the month of August 1993 is the applicable percentage for the building for the entire $150,000 of credit allocated for the building, even though separate allocations were made in 1993 and 1994. Because allocations were made for the building in two separate calendar years, Agency must issue two Forms 8609 to X. One Form 8609 must reflect the $100,000 allocation made in 1993, and the other Form 8609 must reflect the $50,000 allocation made in 1994.

(iii) X gives the original notarized statement to Agency on or before September 5, 1993, and retains a copy of the binding agreement, election statement, and carryover allocation document. X files a copy of the binding agreement, election statement, and carryover allocation document with X's Form 8609 for the first taxable year in which X claims credit for the building.

(iv) Agency files the original of the binding agreement, election statement, and 1993 carryover allocation document with its 1993 Form 8610. Agency retains a copy of the binding agreement, election statement, and carryover allocation document. After the building is placed in service in 1994, Agency issues to X a copy of the Form 8609 reflecting the 1993 carryover allocation of $100,000 and files the original of that form with its 1994 Form 8610. Agency also files the original of the 1994 Form 8609 reflecting the $50,000 allocation with its 1994 Form 8610 and issues to X a copy of the 1994 Form 8609. Agency retains copies of the Forms 8609 that are issued to X.

Example 2. (i) In September 1993, X and Agency enter into an agreement that Agency will allocate $70,000 of housing credit dollar amount for rehabilitation expenditures that X is incurring and that X will treat as a new low-income housing building under section 42(e)(1). The agreement is binding and meets all the requirements of paragraph (a)(1) of this section. The agreement is a reservation of credit, not an allocation, and therefore, has no effect on Agency's state housing credit ceiling. On or before October 5, 1993, X signs and has notarized a written election statement that meets the requirements of paragraph (a)(3) of this section. The applicable percentage for the building is the appropriate percentage for the month of September 1993. Agency makes a carryover allocation of $70,000 of housing credit dollar amount for the building on November 15, 1993. The carryover allocation reduces by $70,000 Agency's state housing credit ceiling for 1993.

(ii) In October 1994, X and Agency enter into another binding agreement meeting the requirements of paragraph (a)(1) of this section. Under the agreement, Agency will allocate $50,000 of housing credit dollar amount for additional rehabilitation expenditures by X that qualify as a second separate new building under section 42(e)(1). On or before November 5, 1994, X signs and has notarized a written election statement meeting the requirements of paragraph (a)(3) of this section. On December 1, 1994, X receives a carryover allocation under section 42(h)(1)(E) for $50,000. The carryover allocation reduces by $50,000 Agency's state housing credit ceiling for 1994. The applicable percentage for the rehabilitation expenditures treated as the second separate new building is the appropriate percentage for the month of October 1994, not September 1993. The appropriate percentage for the month of September 1993 still applies to the allocation of $70,000 for the rehabilitation expenditures treated as the first

separate new building. Because allocations were made for the building in two separate calendar years, Agency must issue two Forms 8609 to X. One Form 8609 must reflect the $70,000 allocation made in 1993, and the other Form 8609 must reflect the $50,000 allocation made in 1994.

(iii) X gives the first original notarized statement to Agency on or before October 5, 1993, and retains a copy of the first binding agreement, election statement, and carryover allocation document issued in 1993. X gives the second original notarized statement to Agency on or before November 5, 1994, and retains a copy of the second binding agreement, election statement, and carryover allocation document issued in 1994. X files a copy of the binding agreements, election statements, and carryover allocation documents with X's Forms 8609 for the first taxable year in which X claims credit for the buildings.

(iv) Agency retains a copy of the binding agreements, election statements, and carryover allocation documents. Agency files the original of the first binding agreement, election statement, and 1993 carryover allocation document with its 1993 Form 8610. Agency files the original of the second binding agreement, election statement, and 1994 carryover allocation document with its 1994 Form 8610. After X notifies Agency of the date each building is placed in service, the Agency will issue copies of the respective Forms 8609 to X, and file the originals of those forms with the Agency's Form 8610 that reflects the year each form is issued. The Agency also retains copies of the Forms 8609.

(b) *Election under section 42(b)(2)(A)(ii)(II) to use the appropriate percentage for the month tax-exempt bonds are issued*—(1) *Time and manner of making election.* In the case of any building to which section 42(h)(4)(B) applies, an election under section 42(b)(2)(A)(ii)(II) to use the appropriate percentage for the month tax-exempt bonds are issued must—

(i) Be in writing;

(ii) Reference section 42(b)(2)(A)(ii)(II);

(iii) Specify the percentage of the aggregate basis of the building and the land on which the building is located that is financed with the proceeds of obligations described in section 42(h)(4)(A) (tax-exempt bonds);

(iv) State the month in which the tax-exempt bonds are issued;

(v) State that the month in which the tax-exempt bonds are issued is the month elected for the appropriate percentage to be used for the building;

(vi) Be signed by the taxpayer; and

(vii) Be notarized by the 5th day following the end of the month in which the bonds are issued.

(2) *Bonds issued in more than one month.* If a building described in section 42(h)(4)(B) (substantially bond-financed building) is financed with tax-exempt bonds issued in more than one month, the taxpayer may elect the appropriate percentage for any month in which the bonds are issued. Once the election is made, the appropriate percentage elected applies for the building even if all bonds are not issued in that month. The requirements of this paragraph (b), including the time limitation contained in paragraph (b)(1)(vii) of this section, must also be met.

(3) *Limitations on appropriate percentage.* Under section 42(m)(2)(D), the credit allowable for a substantially bond- financed building is limited to the amount necessary to assure the project's feasibility. Accordingly, in making the determination under section 42(m)(2), an Agency may use an applicable percentage that is less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer under section 42(b)(2)(A)(ii)(II).

(4) *Procedures*—(i) *Taxpayer.* The taxpayer must provide the original notarized election statement to the Agency before the close of the 5th calendar day following the end of the month in which the bonds are issued. If an authority other than the Agency issues the tax-exempt bonds, the taxpayer must also give the Agency a signed statement from the issuing authority that certifies the information described in paragraphs (b)(1)(iii) and (iv) of this section. The taxpayer must file a copy of the election statement with the taxpayer's Form 8609 for the first taxable year in which credit is claimed for the building. The taxpayer must also retain a copy of the election statement.

(ii) *Agency.* The Agency must file with the Internal Revenue Service the original of the election statement and the corresponding Form 8609 for the building with the Agency's Form 8610 that reflects the year the Form 8609 is issued. The Agency must also retain a copy of the election statement and the Form 8609.

§ 1.42–9 For use by the general public.

(a) *General rule.* If a residential rental unit in a building is not for use by the general public, the unit is not eligible for a section 42 credit. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD) (24 CFR subtitle A and chapters I through XX). See HUD Handbook 4350.3 (or its successor). A copy of HUD Handbook 4350.3 may be requested by writing to: HUD, Directives Distribution Section, room B–100, 451 7th Street, SW., Washington, DC 20410.

(b) *Limitations.* Notwithstanding paragraph (a) of this section, if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under section 42. In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for credit under section 42.

(c) *Treatment of units not for use by the general public.* The costs attributable to a residential rental unit that is not for use by the general public are not excludable from eligible basis by reason of the unit's ineligibility for the credit under this section. However, in calculating the applicable fraction, the unit is treated as a residential rental unit that is not a low-income unit.

§ 1.42–10 Utility allowances.

(a) *Inclusion of utility allowances in gross rent.* If the cost of any utilities (other than telephone) for a residential rental unit are paid directly by the tenant(s), the gross rent for that unit includes the applicable utility allowance determined under this section. This section only applies for purposes of determining gross rent under section 42(g)(2)(B)(ii) as to rent-restricted units.

(b) *Applicable utility allowances*—(1) *FmHA-assisted buildings.* If a building receives assistance from the Farmers Home Administration (FmHA-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Farmers Home Administration (FmHA) for the building. For example, if a building receives assistance under FmHA's section 515 program (whether or not the building or its tenants also receive other state or federal assistance), the applicable utility allowance for all rent-restricted units in the building is determined using Exhibit A–6 of 7 CFR part 1944, subpart E (or a successor method of determining utility allowances).

(2) *Buildings with FmHA assisted tenants.* If any tenant in a building receives FmHA rental assistance payments (FmHA tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving HUD rental assistance

payments) is the applicable FmHA utility allowance.

(3) *HUD-regulated buildings.* If neither a building nor any tenant in the building receives FmHA housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

(4) *Other buildings.* If a building is neither an FmHA-assisted nor a HUD-regulated building, and no tenant in the building receives FmHA tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

(i) *Tenants receiving HUD rental assistance.* The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.

(ii) *Other tenants*—(A) *General rule.* If none of the rules of paragraphs (b)(1), (2), (3), and (4)(i) of this section apply to any rent-restricted units in a building, the appropriate utility allowance for the units is the applicable PHA utility allowance. However, if a local utility company estimate is obtained for any unit in the building in accordance with paragraph (b)(4)(ii)(B) of this section, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. This local utility company estimate procedure is not available for and does not apply to units to which the rules of paragraphs (b) (1), (2), (3), or (4)(i) of this section apply.

(B) *Utility company estimate.* Any interested party (including a low-income tenant, a building owner, or an Agency) may obtain a local utility company estimate for a unit. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located. The local utility company estimate may be obtained by an interested party at any time during the building's extended use period (see section 42(h)(6)(D)) or, if the building does not have an extended use period, during the building's compliance period (see section 42(i)(1)). Unless the parties agree otherwise, costs incurred in obtaining the estimate are borne by the initiating party. The interested party that obtains the local utility company estimate (the initiating party) must retain the original of the utility company estimate and must furnish a copy of the local utility company estimate to the owner of the building (where the initiating party is not the owner), and the Agency that allocated credit to the building (where the initiating party is not the Agency). The owner of the building must make available copies of the utility company estimate to the tenants in the building.

(c) *Changes in applicable utility allowance.* If at any time during the building's extended use period (or, if the building does not have an extended use period, the building's compliance period), the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of rent-restricted units due 90 days after the change. For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due more than 90 days after the date of the local utility company estimate.

§ 1.42–11 Provision of services.

(a) *General rule.* The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as residential rental property eligible for credit under section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of section 42(g).

(b) *Services that are optional*—(1) *General rule.* A service is optional if payment for the service is not required as a condition of occupancy. For example, for a qualified low-income building with a common dining facility, the cost of meals is not included in gross rent for purposes of section 42(g)(2)(A) if payment for the meals in the facility is not required as a condition of occupancy and a practical alternative exists for tenants to obtain meals other than from the dining facility.

(2) *Continual or frequent services.* If continual or frequent nursing, medical, or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, lifecare facility, or intermediate care facility for the mentally and physically handicapped. See also § 1.42–9(b).

(3) *Required services*—(i) *General rule.* The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by building owners.

(ii) *Exceptions*—(A) *Supportive services.* Section 42(g)(2)(B)(iii) provides an exception for certain fees paid for supportive services. For purposes of section 42(g)(2)(B)(iii), a supportive service is any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

(B) *Specific project exception.* Gross rent does not include the cost of mandatory meals in any federally-assisted project for the elderly and handicapped (in existence on or before January 9, 1989) that is authorized by 24 CFR 278 to provide a mandatory meals program.

§ 1.42–12 Effective dates and transitional rules.

(a) *Effective date.* The rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12 are effective May 2, 1994. However, binding agreements, election statements, and carryover allocation documents entered into before May 2, 1994 that follow the guidance set forth in Notice 89–1, 1989–1 C.B. 620 (see § 601.601(d)(2)(ii)(*b*) of this chapter) need not be changed to conform to the rules set forth in §§ 1.42–6 and 1.42–9 through 1.42–12.

(b) *Prior periods.* Notice 89–1, 1989–1 C.B. 620 and Notice 89–6, 1989–1 C.B. 625 (see § 601.601(d)(2)(ii)(*b*) of this chapter) may be applied for periods prior to May 2, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. Part 602 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 26 U.S.C. 7805.

2. Section 602.101(c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * *	
1.42–6	1545–1102
1.42–8	1545–1102
1.42–10	1545–1102
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: January 25, 1994.
Samuel Y. Sessions,
Acting Assistant Secretary of the Treasury.
[FR Doc. 94–3515 Filed 3–2–94; 8:45 am]
BILLING CODE 4830–01–U

26 CFR Part 301

[TD 8524]

RIN 1545–A079

Clarification of Period During Which Interest Is Allowed With Respect to Certain Overpayments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends § 301.6611–1 on Procedure and Administration. The amendments clarify the period during which interest is allowed on overpayments credited against a taxpayer's liability for interest and certain additions to the tax. The amendments are necessary as a result of changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Deficit Reduction Act of 1984. The amendments affect all taxpayers that have overpayments credited against underpayments.

DATES: These regulations are effective March 3, 1994. These regulations are applicable for credits made on or after August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Forest Boone of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:IT&A:Br06) or telephone 202–622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the regulations on Procedure and Administration (26 CFR part 301) under section 6611 of the Internal Revenue Code (Code) to clarify the period during which interest is allowed on overpayments that are credited against a taxpayer's liability for interest and certain additions to the tax. These amendments conform the regulations to section 344 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248, 96 Stat. 635), and section 158 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98–369, 98 Stat. 696).

On August 25, 1992, the IRS published in the **Federal Register** a Notice of Proposed Rulemaking (57 FR 38457). The IRS did not receive any comment letters in response to that notice nor was a public hearing requested. The proposed regulations are adopted in this Treasury decision.

Explanation of Provisions

Interest on Overpayments That Are Credited Against Interest on Underpayments

Section 6611(a) of the Code provides that interest shall be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621. Under section 6402(a), the Secretary may credit any overpayment (including any interest allowed thereon) against any liability imposed under the Code on the taxpayer. Under section 6611(b)(1), interest is allowed on an overpayment that is so credited from the date of the overpayment to the due date of the taxpayer's liability against which the overpayment is credited. For purposes of this interest computation, specific due dates are provided in § 301.6611–1(h).

Generally, section 6601(f) provides that once an overpayment is credited to satisfy a taxpayer's liability, interest no longer accrues on that liability. Section 344 of TEFRA added section 6622 of the Code, which requires interest imposed by the Code to be compounded daily. The effect of section 6601(f) on the compounding requirement of section 6622 is that once an overpayment is credited to satisfy the taxpayer's liability for interest, that credit cuts off any further compounding of that interest (i.e., interest no longer accrues on the taxpayer's interest liability against which the credit has been made).

Similarly, it is appropriate that no interest liability to the taxpayer accrues on the overpayment once the overpayment is credited to satisfy the taxpayer's liability for interest. Thus, § 301.6611–1(h)(2)(v) is amended to clarify that interest does not continue to accrue on any portion of an overpayment that is credited against the taxpayer's liability for interest.

Interest on Overpayments That Are Credited Against Certain Additions to the Tax

Prior to DEFRA, interest only accrued on additions to the tax from the date of notice and demand, and then only if not paid within 10 days from the date of notice and demand. In section 158 of DEFRA, Congress added section 6601(e)(2)(B) to the Code, which requires taxpayers to pay interest on certain additions to tax from the due date of the relevant return (including any extensions) until the addition to the tax is paid. The number of additions to the tax that bear interest from the due date of the return was increased by Congress in 1988 and again in 1989. Thus, § 301.6611–1(h)(2)(vi) is amended to clarify that no interest is allowed on any portion of an overpayment that is credited against certain additions to the tax for any period after the due date of the return (including extensions) to which the addition to the tax relates.

Prior Regulations Obsolete

These regulations are effective for credits made on or after August 25, 1992. It should be noted that, since the enactment of section 6622 of the Code in TEFRA, the IRS has treated § 301.6611–1(h)(2)(v) of the prior regulations as obsolete. Likewise, the Service has treated § 301.6611–1(h)(2)(vi) of the prior regulations as obsolete with respect to certain additions to the tax since the enactment of section 6601(e)(2)(B) in DEFRA. Thus, the IRS has computed and is currently computing interest in a fashion consistent with these amendments.

Effect on Other Documents

On October 9, 1984, the IRS published in the **Federal Register** (49 FR 39566 [LR–280–82, 1984–2 C.B. 860]) proposed amendments to § 301.6611–1 and § 301.6601–1 on Procedure and Administration. The proposed amendments revised § 301.6611–1 to reflect section 346 of TEFRA and section 714(n) of DEFRA, eliminated certain deadwood provisions, and reorganized § 301.6611–1. The proposed amendments did not, however, include revisions to take into account section 344 of TEFRA or section 158 of DEFRA because those sections were beyond the scope of that regulation project. The proposed amendments have not been adopted as final regulations. If the proposed amendments are adopted as final regulations, their rules (and, to the extent necessary, their effective dates) will be modified to be consistent with these regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Forest Boone of the Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6611–1 is amended by:

a. Revising paragraphs (h)(2)(v) and (h)(2)(vi) as set forth below.

b. Adding paragraph (k) to read as set forth below.

§ 301.6611–1 Interest on overpayments.

* * * * *

(h) * * *

(2) * * *

(v) *Interest.* In the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date is the earlier of the date of assessment of such interest or December 31, 1982. In the case of a credit against interest that accrues for any period beginning on or after December 31, 1982, such interest is due as it economically accrues on a daily basis, rather than when it is assessed.

(vi) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an additional amount, addition to the tax, or assessable penalty, the due date is the earlier of the date of assessment or the date from which such amount would bear interest if not satisfied by payment or credit.

* * * * *

(k) *Effective date.* Paragraphs (h)(2)(v) and (h)(2)(vi) of this section are effective for credits made on or after August 25, 1992.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 3, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–4780 Filed 3–2–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–93–028]

Drawbridge Operation Regulations; Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is reinstating the temporary regulations governing the operation of the Evergreen Point Bridge (State Route 520) across Lake Washington between Seattle and Bellevue, Washington. This rule will be in effect through June 30, 1994. The amended regulations will provide for the reasonable needs of navigation and allow the bridge owner to provide openings only during periods of reduced vehicular traffic if 12 hours notice is furnished. The purpose of this measure is to avoid risking failure of the drawspan in the open position during commuter hours as has previously occurred. The hours of limited operation insure sufficient time for the owner to restore the retractable span to the closed position before road traffic becomes heavy. During the period that this rule is in effect malfunctions of the draw mechanism will be analyzed and repaired.

EFFECTIVE DATES: This regulation becomes effective on April 4, 1994. This temporary final rule is effective through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (206) 220–7270).

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are Austin Pratt, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Regulatory History

This same regulation was put into effect on September 21, 1992. It has since expired. On November 2, 1993, the Coast Guard published a proposed rule (58 FR 58518) to consider the reinstatement of the temporary regulations. The Commander, Thirteenth Coast Guard District, also published a public notice on November 19, 1993. Both articles solicited comments from interested parties until December 17, 1993. No objections to the temporary regulations were received. A public hearing was not requested and was not held.

Background and Purpose

The temporary regulations allow the bridge owner to limit openings for the passage of vessels to late at night. These restricted hours of operation enable the owner to restore the bridge to the closed position in the event of a malfunction prior to the daylight hours of heavy commuter traffic. Openings during the day are excluded. With 12 hours notice, the bridge will be opened from 11 p.m. to 2 a.m. Sunday night through Friday morning and from 11 p.m. to 5 a.m. Friday night through Sunday morning. The hours for opening on weeknights are more restricted to give greater time to restore the drawspan in the event of a failure prior to the start of heavy commuter traffic.

Discussions of Comments and Changes

No comments were received in opposition to the proposed rulemaking.

Regulatory Evaluation

This temporary final rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impacts of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We base our decision on the light and infrequent commercial traffic on the subject waterways during the hours affected by this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) the U.S. Coast

Guard must consider whether rules will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act. Because this final rule imposes no new requirements on small businesses and will result in partial relief from a regulatory burden on the owner or operator of these bridges, the Coast Guard does not expect this rule to have significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.1049 is temporarily suspending amended by paragraph (d) and revising paragraphs (a) and (c) to read as follows.

Note: This is a temporary amendment and will not appear in the Code of Federal Regulations.

§ 117.1049 Lake Washington.

* * * * *

(a) The draw shall open on signal for the passage of vessels from 11 p.m. to 2 a.m. Sunday night through Friday morning and from 11 p.m. to 5 a.m. Friday night through Sunday morning if at least 12 hours notice is given. At all other times the draw need not open.

* * * * *

(c) All non-self-propelled vessels, rafts, and other watercraft navigating this waterway which require an opening of the draw shall be towed by a suitable self-propelled vessel while passing through the draw.

Dated: February 8, 1994.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 94–4763 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Miami 94–008]

Safety Zone Regulations; North Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Intracoastal Waterway at Bakers Haulover Inlet Florida. This safety zone is needed to protect vessels from a safety hazard associated with severe shoaling in the channel between Biscayne Bay daybeacon 6 (light list number 41185) and Biscayne Bay light 9 (light list number 41210). Entry into this safety zone by tugs towing or pushing barges with drafts exceeding four feet, beams exceeding 16 feet, and all barges carrying oil, or hazardous material is prohibited unless authorized by the Captain of the Port, Miami, Florida or his designated representative.

EFFECTIVE DATE: This regulation becomes effective on January 28, 1994 at 1 p.m. and terminates at 7 p.m. on April 11, 1994, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Chief Boatswains Mate Robert F. Chason, Port Operations Department, USCG Marine Safety Office Miami, Claude Pepper Federal Building, 5th Floor, 51 SW. First Avenue, Miami, Florida 33130–1608, (305) 536–5693.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to public safety interests since immediate action is needed to prevent potential damage to the public.

Drafting Information

The drafters of this regulation are Chief Boatswains Mate Robert F. Chason, Project Officer for the Captain of the Port, Miami, Florida, and Lieutenant J. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

This safety zone is needed to protect vessels from a safety hazard associated with severe shoaling in the channel between Biscayne Bay daybeacon 6, (light list number 41185) and Biscayne Bay light 9 (light list number 41210). There have been several recent tug and barge groundings caused by the current channel conditions, and the potential for a severe marine casualty is great if unrestricted commercial vessel traffic is allowed to continue. This area of the channel is scheduled to be dredged to its published depth between February 7, 1994 and April 11, 1994. Until the channel is dredged, entry into this safety zone by tugs towing or pushing barges with drafts exceeding four feet, beams exceeding 16 feet, and all barges carrying oil, or hazardous material is prohibited unless authorized by the Captain of the Port, Miami, Florida or his designated representative.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Economic Assessment and Certification

This proposal is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this

proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The safety zone will only be in effect 5 hours of one day, February 11, 1994.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. A new § 165.T07–008 is added to read as follows:

§ 165.T07–008 Safety Zone: Intra Coastal Waterway, Bakers Haulover Inlet Florida.

(a) *Locations.* The following area is a safety zone: The waters of the Intracoastal Waterway (Statute Mile 1080) at Bakers Haulover Inlet Florida (chart 11467), between Biscayne Bay Daybeacon 6, (light list number 41185) and Biscayne Bay light 9 (light list number 41210).

(b) *Effective date.* This section becomes effective on January 28, 1994 at 1 p.m. and terminates at 7 p.m. April 11, 1994, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in 33 CFR 165.23 of this part, entry into this safety zone by tugs towing or pushing barges with drafts exceeding four feet, beams exceeding 16 feet, and all barges carrying oil, or hazardous material is prohibited unless authorized by the Captain of the Port, Miami, Florida or his designated representative.

Dated: January 28, 1994.

L.A. Doyle,

Captain, United States Coast Guard, Captain of the Port, Miami.

[FR Doc. 94–4762 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN31–1–6283; FRL–4842–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Technical amendment.

SUMMARY: This document contains corrections to a final rule which was published on April 8, 1981 relating to approval of a Minnesota State Implementation Plan (SIP) revision consisting of a sulfur dioxide control plan and emission limitations contained in revised operating permits for the Rochester and Twin Cities nonattainment area. This technical amendment corrects an error of codification in the CFR and prevents further confusion in citing the Minnesota SIP revision.

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

FOR FURTHER INFORMATION CONTACT: Maggie J. Greene at (312) 886–6088.

SUPPLEMENTARY INFORMATION: On April 8, 1981, (46 FR 20996), the United States Environmental Protection Agency (USEPA) approved a Minnesota State Implementation Plan (SIP) revision consisting of a sulfur dioxide control plan and emission limitations contained in revised operating permits for the Rochester and Twin Cities nonattainment area. USEPA erroneously codified its approval at 40 CFR 52.1220(c)(16). Paragraph (c)(16) had already been utilized to codify USEPA's March 4, 1981 (46 FR 15138) approval of a revision to provide for modification of the Minnesota air quality surveillance network.

This revision is related to items incorporated by reference into the Minnesota State Implementation Plan which is designated as 40 CFR 52.1220, Identification of plan, subpart Y—Minnesota.

Need for Correction

Duplicate paragraphs 52.1220(c)(16) make citations to these paragraphs confusing and unclear. For this reason, USEPA is publishing this technical amendment to avoid further confusion.

List of Subjects in 40 CFR Part 52

Environmental protection, air pollution control, Incorporation by reference, Sulfur oxides.

Dated: February 14, 1994.

David A. Allrich,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1220 is amended by redesignating the second paragraph (c)(16) as paragraph (c)(17).

[FR Doc. 94–4374 Filed 3–2–94; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1853, and 1870

Contractor Performance Summary (CPS) Guidance

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final Rule.

SUMMARY: This rule removes NASA guidance on Contractor Performance Summary (CPS). NASA has determined that such guidance is an unnecessary burden on government contracting personnel.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION: Dave Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION: NASA guidance on Contractor Performance Summary (CPS) was adopted in 57 FR 3137, 01/28/92, and amended in 57 FR 60737, 12/22/92. This rule removes CPS guidance because the guidance is burdensome. This rule makes no change to the guidance on evaluating proposal risk which was also added by 57 FR 3137, 01/28/92, to Subpart 1870.3, Appendix I, to 1870.303 in Chapter 3, section 301, Mission Suitability, paragraph 1. Evaluation Subfactors, as subparagraph f.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no new burdens on the public under the Paperwork Reduction Act, as implemented at 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1804, 1853, and 1870

Government procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1804, 1853 and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. In part 1804, sections 1804.677 and 1804.677–1 through 1804.677–6 are removed.

PART 1853—FORMS

1853.204–70 [Amended]

3. In subpart 1853.2, § 1853.204–70, the section heading is amended by removing "1651," and paragraph (o) is removed.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Appendix I to 1870.303 [Amended]

4. Subpart 1870.3, Appendix I, to § 1870.303 is amended as set forth below:

In Chapter 3, section 303, *Relevant Experience and Past Performance*, is amended by removing paragraph 1. and renumbering paragraphs 2. through 7. as paragraphs 1. through 6., respectively.

[FR Doc. 94–4770 Filed 3–2–94; 8:45 am]

BILLING CODE 7510–01–P

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48 CFR Parts 1807, 1834, 1852, and 1870

Changes to NASA FAR Supplement Streamlining the Major System Acquisition Process by Eliminating the Requirement for a Formal Solicitation Between Each Phase of the Procurement

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice amends the NASA FAR Supplement to provide for selection/down-selection between phases of a Major System Acquisition utilizing a streamlined approach that eliminates the previous NASA requirement to provide a new, formal solicitation for each phase of the acquisition.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1993, an interim rule to amend the NASA FAR Supplement to streamline the major system acquisition process was published in the **Federal Register** for comment (58 FR 58791–58798). In addition to pointing out errata and inconsistencies that are corrected in the final rule, the public comments on the interim rule addressed several substantive issues and suggested NASA consider revising its policy to address them.

The first of these issues is that the NASA interim rule, by prohibiting the establishment of contractual requirements for subsequent phase proposals, may not provide a mechanism to ensure that the contractors in the initial phase of the procurement complete their efforts and submit proposals for the subsequent phase in a timely and responsive manner. The comment suggests that, absent the appropriate leverage, contractors could "game" the system to gain a competitive advantage in the down-selection by delaying proposal submission until their designs matured. The comment recommends that NASA revise its interim rule to ensure the integrity of the process in this area.

Although the comment correctly cites the NASA prohibition against establishing a contract requirement for subsequent phase proposals, it apparently misunderstands the NASA policy relative to requesting these proposals and ensuring their timely submittal. As stated in the interim rule, NASA will request proposals for the subsequent phase of the procurement from the preceding phase contractors (and any outside source that wishes to submit one) at a defined point during initial phase performance. This request will advise offerors that proposals will be required by a date certain and that FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, applies. This clause states that any proposal received after the required submission date will not be considered unless one of the specified exceptions applies. Consequently, if an initial phase contractor does not submit a proposal by the due date and one of the exceptions in FAR 52.215–10 does not apply, they forfeit the opportunity to continue in the competition, and the procurement will proceed without them. NASA believes that this procedure best suits our goals. We are not interested in requiring a contractor to submit a proposal if that offeror believes its design approach is not competitive. To do so would be to force a contractor to expend its resources in pursuit of a contract it has no reasonable expectation of winning, and the resultant "competition" could fairly be labeled a sham. Moreover, we expect contractors in progressive competition procurements to be committed to satisfying our requirements, and to work diligently toward providing, at the times specified, the products required for the Government's down-selection decisions. It is not in their interests to do otherwise. The hypothetical instance described in the public comment of a contractor attempting to "game" the system is effectively precluded by the proposal request procedures described above that would eliminate them from consideration for subsequent phase awards. No revision to our policy is necessary in this area.

A second public comment requested clarification of the interim rule to address the issue of proposals submitted for subsequent phases by sources other than the preceding phase contractors and how they would be treated. By way of example, the comment questioned whether such outside offerors have the right to protest and debriefing.

NASA's progressive competitions are full and open competitions throughout the process. All proposals received, whether from preceding phase contractors or from outside sources, are considered to be solicited and are given full, unbiased evaluation under NASA SEB procedures. Since outside offerors enjoy the same standing as the preceding phase contractors, they have the full rights of any offeror on a NASA procurement, including protest and debriefing. To accord a diminished set of rights to outside offerors would compromise both the commitment to full and open competition and the agency's source selection process. Even-handed treatment of all offerors is inherent in both our SEB procedures and the progressive competition policy, and no revision to our policy is necessary to address the public comment.

A third public comment requested further definition of the proposal preparation information that will be provided to offerors who are not preceding phase contractors.

The NASA interim rule specifies that such information includes the "previously issued solicitation; the preceding phase contracts; the preceding phase system performance and design requirements; all proposal

preparation instructions; and evaluation factors, subfactors and elements". NASA considers this list to be adequately inclusive for a policy that must address a wide range of programs. Individual programs will have unique information that will be provided to outside offerors, but these requirements cannot be anticipated at this time. No revision to our policy is necessary in this area.

The last substantive public comment recommended clarification of the procedure in 1834.005–1(d)(7) by which subsequent phase offerors other than initial phase contractors are eliminated from the competition if their proposals do not demonstrate a design maturity equivalent to that of the preceding phase contracts. The comment suggested that this process be explicitly linked to the competitive range standard in FAR 15.609(b).

Elimination of an offeror is technically a competitive range determination. Accordingly, we believe that explicit linkage of 1834.005–1(d)(7) and FAR 15.609(b) is unnecessary. Furthermore, NASA source selection procedures in 1815.613–71(b) already discuss elimination of offerors with more precision than a cross reference to the FAR would provide. Under these procedures, offerors may be eliminated at several points during the selection process, the first of which is through an initial identification of unacceptable proposals. This process occurs during initial review, before the proposal is formally scored or evaluated against the evaluation factors. At this time, if a proposal's deficiencies are clearly of such a magnitude that it warrants discontinuance of the evaluation, NASA eliminates that proposals from further consideration. The procedures of 1834.005–1(d)(7) cited in the public comment relate to this process. For those proposals still under consideration, NASA performs a full evaluation against the evaluation factors and makes a competitive range determination based on that evaluation. These long-standing procedures provide a clear description of the NASA evaluation process. Adoption of the public comment recommendation would only cloud this description, and no change is made to the interim rule in this area.

NASA is adopting as a final rule the text set out in the interim rule with minor changes that have no significant effect on the substance of the interim rule. First, the interim rule did not specify dates for the two clauses added to the NASA FAR Supplement, 1852.234–70 and 1852.234–71. These clauses are dated November 1993 in this final rule. Second, the interim rule included a number of references to NASA Management Instruction (NMI) 7102.4, "Management of Major System Programs and Projects." Several of these references should also have cited the NMI's companion NASA Handbook (NHB) 7120.5, "Management of Major System Programs and Projects Handbook". These NHB references are included in this final rule. Third, a number of editorial changes are made to correct errata and inconsistencies in the publishes interim rule.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1807, 1834, 1852, and 1870

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1807, 1834, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

2. Section 2807.170–1 is amended by revising the last sentence of paragraph (a) to read as follows:

1807.170–1 Procurement plans requiring approval by NASA headquarters.

(a) * * * Separate authorization must be obtained for each phase in accordance with the procedures of NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects," and NASA Handbook (NHB) 7120.5, "Management of Major System Programs and Projects Handbook."

* * * * *

PART 1834—MAJOR SYSTEM ACQUISITION

3. Section 1834.000 is amended by revising the first sentence to read as follows;

1834.000 Scope.

NASA's implementation of OMB Circular No. A–109, Major Systems Acquisitions, and (FAR) 48 CFR part 34 is contained in this part, subpart 18–70.5, and in NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects," and NASA Handbook (NHB) 7120.5, "Management of Major System Programs and Projects Handbook."

* * *

4. In section 1834.001, paragraph (b) is amended to read as follows:

1834.001 Definitions.

* * * * *

(b) *Major system.* Any system that: Is directed at and critical to fulfilling an agency mission; entails the allocation of a relatively large amount of resources; or warrants special management attention. Designation of a system as "major" is made in accordance with NMI 7120.4, "Management of Major System Programs and Projects," and NHB 7120.5, "Management of Major System Programs and Projects Handbook."

* * * * *

5. In section 1834.005–1, paragraph (a) is revised to read as follows:

1834.005–1 Competition.

(a) In procurements subject to the provisions of OMB Circular No. A–109 and NMI 7120.4 and NHB 7120.5, or other similar phased procurements, it is NASA policy to ensure competition in the selection of contractors for award in each phase of the process not performed in-house.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.234–70 and 1852.234–71 [Amended]

6. In sections 1852.234–70 and 1852.234–71, the reference "(Date)" after the clause title is revised to read "(November 1993)" in each instance, and in section 1852.234–70, the word "in" in the first sentence of paragraph (c) of the clause is revised to read "on".

PART 1870—NASA SUPPLEMENTARY REGULATIONS

7. In section 1870.502, the first sentence is revised to read as follows:

1870.502 Regulations.

The basic regulations governing major system acquisitions are Office of Management and Budget (OMB) Circular No. A–109, NASA Management Instruction (NMI) 7120.4 ("Management of Major System Programs and Projects") and NASA Handbook (NHB) 7120.5 ("Management of Major System Programs and Projects Handbook"), and NASA FAR Supplement (NFS) 48 CFR 1834. * * *

1870.503, Appendix I [Amended]

8. In section 1870.503, Appendix I, section 2 is amended by revising

paragraph 2.(b) and the third sentence of paragraph 2.(d) to read as follows:

Appendix I to 1870.503—NASA Procedures for Conducting Major System Acquisitions

* * * * *

2. Definitions

* * * * *

(b) *Major system.* Any system that: is directed at and critical to fulfilling an agency mission; entails the allocation of a relatively large amount of resources; or warrants special management attention. Designation of a system as "major" is made in accordance with NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects," and NASA Handbook (NHB) 7120.5, "Management of Major System Programs and Projects Handbook."

* * * * *

(d) * * * The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors.

* * *

* * * * *

9. In Section 1870.503, Appendix I, paragraph 3 is amended by revising paragraph 3.(a), first sentence, and paragraph 3.(b) to read as follows:

3. *Phases of a Major System Acquisition*

(a) As described in NMI 7120.4 and NHB 7120.5, there are five phases in the life cycle of a major system acquisition, three of which are normally included in a phased procurement: Phase B, Definition; Phase C, Design; and Phase D, Development. * * *

(b) For a detailed description of the phases of a major system acquisition and their interrelationships, consult NHB 7120.5.

* * * * *

10. In section 1870.503, Appendix I, paragraph 5 is amended by revising the last sentence of paragraph 5.(b) to read as follows:

5. *Progressive Competition Synopsis Requirements*

* * * * *

(b) * * * Each synopsis must be prepared in accordance with (FAR) 48 CFR 5.207 and NFS 1834.005–1(d).

* * * * *

[FR Doc. 94–4771 Filed 3–2–94; 8:45 am]

BILLING CODE 7510–01–M

48 CFR Part 1815

Applicability of NASA Formal Source Evaluation Board (SEB) Procedures

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has amended the NASA FAR Supplement part 1815 to make editorial corrections and administrative changes to clarify when formal SEB procedures are to be used.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

NASA formal SEB procedures apply to all competitive negotiated procurements of $25 million or more, except for specific categories of procurements (e.g., NASA Research Announcements) that require their own unique procedures. For actions under $25 million, the formal procedures are optional. Existing agency regulations on this issue are not clear, and the NASA FAR Supplement is revised to clarify the applicability of formal SEB procedures. These revisions affect internal procedures only and have no direct impact on external entities. The revisions are issued as a final rule to ensure immediate implementation.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1815

Government procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1815 is amended as follows:

1. The authority citation for 48 CFR part 1815 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. Section 1815.610 is revised to read as follows:

1815.610 Written or oral discussion.

(FAR) 48 CFR 15.610(c)(2) is not applicable to NASA competitive negotiated procurements. The limited discussion procedures described in (FAR) 48 CFR 15.613 and 48 CFR 1815.613 shall be used instead.

3. Section 1815.613–70 is revised to read as follows:

1815.613–70 General.

The source selection procedures in (FAR) 48 CFR 15.610, as modified by (FAR) 48 CFR 15.613 and 48 CFR 1815.613 to limit discussions with offerors, apply to all NASA competitive negotiated procurements except those conducted under the following procedures:

(a) Announcements of Opportunity (see 1870.103, App. I).

(b) NASA Research Announcements (see 1835.016–70 and 1870.203, App. I).

(c) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(d) Architect and Engineering (A&E) services (see (FAR) 48 CFR 36.6 and 48 CFR 1836.6).

4. In section 1815.613–71, paragraph (a) is revised to read as follows:

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

(a) *Applicability.* Unless one of the exceptions in 1815.613–70 (a) through (d) applies, the formal SEB procedures of 1870.303, App. I, shall be followed in all competitive negotiated procurements of $25 million or more (including the value of multiple awards, options, and later phases of the same project). The formal SEB procedures may be used in lesser valued procurements at the discretion of the Procurement Officer.

* * * * *

[FR Doc. 94–4769 Filed 3–2–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 022894A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for aggregate species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowance of red king crab to the trawl rock sole/"other flatfish" fishery category in Zone 1.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 28, 1994, through 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Fishery Biologist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1994 prohibited species bycatch allowance of red king crab in Zone 1 for the trawl rock sole/"other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(2), was established as 110,000 crabs by the final 1994 initial specifications (59 FR 7656, February 16, 1994).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(i), that the prohibited species bycatch allowance of red king crab for the trawl rock sole/"other flatfish" fishery in Zone 1 has been reached. Therefore, NMFS is prohibiting directed fishing for aggregate species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in Zone 1 of the BSAI from 12 noon, A.l.t., February 28, 1994, through 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 28, 1994

David S. Crestin

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4902 Filed 2–28–94; 2:49 pm]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 022394A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for the offshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 1, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC of pollock for vessels catching pollock for processing by the offshore component in the AI was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994), as 31,272 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the pollock TAC for the offshore component in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 27,772 mt after determining that 3,500 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the offshore component in the AI, effective from 12 noon A.l.t., March 1, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 25, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4839 Filed 2–28–94; 2:49 pm]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 022594A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first allowance of the pollock total allowable catch (TAC) for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 2, 1994, until 12 noon, A.l.t., August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock for the inshore component in the BS was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) as 178,054 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director) has determined in accordance with § 675.20(a)(8), that the first allowance of pollock TAC for the inshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 173,054 mt with consideration that 5,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS, effective from 12 noon, A.l.t., March 2, 1994, until 12 noon, A.l.t., August 15, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 28, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–4838 Filed 2–28–94; 2:49 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 42
Thursday, March 3, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–14]

Proposed Establishment of Jet Route J–512 and Alteration of VOR Federal Airway V–351

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Jet Route J–512 from the Kalispell, MT, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to Calgary, Alberta, Canada, to enhance traffic flow between the United States and Canada. This action also proposes to amend VOR Federal Airway V–351 from Kalispell, MT, to the United States/Canadian Border to reduce controller workload

DATES: Comments must be received on or before April 25, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 93–AWA–14, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

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–AWA–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. 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 Jet Route J–512 from the Kalispell, MT, VOR/DME to Calgary, Alberta, Canada, excluding that airspace within Canada. This action would enhance traffic flow between the United States and Canada. This action would also amend V–351 from Kalispell, MT, to the United States/Canadian Border to reduce controller workload. Jet routes and domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993. The jet route and domestic VOR Federal airway 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 2004—Jet Routes

* * * * *

J–512 [New]

From Kalispell, MT; to Calgary, Alberta, Canada. The airspace within Canada is excluded.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–351 [Revised]

From Kalispell, MT; to INT Kalispell 022°T(004°M) and Calgary, Alberta, Canada, 184°T(164°M) radials; Calgary. The airspace within Canada is excluded.

Issued in Washington, DC, on February 23, 1994.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 94–4873 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Food and Drug Administration

21 CFR Parts 123 and 1240

[Docket No. 93N–0195]

Proposal To Establish Procedures for the Safe Processing And Importing of Fish and Fishery Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule that appeared in the Federal Register of January 28, 1994 (59 FR 4142). The document proposed to adopt regulations to ensure the safe processing and importing of fish and fishery products. The proposed regulations provided, in part, for the monitoring of selected processes in accordance with Hazard Analysis Critical Control (HACCP) principles. The document was published with some errors. This document corrects those errors.

DATES: Written comments by April 28, 1994. The agency is proposing that any final rule based upon this proposal become effective 1 year following its publication.

ADDRESSES: Written comments, data, or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Paper or diskette copies of the document may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS number PB94–134707 for a paper copy and PB94–501301 for a diskette and include a payment of $30.00. Payment may be made by check, money order, charge card (American Express, Visa, or MasterCard), or an NTIS deposit account. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650 for regular service, or 800–553–NTIS for rush service. For electronic access (via FedWorld™) to ordering and downloading options, dial 703–321–8020 with a modem (Internet: fedworld.gov (192.239.92.201)).

FOR FURTHER INFORMATION CONTACT: Philip Spiller, Center for Food Safety and Applied Nutrition (HFS–401), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–3885.

In FR Doc. 94–1592, appearing on page 4142 in the Federal Register of Friday, January 28, 1994, the following corrections are made:

1. On page 4142, in the 1st column, in line 5, "Nos. 90N–0199 and" is removed and "No." is added in its place; Under the "**DATES**" caption, in line 1, "March 29, 1994" is corrected to read " April 28, 1994"; and under the "**ADDRESSES**" caption, the following text is added to read as follows:

Paper or diskette copies of the document may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Orders must reference NTIS number PB94–134707 for a paper copy and PB94–501301 for a diskette and include a payment of $30.00. Payment may be made by check, money order, charge card (American Express, Visa, or MasterCard), or an NTIS deposit account. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650 for regular service or 800–553–NTIS for rush service. For electronic access (via FedWorld™) to ordering and downloading options, dial 703–321–8020 with a modem (Internet: fedworld.gov (192.239.92.201)).

2. On page 4148, in the 2d column, in the 1st full paragraph, in line 10, "Ph" is corrected to read "pH".

3. On page 4150, in the 2d column, in the 1st full paragraph, in the 3d line from the bottom of the paragraph, the word "*been*" is corrected to read "*become*".

3a. On page 4157, in the 3d column, in the 1st full paragraph, in line 14, the word "an" is corrected to read "a".

4. On page 4165, in the 3d column, in lines 2 and 21, the words "and smoked" are added after the words "Ready-to-eat"; and in line 16, the words " or smoked" are added after the words "Ready-to-eat".

5. On page 4171, in the 1st column, in the 1st full paragraph, in the 4th line from the bottom, the words "as guidance" are added after the word " forth"; and beginning in the 3d line from the bottom, the last sentence is corrected to read: "If FDA adopts the guidance on smoked and smoked-flavored fishery products in Appendix 1 as regulation based on the public comments that the agency receives, it will codify it in reserved subpart B of part 123."

6. On page 4181, in the 2d column, in the first full paragraph, in the 2d line from the bottom of the paragraph, the words "as guidance" are added after the word "procedures".

7. On page 4188, in the 1st column, in the 3d full paragraph, in line 12, the words ", smoked fishery products," are added after the words "ready-to-eat products".

Appendix A to Part 123 [Corrected]

8. On page 4198, in the 3d column, in section 1 of Appendix A to part 123, in the last line the words "covered by 21 CFR part 123, subpart B" are removed and the words "that are also smoked or smoke-flavored fishery products. Guidance on the processing of these products has been consolidated in the separate guidance document and is also provided in Appendix 1." are added in their place.

Appendix 1 [Corrected]

9. On page 4211, in the 2d column, in Appendix 1, Example 6, in lines 1, 3, and 15, the word "General" is corrected to read "Consolidated"; and in the 3d column, in line 19, "Appendix A" is corrected to read "separate guidance"; in line 20, the word "the" is removed, and the words "this consolidated" are added in its place; and in line 24, the parenthetical statement is corrected to read: "(These hazards are addressed in the materials in the FDA Fish and Fishery Products Hazards and Controls

Guide relating to species related hazards and controls)."

10. On page 4212, in the 1st column, in Appendix 1, Example 6, section 5.a.(1), beginning in the 3d line from the bottom of the paragraph, "§ 172.177 of this chapter" is corrected to read "21 CFR 172.177", and in the 2d column, in section 5.a.(4) beginning in line 8, and in section 5.b. beginning in line 5, "§§ 172.175 and 172.17 of this chapter" are corrected to read "21 CFR 172.175 and 172.177".

11. On page 4212, in the 1st column, in Appendix 1, Example 6, section 5.a.(2) beginning in the 5th line from the bottom the parenthetical phrase is corrected to read "(as permitted by 21 CFR 172.175 and 172.177)."

12. On page 4212, in the 2d column, in section 5.a.(4), line 11, and in section 5.b., line 7, and in the 3d column, in section 6.a., line 10, the word "Appendix" is removed and the words "consolidated guidance" are added in its place.

13. On page 4213, in the 1st column, in section 6.c.(2).ii, in line 3, and in the 2d column in section 7, line 1, the word "Appendix" is removed and the words "consolidated guidance" are added in its place; and in the 3d column in section 11, beginning in line 3, "Appendix C. section 5.a.," is removed and the words "section 5., Brining and smoking, of this consolidated guidance" are added in their place.

Dated: February 24, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4662 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 77

[AG Order No. 1851–94]

Communications With Represented Persons

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice ("Department") is issuing for an additional 30-day comment period a proposed rule governing the circumstances under which its attorneys may communicate with persons and organizations known to be represented by counsel in the course of law enforcement investigations and proceedings.

The purpose of the proposed rule is to impose a comprehensive, clear and uniform set of regulations on the conduct of government attorneys during criminal and civil investigations and enforcement proceedings. The rule is intended to ensure that government attorneys adhere to the highest ethical standards, while eliminating the uncertainty and confusion arising from the variety of interpretations of state rules, some of which have been incorporated by reference as local court rules in a number of federal district courts.

The proposed rule establishes a general prohibition, subject to limited enumerated exceptions, against contacts with "represented parties." This prohibition derives from the American Bar Association ("ABA") Code of Professional Responsibility and its successor, the ABA Model Rules of Professional Conduct. The proposed rule generally permits investigative contacts with represented individuals or organizations who have not yet been named as defendants in a civil or criminal enforcement proceeding or arrested as part of a criminal proceeding. However, the rule would not permit contacts with represented persons without the consent of counsel for the purpose of negotiating plea agreements, settlements or other similar legal arrangements.

In addition, the Department intends to issue substantial additions to the United States Attorneys' Manual ("Manual") to provide additional direction to Department attorneys when they deal with represented individuals and organizations, in order to accommodate more fully the principles and purposes underlying the bar rules. Those provisions further restrict government attorneys when they contact targets of criminal or civil law enforcement investigations who are known to be represented by counsel, and when they communicate with other represented persons. The intended additions to the United States Attorneys' Manual are provided for reference as part of this commentary.

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: Written comments should be submitted to: The Office of the Associate Attorney General, United States Department of Justice, 10th St. and Constitution Ave. NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: F. Mark Terison, Senior Attorney, Legal Counsel, Executive Office for United States Attorneys, United States Department of Justice, (202) 514–5204. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. General Discussion

The Department issued for notice and comment a proposed rule on the same subject on two previous occasions. See 57 FR 54737 (Nov. 20, 1992) and 58 FR 39976 (July 26, 1993). The Department received many thoughtful comments from members of the bar, state courts, bar counsel, federal and state prosecutors and others during those comment periods. The current version of the proposed rule includes substantial revisions based on those comments. Accordingly, the Department is issuing the rule again for comments to ensure that all the interested parties have an opportunity to comment.

This proposal reflects the Department's commitment to fostering ethical behavior consistent with the principles informing DR 7–104(A)(1) of the ABA Code of Professional Responsibility and Rule 4.2 of the Model Rules of Professional Conduct, while setting forth clear and uniform national guidelines upon which federal attorneys can rely in carrying out their responsibilities to enforce federal laws. The regulations make clear that federal attorneys generally continue to be subject to state bar ethical rules where they are licensed to practice, except in the limited circumstances where state ethical rules clearly conflict with lawful federal procedures and practices. With respect to willful violations of the contacts rules as embodied in the Attorney General's proposed regulations, federal attorneys would remain subject to state bar disciplinary sanctions. This new proposal is the product of extensive review, comments and vigorous debate among judges, federal government attorneys, members of the private bar, disciplinary officials, academics and ethicists.

In essence, the proposed regulations would permit federal prosecutors and agents to continue to conduct criminal and civil investigations in routine fashion against all individuals, whether or not those persons are represented by counsel. They would allow Department attorneys to continue to make or direct undercover or overt contacts with individuals and organizations represented by counsel for the purpose of developing factual information up until the point at which they are arrested or charged with a crime or named as defendants in a civil law enforcement action. However, the regulations generally would not permit federal prosecutors to attempt to negotiate plea agreements, settlements or similar arrangements with individuals represented by counsel

outside of the presence or without the consent of their attorneys. These regulations also would preclude, with certain very narrow exceptions, any contacts with represented parties after an arrest, indictment, or the filing of a complaint on the subject matter of the representation. The principal exception to these general prohibitions occurs when the defendant voluntarily and knowingly initiates a contact with the government attorney, in which case the regulations would require the government attorney to take the matter before a district judge or magistrate judge to obtain approval for the communication or to obtain the appointment of substitute counsel for the defendant.

The United States Attorneys' Manual will set forth further guidance. The proposed Manual provisions, which are set out in their entirety at the end of this commentary, prohibit overt approaches by federal attorneys to represented targets of criminal or civil enforcement proceedings without the consent of counsel, unless certain enumerated exceptions are met. The Manual also will require that government attorneys receive approval from their supervisors before communicating with any represented party or represented target.

Since early in this century, the rules of professional conduct that govern attorneys have required that lawyers for one party in a dispute communicate only through an adverse party's lawyer, rather than directly. DR 7–104(A)(1) of the ABA Model Code of Professional Responsibility provides:

> A. During the course of his representation of a client a lawyer shall not:
>
> 1. Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

Rule 4.2 of the ABA Model Rules states:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Disciplinary authorities in all 50 states and in the District of Columbia have adopted one of these rules, or a similar prohibition. Underlying these rules is the recognition that when two parties in a legal proceeding are represented, it is unfair for an attorney to circumvent opposing counsel and employ superior skills and legal training to take advantage of the opposing party.

At the same time, the courts have long recognized that government law enforcement agents must be allowed broad powers, within constitutional limits, to investigate crime and civil violations of police and regulatory laws. These powers properly include the authority to conduct undercover operations and to interview witnesses, potential suspects, targets and even defendants who waive their rights to remain silent. Although the Fifth and Sixth Amendments significantly restrict contacts with defendants after their initial appearance before a judge or after indictment, these constraints generally do not apply before a person has been taken into custody or charged in an adversary proceeding. Sound policies support this substantial power of police to investigate. The general public, victims of crime, and even potential suspects have a strong interest in vigorous inquiry by law enforcement officers before arrest or the filing of charges.

As long as investigations were treated as within the province of the police alone, the traditional rule forbidding counsel from directly contacting represented persons did not come into conflict with legitimate law enforcement activities. In recent years, however, the Department of Justice has encouraged federal prosecutors to play a larger role in preindictment, prearrest investigations. Some of this increased involvement stems from the wider use of law enforcement techniques, such as electronic surveillance, which require the preparation of legal filings. Also, complex white collar and organized crime investigations necessitate more intensive engagement of lawyers, who present such cases to grand juries. Most important, greater participation of lawyers at the preindictment stage of law enforcement has been regarded as helpful in assuring that police investigations comply with high legal and ethical standards.

This extension of the traditional prosecutor's responsibility has been a salutary development. One by-product, however, has been uncertainty about whether the traditional professional limitation on attorney contacts with represented parties should be viewed as a restriction upon prosecutors engaged in investigations and, by extension, the agents with whom they work. The overwhelming preponderance of federal appellate courts have held that the restriction on contacts with represented persons does not apply at the preindictment investigation stage. See, e.g., *United States* v. *Ryans*, 903 F.2d 731 (10th Cir.), cert. denied, 498 U.S. 855 (1990) (discussing cases); *United States* v. *Lemonakis*, 485 F.2d 941, 955–56 (DC Cir. 1973), cert. denied, 415 U.S. 989 (1974). Only the Second Circuit has suggested otherwise. See *United States* v. *Hammad*, 858 F.2d 834 (2d Cir. 1988). In recent years, state courts and state bar organizations have expressed different views on the point at which the prohibition on contacts now embodied in DR 7–104, Model Rule 4.2 and their analogs should apply to criminal enforcement proceedings.

Uncertainty about the scope and applicability of DR 7–104, Rule 4.2 and their state counterparts has directly affected the investigative activities of agents, including Federal Bureau of Investigation and Drug Enforcement Administration personnel, who work with prosecutors. An expansive application of these rules in some jurisdictions may have the effect of blocking preindictment interviews or undercover operations that most courts have held permissible under federal constitutional and statutory law.

This problem is compounded when federal attorneys assigned to the same case are members of different state bars. Under federal law, a Department attorney must be a member in good standing of a state bar, but he or she need not belong to the bar in each state in which he or she is practicing for the government. As a result, prosecution teams often comprise attorneys admitted to different bars. The application of different state disciplinary rules to these individuals creates uncertainty, confusion and the possibility of unfairness. Indeed, one member of a two-member federal prosecution team could receive a commendation for effective law enforcement while the other member would be subject to state discipline for the exact same conduct.

In light of these circumstances, the Department has concluded that a compelling need exists which warrants a uniform federal rule to reconcile the traditional rule against contacts with a represented person with the obligation of the Department of Justice to enforce the law vigorously. Indeed, absent a new federal rule, prosecutors have been forced on occasion to reduce their participation in the investigative phase of law enforcement so as to leave federal agents unfettered by state disciplinary rules that were never intended to govern police behavior. Such a retreat from the field by prosecutors serves neither efficiency nor the interest in elevating legal compliance and ethical standards in all phases of law enforcement.

Furthermore, the disciplinary rules themselves invite this type of regulation. Virtually all the states have adopted rules that include an "authorized by law" exception. These proposed regulations are intended to

provide legal authorization in states whose bar rules provide that exception.

Finally, the Department has long maintained, and continues to maintain, that it has the authority to exempt its attorneys from the application of DR 7–104 and Model Rule 4.2 and their state counterparts. Furthermore, the Department maintains that whether, and to what extent, such prohibitions should apply to Department attorneys is a policy question. See Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations, 4B Op. O.L.C. 576, 577 (1980). However, in light of the fact that all 50 states and the District of Columbia have adopted some form of a prohibition on contacts with represented parties, and in view of the long history of those rules, the Department believes that its attorneys should adhere to the principles underlying those rules to the maximum extent possible. Therefore, even though the Department has the authority to exempt its attorneys from the reach of these rules, the Department has decided not to implement a wholesale exemption.

Rather, the proposed regulations attempt to reconcile the purposes underlying DR 7–104 and Rule 4.2 with effective law enforcement. Recognizing the importance of the attorney-client relationship and the desirability of an individual who is represented by counsel being fully advised by counsel before negotiating legal agreements, the regulations provide that federal attorneys may not negotiate plea bargains, settlement agreements, immunity agreements or similar arrangements without the participation or consent of the individual's attorney. In this context, the prosecutor's superior legal training and specialized knowledge could be used to the detriment of the untutored layperson. Thus, the regulations comport with the principal purpose of DR 7–104 and Rule 4.2 by insisting that the individual's attorney participate in these types of negotiations. At the same time, the regulations would permit direct contacts at the preindictment, prearrest investigative stage with any individual, whether or not he or she is represented by counsel, to inquire about the matters under investigation. The regulations are drafted to conform to the approach of most federal appellate courts that have considered the matter. See, e.g., *United States* v. *Lopez*, 4 F.3d 1455 (9th Cir. 1993); *United States* v. *Ryans*, 903 F.2d 731 (10th Cir.), cert. denied, 498 U.S. 855 (1990); *United States* v. *Fitterer*, 710 F.2d 1328, 1333 (8th Cir.), cert. denied, 464 U.S. 852 (1983); *United States* v. *Kenny*, 645 F.2d 1323, 1339 (9th Cir.), cert. denied, 452 U.S. 920 (1981); and *United States* v. *Lemonakis*, 485 F.2d 941, 955–56 (D.C. Cir. 1973), cert. denied, 415 U.S. 989 (1974). The Department believes that public policy and effective law enforcement would not be served if one could exempt himself or herself from lawful, court-sanctioned investigative techniques simply by retaining an attorney. The Department believes that it is inappropriate to alter investigative techniques based upon an individual's financial ability to retain counsel before the point at which a court would appoint counsel for a person not able to afford counsel.

The regulations and the accompanying changes to the United States Attorneys' Manual also would give effect to other important aspects of the bar rules against contacts with represented parties. For example, the regulations would preclude federal attorneys from disparaging an individual's counsel or from attempting to gain access to attorney-client confidences or lawful defense strategy. The guidelines contained in the Manual provisions will also make clear that once an individual is in a likely adversarial situation with the government and has retained an attorney to represent him or her with respect to the particular subject matter under investigation, the government attorney must take greater care before making any *ex parte* contacts. While the proposed regulations authorize most communications before arrest, the proposed Manual changes provide that, as a matter of internal policy guidance, federal prosecutors generally should not make overt contacts with represented targets of investigations. However, the Manual provisions permit overt contacts with a represented target when initiated by the target; when necessary to prevent death or physical injury; when the relevant investigation involves ongoing, additional or different crimes from that to which the representation relates; or when a United States Attorney or an Assistant Attorney General expressly concludes, under all of the circumstances, that the contact is needed for effective law enforcement.

Finally, the proposed regulations and Manual provisions also address when a government attorney may communicate with an employee, officer or director of a represented corporation or organization without the consent of counsel. The regulations generally prohibit a government attorney from communicating with a current, high-level employee of a represented organization who participates as a "decision maker in the determination of the organization's legal position in the proceeding or investigation of the subject matter" and the organization has been named as a defendant in a criminal or civil law enforcement proceeding. The Manual provisions further generally prohibit contacts with controlling individuals of organizations that have not yet been named as defendants but are targets of federal criminal or civil law enforcement investigations without the consent of counsel.

The proposed regulations recognize that state courts and disciplinary bodies continue to play the primary role in regulating the conduct of all attorneys, including those who work for the federal government. Further, Department of Justice attorneys continue to be subject to state bar ethical rules except to the limited extent those rules conflict with lawful federal procedures and practices. As noted above, however, because of the expanded participation of federal prosecutors in preindictment investigations, DR 7–104 and Model Rule 4.2 have inevitably affected and circumscribed the power of federal law enforcement officials to carry out their legally mandated responsibilities. State courts and disciplinary committees are not the appropriate final arbiters of the scope of federal policing. The Department of Justice must assume this role, subject to the Constitution and the laws of the United States. The new regulations would not supplant state discipline. Rather, the regulations would provide that attorneys who comply with the new federal rule will be shielded from inconsistent state disciplinary rules. On the other hand, attorneys who willfully violate the new regulations would continue to be subject to the full measure of state disciplinary jurisdiction.

The Department is confident that, taken together, the proposed regulations, Manual amendments and this supplemental information will promote the public interest in effective law enforcement conforming to the highest standards of legal ethics.

II. Analysis of Comments and Revisions

A detailed discussion of the comments received following the first publication of the earlier proposal is included at 58 FR 39976 (July 26, 1993).

The comments received following the second publication of the earlier proposal were similar in many respects to those received in the first round of comments. As of September 19, 1993, the Department received 219 written comments. Of those, 159 comments were received from Department of

Justice employees. Of those, 144, mostly from federal prosecutors from around the country, supported promulgation of the earlier proposal; 1 opposed the rule; and 14 others provided miscellaneous comments. The Department also received 21 comments from federal officials outside the Department, 18 of whom supported the proposal.

The Department received 39 comments from individuals and organizations outside of the federal government. These writers included private attorneys, public defenders, state court judges, bar associations, disciplinary officials and others. Twenty-eight writers in that group expressed opposition to the rule while 3 supported the proposal.

Those writing in support of the earlier proposal generally emphasized three major points. First, they stated that a clear rule governing communications by federal attorneys with represented individuals was critical to the vigorous enforcement of federal law. Several writers stated that the lack of clarity on the matter created by a variety of court and bar association opinions has had a chilling effect on federal enforcement efforts. They stated that some federal prosecutors fearful of the uncertain state of the law and unwilling to risk their licenses to practice law have decided not to engage in routine discussions with represented individuals. Second, several writers described the practice of some attorneys to claim representation of all the employees of a corporate client. They argued that this practice, along with the uncertainty of the state of the disciplinary rules, often makes it exceedingly difficult to investigate wrongdoing by corporations or other organizations. Third, several supporters of the previous proposal stated that they did not believe that it was the intention of DR 7–104 and Model Rule 4.2 to apply to criminal investigations. Furthermore, they argued that if the prohibitions in those rules apply to all federal criminal and civil investigations the result will be twofold: (1) Federal attorneys will be forced to reverse the trend of the last 20 years and become less involved in investigations; and (2) federal agents will stop consulting with federal attorneys during investigations. Both of these trends will result in less effective law enforcement.

The Department received several comments critical of the earlier proposal. Those criticisms fall generally in four categories. First, several individuals stated that they believed the proposal would exempt Department attorneys from ethical requirements that apply to all other attorneys, thus creating a double standard. Furthermore, they argued that the proposal improperly equated constitutional minimums with ethical conduct. Second, several writers argued that the Attorney General did not have the authority to promulgate such a regulation. They argued that the proposal unfairly impinged on the traditional right of state supreme courts to monitor and discipline attorneys admitted to practice before them. They also questioned whether the drafters of the "authorized by law" exceptions could have intended that the Attorney General would be empowered to release Department attorneys from the obligations of the rules simply by issuing a regulation.

Third, several people argued that the proposed regulation was not necessary for the vigorous enforcement of the law. And fourth, several writers commented on various aspects of the proposal itself. The most common objection was to the "controlling individual" test that the proposal used to determine whether communications with a particular employee of a represented corporation would be permissible. They argued that the test was much too narrow and would only apply to a corporation's general counsel and a small handful of very senior executives.

The Department has reviewed, analyzed and carefully considered all the comments it received and has made substantial revisions to its earlier proposal based on these comments. The Department believes the current proposal, in combination with the proposed additions to the United States Attorneys' Manual, appropriately addresses the concerns of the commenters critical of the earlier proposal, while preserving the Department's ability to enforce federal laws. Due to the significant nature of the changes made, the Department determined that an additional comment period is appropriate.

III. Section-by-Section Analysis

Section 77.1 Purpose and Authority

This section includes no material changes from the rule published earlier. It does, however, include additional discussion regarding the purpose of the rule.

The Attorney General's authority to establish standards of conduct for Department of Justice attorneys derives from two distinct sources: Section 301 of title 5, United States Code, and title 28 of the United States Code, which, through a variety of provisions, authorizes the Attorney General and the Department of Justice to enforce federal law. Section 301 states that "[t]he head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, [and] the distribution and performance of its business." Authority to promulgate this rule also is implicit in the Attorney General's statutory power to "supervise all litigation" to which the United States is a party and to direct United States Attorneys and other subordinate attorneys in the "discharge of their respective duties." 28 U.S.C. 519. Other specific statutory references are indicated in the text of the rule.

Section 77.2 Definitions

This section is substantially similar to the definitional section of the previous proposal. Two changes, however, are worthy of attention:

"Attorney for the Government"

First, the definition of "attorney for the government" has been refined explicitly to exclude from the definition those law enforcement agents employed by the Department of Justice who are also members of state bars, if they are employed as, and are performing the function of, agents rather than attorneys. The Federal Bureau of Investigation, Drug Enforcement Agency and other investigative agencies have long recruited individuals with advanced degrees—including, for example, engineering, business and law degrees—to serve as agents. The Department strongly encourages the recruitment of educated and specially trained individuals for positions as agents. An agent's bar membership should not adversely affect his or her ability to conduct comprehensive investigations and otherwise to fulfill his or her law enforcement functions. Therefore, the proposed rule specifically exempts attorney-agents from its scope if they are employed by the government as investigative agents and not as attorneys.

"Undercover Investigation"

Second, the section now includes a definition of the term "undercover investigation." Under this definition, the hallmark of an "undercover operation" is an investigation in which an individual "whose identity as an official of the government or a person acting at the behest thereof is concealed or is intended to be concealed." This definition is intended to be read broadly to include virtually every type of law enforcement investigation in which the identity of a government employee, or the fact that an individual is cooperating with the government, is concealed.

Section 77.3 Represented Party; Represented Person

This section differs significantly from the corresponding section in the earlier proposal in order more closely to follow the language in DR 7–104(a)(1) and Rule 4.2, which establish general prohibitions against *ex parte* contacts with a represented party, and to differentiate between those individuals who are represented by counsel and have become a party to a proceeding, and those represented individuals who are not parties to any relevant proceedings.

An individual is considered to be a "represented party" under these rules if: (1) The person is represented by counsel; (2) the representation is current and concerns the subject matter in question; and (3) the person has either been arrested or charged in a federal criminal case or is a defendant in a civil law enforcement proceeding concerning the subject matter of the representation. If the person is currently represented in fact regarding the subject matter in question, but has not been charged or arrested, that person is considered a "represented person." Thus, witnesses, suspects and targets of investigations who have not been indicted or arrested are considered represented persons under this rule and in the United States Attorneys' Manual guidelines.

Section 77.5 of this rule generally prohibits government attorneys from initiating *ex parte* contacts with represented parties, but does not prohibit *ex parte* contacts with represented persons. (However, §§ 77.8 and 77.9 prohibit some contacts with represented persons as well.) This distinction between represented parties and represented persons is consistent with the rulings of the vast majority of federal courts to consider the issue. *See United States* v. *Infelise*, 773 F. Supp. 93, 95 n.3 (N.D. Ill. 1991) (DR 7–104(A)(1) "speaks in terms of communications with a 'party', suggesting that the rule is to be applied only when adversarial proceedings have been initiated."); *United States* v. *Ryans*, 903 F.2d 731, 739 (10th Cir.) ("We are not convinced that the language of [DR 7–104(A)(1)] calls for its application to the investigative phase of law enforcement" because "the rule appears to contemplate an adversarial relationship between litigants, whether in a criminal or a civil setting."), cert. denied, 498 U.S. 855 (1990); *United States* v. *Dobbs*, 711 F.2d 84, 86 (8th Cir. 1983) (agent's "noncustodial interview of [suspect] prior to the initiation of judicial proceedings against the appellant did not constitute an ethical breach"); *United States* v. *Kenny*, 645 F.2d 1323, 1339 (9th Cir.), cert. denied, 452 U.S. 920 (1981); *United States* v. *Lemonakis*, 485 F.2d 941, 956 (D.C. Cir. 1973), cert. denied, 415 U.S. 989 (1974); *In re U.S. Dept. of Justice Antitrust Investigation*, 1992–2 Trade Cases (CCH) ¶ 69,933, at 68,469 (D. Minn. 1992) (Rule 4.2 held inapplicable because "[t]he word 'parties' in Rule 4.2 indicates the presence of a lawsuit" and "[t]he present controversy relates to an investigation, not a lawsuit"); *United States* v. *Western Electric Co., Inc.*, 1990–2 Trade Cases (CCH) ¶ 69,148, at 64,314 & n.6 (D.D.C. 1990); *United States* v. *Guerrerio*, 675 F. Supp. 1430, 1438 (S.D.N.Y. 1987); *Faragher* v. *National R.R. Passenger Corp.*, 1992 U.S. Dist. LEXIS 1810 at *2–3 (E.D. Pa. 1992). Only the Second Circuit has suggested that DR 7–104(A)(1) may apply to federal law enforcement activities before indictment or arrest. See *United States* v. *Hammad*, 858 F.2d 834, 838–39 (2d Cir. 1988); *United States* v. *Pinto*, 850 F.2d 927, 935 (2d Cir.), cert. denied, 488 U.S. 867 (1988); *United States* v. *Sam Goody, Inc.*, 518 F. Supp. 1223, 1224–25 n.3 (E.D.N.Y. 1981), appeal dismissed, 675 F.2d 17 (2d Cir. 1982).

Section 77.4 Constitutional and Other Limitations

This section is substantially similar to the corresponding section in the earlier proposal. The section has been revised slightly to make clear that although the proposed rule does not supersede the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, this limitation does not extend to other rules regarding procedure in federal courts. Thus, rules of procedure adopted by individual courts as local rules, many of which incorporate state bar rules, are not included in this limitation.

Section 77.5 General Rule for Civil and Criminal Enforcement; Represented Parties

This section, as well as sections 77.6 through 77.9, differs substantially from corresponding sections contained in the earlier proposal.

This section closely tracks the language of DR 7–104(A)(1) and Rule 4.2 and applies similar prohibitions to attorneys for the government. The section prohibits an attorney for the government from communicating with a represented party, as defined in § 77.3, about the subject matter of the representation without the consent of that individual's attorney. The prohibition applies, however, only if the attorney for the government knows that the represented party is, in fact, represented by counsel. Therefore, communications by an attorney for the government with a represented party will not violate this rule if the attorney for the government is unaware of the fact of representation.

This section also prohibits an attorney for the government from causing another individual to communicate with a represented party. Accordingly, a government investigator acting at the attorney's direction and control may not do what the attorney himself or herself is prohibited from doing. Conversely, a government attorney will not be personally responsible for the actions of agents in communicating with represented persons unless, in doing so, the agents were acting as the attorney's "alter ego."

It also should be noted that this provision is violated (and thus, a basis for departmental discipline exists) when an inappropriate communication takes place, regardless of whether or not the communication results in eliciting an inculpatory statement or is otherwise prejudicial to the represented party.

Section 77.6 Exceptions; Represented Parties

This section describes the circumstances under which Department attorneys may communicate, or cause others to communicate, with a represented party who the Department attorney knows is represented concerning the subject matter of the representation without first obtaining the consent of the represented party's counsel. The exceptions enumerated in this section are similar to, but not identical with, the exceptions enumerated in § 77.7 of the earlier proposal.

Paragraph (a): Determination if Representation Exists

This exception recognizes the fact that there is no reason to prohibit a limited inquiry about whether an individual is, in fact, represented by counsel regarding the relevant subject matter. Such an inquiry does not involve the kind of communication about which courts have expressed concern and has little potential for undermining the attorney-client relationship.

There may be uncertainty about the existence of representation with respect to whether it has been established, whether it may have been terminated, and whether a particular subject falls within the scope of the representation. The first issue may arise when a judicial or other appearance has not occurred, but the government attorney has some information suggesting that the person

may be represented. It may also arise when an attorney purports to represent a group of persons, such as all the employees of a corporation. Uncertainty about the termination of the representation may arise when substantial time has passed since it was made known that the person was represented by counsel or when the attorney for the government has reason to believe that the representation has ceased. It is unlikely, however, that such uncertainty will arise when there are pending judicial proceedings, since the court must approve termination of representation.

When inquiring about the status of representation, government attorneys and agents generally must refrain from stating whether it is necessary or desirable to be represented by counsel. After the right to counsel has attached, a statement or implication suggesting that counsel is not providing proper or effective representation could violate the Sixth Amendment right to effective assistance of counsel. See *United States* v. *Morrison*, 449 U.S. 361, 364 (1981).

This exception is not intended to and does not create a duty on the part of the attorney for the government to inquire about the status of representation. However, if the attorney for the government has any reason to believe that the individual is represented by counsel with regard to the relevant subject matter, he or she should, as a matter of course, make the appropriate inquiries before engaging in substantive discussions with the individual.

Paragraph (b): Discovery or Judicial or Administrative Process

Any communication that is authorized by discovery procedures, such as a deposition of a party-opponent, or by judicial or administrative process, such as a grand jury, deposition, or trial subpoena or an administrative summons, obviously should not be prohibited by any rule. See *United States* v. *Schwimmer*, 882 F.2d 22, 28 (2d Cir. 1989), cert. denied, 493 U.S. 1071 (1990) (prosecutor's questioning of represented person before the grand jury outside the presence of counsel is "authorized by law" under DR 7–104). Among other reasons, a person who is served with process has an opportunity to consult with counsel prior to his or her appearance at the proceeding, and may have counsel present if desired during the proceeding (except, of course, while testifying before a grand jury). This provision ensures that such communications continue to be allowed.

This exception does not purport to authorize any communications not otherwise available pursuant to discovery procedures or legal process.

Paragraph (c): Initiation of Communication by Represented Party

One of the concerns most frequently raised by Department attorneys during the comment period on the previous proposal was the lack of clarity under current law regarding the propriety of communicating with a represented party, in the absence of that party's counsel, when the communication is initiated by the party. A defendant may wish to communicate with the government outside the presence of counsel for many valid reasons. Department attorneys repeatedly cited the situation in which a defendant wants to cooperate with the government but does not want his or her attorney to know for fear that the attorney will disclose the defendant's intentions to others. This situation typically arises when the defendant questions the loyalty of his or her attorney, who is being paid by another individual involved in a criminal enterprise. The same problem may arise when a single attorney represents multiple parties who are part of the same criminal enterprise.

When the desire of a defendant or arrestee to speak with the attorney for the government outside the presence of his or her counsel is "voluntary, knowing and informed," there is no valid reason to prohibit the government from engaging in such communications. In fact, the Department believes that it would be a dereliction of its obligation to enforce vigorously federal law if it promulgated a rule that would prohibit such communications.

It is well established that an individual who is entitled to counsel under the Fifth Amendment or the Sixth Amendment may waive that right and choose to communicate with the government outside the presence of his or her attorney, "provided the waiver is made voluntarily, knowingly and intelligently." *Moran* v. *Burbine*, 475 U.S. 412, 421 (1986) (internal quotations omitted); *Patterson* v. *Illinois*, 487 U.S. 285, 292 (1988); *Brewer* v. *Williams*, 430 U.S. 387, 404–06 (1977). In such a situation, the defendant should not be prohibited from engaging in communications that are allowed by the Constitution by a disciplinary rule that was intended to protect that individual in the first place. Neither common sense nor the principles underlying DR 7–104 and Rule 4.2 require such a result.

This paragraph amends the previous proposal by adding procedural protections designed to ensure that such waivers are in fact voluntary, knowing, and informed. After a represented individual has been arrested or charged in a criminal proceeding or is named as a defendant in a civil law enforcement proceeding, the proposed rule requires that several steps be taken before any substantive discussions take place. First, the government attorney must inform the individual of his or her right to speak through his or her attorney and to have that attorney present for any communications with the government attorney. Second, the represented party must waive his or her right to counsel in such a way as to indicate that the waiver is voluntary, knowing and informed. If at all possible, the attorney for the government should obtain a signed written waiver. Third, the attorney for the government must bring the matter before the appropriate district court judge, magistrate or other tribunal of competent jurisdiction. The court should be asked for a determination: That the waiver satisfies the provisions of this rule; or that substitute counsel is in place and that counsel consents to the communication; or, in the alternative, that it is appropriate for the court to appoint counsel.

The rule does not, however, require that the waiver take place before the judge or magistrate. In exceptional circumstances, it may be impractical or unsafe to bring the defendant before a judge or magistrate to secure the waiver. In those cases, the tribunal must determine in advance of substantive discussions, based on the evidence before it, whether the waiver was made knowingly, intelligently and voluntarily.

As noted above, the initiation of *ex parte* contacts by represented parties frequently occurs in the context of the "fearful defendant" whose attorney has been chosen by a third party, often an individual above the defendant in the criminal hierarchy. Such a defendant may wish to cooperate with the government but may fear that his life or safety will be endangered if his attorney learns of the cooperation. Although the need for a mechanism by which a represented party can initiate contacts with the government is particularly acute in this context, paragraph (c) is not limited to this setting. Rather, the proper inquiry is whether the represented party's waiver of the right to counsel is voluntary, knowing, and informed—not whether the represented party has established some overriding justification for his or her decision.

Paragraph (d): Waivers at the Time of Arrest

Paragraph (c) of this section provides the general rule regarding how a represented party may waive any protections otherwise provided under this regulation. This paragraph provides for a more specific rule dealing with a waiver at the time of arrest.

This paragraph provides that a government attorney may communicate directly with a represented party without the consent of that party's counsel at the time of his or her arrest if the represented party has been fully informed of his or her Constitutional rights at that time and has waived them. The government attorney need not comply with any of the additional requirements of paragraph (c) in such a situation. However, it is generally prudent to obtain a written waiver at the time of arrest if possible.

This exception is intended to preserve the ability of government attorneys to interview individuals immediately following arrest as an effective and important law enforcement tool. A substantial body of law has developed regarding the post-arrest waiver of various Constitutional rights. The Department believes that the Constitutional requirements identified in that decisional law adequately protect represented individuals following arrest. Furthermore, the effectiveness of post-arrest interviews would be significantly curtailed if the procedural requirements of paragraph (c) applied. Accordingly, this paragraph is intended to preserve this investigative tool without adding any additional procedural requirements.

Paragraph (e): Investigation of Additional, Different or Ongoing Crimes or Civil Violations

This paragraph is similar to, but not identical with, § 77.7(d) of the previously published proposal.

The Sixth Amendment right to counsel is "offense-specific." *McNeil* v. *Wisconsin*, 111 S. Ct. 2204, 2207 (1991). Thus, a defendant whose Sixth Amendment rights have attached as to one offense remains subject to questioning, whether direct or covert, regarding uncharged crimes. *Id.*; *Maine* v. *Moulton*, 474 U.S. 159, 180 n.16 (1985); *United States* v. *Mitcheltree*, 940 F.2d 1329, 1342 (10th Cir. 1991); *United States* v. *Terzado-Madruga*, 897 F.2d 1099, 1111–12 (11th Cir. 1990); *United States* v. *Chu*, 779 F.2d 356, 368 (7th Cir. 1985); *United States* v. *Grego*, 724 F.2d 701, 703 (8th Cir. 1984). The proposed rule employs an analogous approach, permitting *ex parte* contacts with a represented party if the contacts involve the investigation of offenses as to which the represented party has neither been arrested nor charged in a criminal or civil law enforcement proceeding. The Department believes this approach is wholly consistent with DR 7–104 and Model Rule 4.2 and the cases interpreting them.

Accordingly, this section provides that communications may be made in the course of investigations of additional, different or ongoing criminal or unlawful activity, even though the individual is represented by counsel with respect to conduct for which he or she has already been arrested or charged. Such additional criminal or unlawful conduct is typically one of three varieties: (1) Conduct that is separate from the original wrongful conduct; (2) crimes that are intended to impede the trial of the charged crime or unlawful conduct, such as subornation of perjury, obstruction of justice, jury tampering, or murder, assault, or intimidation of witnesses; and (3) conduct that is a continuation of the charged crime, such as a conspiracy or scheme to defraud that continues past the time of indictment. The new or additional criminal or wrongful activity may have occurred in the past or may be ongoing at the time of the investigation.

By definition, communications pursuant to this exception will take place when the represented party is the subject of pending criminal or civil enforcement charges for which he or she is represented by counsel. Government attorneys must take extreme care to avoid violating the Sixth Amendment right to counsel whenever they invoke this exception in the criminal context. In particular, care must be taken to avoid the deliberate elicitation of incriminating information regarding any pending criminal charges.

Paragraph (f): Imminent Threat to Safety or Life

The Supreme Court has recognized that, in certain limited situations, otherwise applicable constitutional requirements may be suspended by the need to guard against threats to public safety. See *Warden* v. *Hayden*, 387 U.S. 294, 298–99 (1967) (warrantless search permissible when delay would endanger lives of officers and citizens); *New York* v. *Quarles*, 467 U.S. 649, 657 (1984) ("the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the [*Miranda*] prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination"). Paragraph (f) recognizes an analogous exception to the general prohibition against communications with represented parties in the absence of their counsel. It is the Department's intention that this exception be invoked only in rare circumstances and only for the purpose of protecting human life or safety.

The exception has three requirements: (1) The attorney for the government must have a good faith belief that the safety or life of any person is threatened; (2) the purpose of the communication must be to obtain information to protect against the risk of injury or death; and (3) the attorney for the government must, in good faith, believe that the communication is reasonably necessary to protect against such risk. These requirements are imposed to ensure that the exception is invoked only to protect human life or safety, and not as a routine matter in violent crime prosecutions. For example, the fact that potentially dangerous firearms have not been recovered would not in and of itself be sufficient under ordinary circumstances to constitute a threat to safety under this exception. Furthermore, the communication must be for the purpose of protecting human life or safety, and may not be designed to elicit testimonial evidence. However, information thus obtained may be used for any purpose consistent with Constitutional limitations.

Section 77.7 Civil and Criminal Enforcement; Represented Persons

As addressed in the discussion of § 77.3, individuals and organizations who are neither defendants nor arrestees are not "parties" within the meaning of this rule, and the general prohibition on *ex parte* contacts therefore does not apply. This section makes clear that attorneys for the government are authorized to communicate, directly or indirectly, with a represented person unless the contact is prohibited by some other provision of federal law. These communications are subject, however, to the restrictions set forth in §§ 77.8 and 77.9. Furthermore, proposed changes to the United States Attorneys' Manual included in this commentary will provide additional guidance to Department attorneys in such situations.

Section 77.8 Represented Persons and Represented Parties; Plea Negotiations

This section prohibits government attorneys from initiating or engaging in negotiations of certain specified legal agreements with any individual who the government attorney knows is represented by counsel, without the consent of that individual's counsel. Even when substantive discussions with a represented party or represented

person are permissible under these regulations, it ordinarily would be improper for a government attorney to initiate or negotiate a plea agreement, settlement, immunity agreement or any other disposition of a claim or charge in the absence of the individual's counsel. The one exception to this prohibition occurs when the communication is initiated by the represented person or represented party and the procedural safeguards provided for in § 77.6(c) are satisfied.

The Department believes that this section is vitally important for the preservation of the attorney-client relationship. One of the primary purposes informing Rule 4.2 and DR 7–104 is that an individual represented by counsel should be protected from overreaching by an attorney for an adversary. The Department believes the risk of such overreaching is greatest during negotiations over plea agreements, settlements and other key legal agreements. The training, experience and knowledge of the law possessed by an attorney is particularly valuable in such situations.

The prohibition contained in this section includes all discussions of the terms of a particular plea agreement, settlement agreement or other agreement covered by the section. However, this section does not prohibit an attorney for the government from responding to questions regarding the nature of such agreements, potential charges, potential penalties or other subjects related to such agreements during an otherwise permissible discussion. Nevertheless, an attorney for the government should take care in such situations not to go beyond providing information on these and similar subjects and should generally refer the represented person to his or her counsel for further discussion of these issues. The government attorney should also make it clear that he or she will not negotiate any agreement with respect to the disposition of criminal charges, civil claims or potential charges or claims or immunity without the presence or consent of counsel.

Section 77.9 Represented Persons and Represented Parties; Respect for Attorney-Client Relationships

When an attorney for the government communicates with a represented party pursuant to one or more of the exceptions listed in § 77.6, or with a represented person pursuant to § 77.7, the communication is nevertheless subject to the restrictions of this section.

Paragraph (a): Deference to Attorney-Client Relationship

DR 7–104(A)(1) and Rule 4.2 protect a represented party's right, if he or she so chooses, to communicate with his or her adversary only through counsel. The rules do not compel one to make that choice, and the represented party may elect to speak directly with the government despite his or her attorney's advice not to do so. As a further protective measure, federal courts have recognized that it is improper for an attorney for the government to disparage counsel for the represented party or otherwise to seek to disrupt the relationship between that party and his attorney. See, e.g., *United States* v. *Morrison*, 449 U.S. 361, 362, 367 (1981); *United States* v. *Weiss*, 599 F.2d 730, 740 (5th Cir. 1979); id. at 740–41 (Godbold, J., specially concurring). This paragraph codifies those basic principles by prohibiting communications that: (1) Attempt to elicit information regarding lawful defense strategies; (2) disparage the represented party's counsel; or (3) otherwise disrupt the attorney-client relationship. These prohibitions apply in every phase of criminal and civil enforcement investigations and proceedings.

However, the paragraph also accommodates an important exception to this prohibition. Courts have held that a government attorney may not permit legal proceedings to go forward if he or she is aware of a conflict of interest between a represented party and his or her lawyer. See *United States* v. *Iorizzo*, 786 F.2d 52, 59 (2d Cir. 1986). Under these circumstances, the attorney for the government ordinarily should move to disqualify the lawyer involved, if legal proceedings have already commenced. If it is not feasible to move for disqualification or otherwise challenge the representation, this paragraph allows an attorney for the government to communicate with the represented individual for the limited purpose of apprising the represented individual of the perceived conflict. However, any substantive discussion of the subject matter of the representation is permissible only insofar as it is authorized by some other provision of this rule.

In order to ensure that this provision is used only in rare circumstances, the rule would require prior authorization for such communications from the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General or a United States Attorney. The authorization should be in writing if at all possible. Furthermore, before providing approval, the authorizing officer must find: (1) A substantial likelihood of a conflict; and (2) that it is not feasible to obtain a court order on the matter.

Paragraph (b): Attorney-Client Meetings

The attendance of an undercover agent or a cooperating witness at lawful meetings of an individual and his or her attorneys is ordinarily an improper intrusion into the attorney-client relationship. The courts have recognized, however, that such attendance occasionally will be required when the operative is invited to participate and his or her refusal to do so would effectively reveal his or her connection to the government. See, e.g., *Weatherford* v. *Bursey*, 429 U.S. 545, 557 (1977); *United States* v. *Ginsberg*, 758 F.2d 823, 833 (2d Cir. 1985); *United States* v. *Mastroianni*, 749 F.2d 900, 906 (1st Cir. 1984). As the First Circuit has noted, a contrary rule "would provide the defense with a quick and easy alarm system to detect the presence of any informants, simply by inviting all known associates of defendants to a supposed defense strategy meeting." *Mastroianni*, 749 F.2d at 906.

Attendance at such meetings, however, intrudes into the attorney-client relationship and impairs the right of the defendant to a fair trial. Accordingly, this section provides that undercover agents or cooperating witnesses may participate in such meetings, but only when requested to do so by the defense and when reasonably necessary to protect their safety or life, or the confidentiality of an undercover operation. See Weatherford, 429 U.S. at 557 (informant went to meeting "not to spy, but because he was asked and because the State was interested in retaining his undercover services on other matters and it was therefore necessary to avoid raising the suspicion that he was in fact the informant whose existence [the defendant and his counsel] already suspected").

However, even when an undercover operative's attendance at such a meeting is authorized to protect his or her cover and safety, any information acquired regarding lawful defense strategy or trial preparation may not be communicated to government attorneys or otherwise used to the substantial detriment of the represented party. See Weatherford, 429 U.S. at 558; Ginsberg, 758 F.2d at 833; Mastroianni, 749 F.2d at 906. As a safeguard, this rule provides that such information should not be communicated to the attorneys for the government or law enforcement agents

who are participating in the trial of the pending criminal charges.

When there is reasonable cause to believe that the purpose of the meeting is not the lawful defense of the underlying charges, but the commission of a new or additional crime (such as bribery of a witness or subordination of perjury), attendance by informants or undercover agents at attorney-client meetings is permissible pursuant to § 77.6(e). The belief, however, must be based on reasonable cause, not mere suspicion or conjecture. See Mastroianni, 749 F.2d at 906. Furthermore, the prohibition against communication of lawful defense strategy to the prosecution should be observed if, in fact, such strategy is imparted to the informant or agent.

Government attorneys should give serious consideration to the extreme sensitivity of permitting agent and informant attendance at defense meetings. Agents and informants should be instructed to avoid participating in such meetings, and to minimize their participation when attendance is required, if it is possible to do so without arousing suspicion. Agents or witnesses who attend defense meetings should also be instructed to avoid taking any role in the shaping of defense strategy or trial preparations. Finally, agents and informants should be instructed to avoid imparting defense strategy or trial preparation information to any other law enforcement officials if reasonably feasible to do so.

Finally, this restriction applies only to law enforcement officials and cooperating witnesses who are acting as "agents for the government" at the time of the communication. If one of several co-defendants who attended an attorney-client defense strategy meeting later testifies for the government at trial, no violation will have occurred as long as the co-defendant was not a government agent at the time of the meeting. *United States* v. *Brugman*, 655 F.2d 540, 545–46 (4th Cir. 1981).

Section 77.10 Organizations and Employees

This section is similar in structure to § 77.13 of the previously published proposal. However, it includes several substantive changes based on comments received during earlier comment periods.

The issue addressed by this section—when should a communication with an employee or member of a represented organization be considered a communication with the organization itself—is one of the most difficult issues addressed by these regulations. It was also perhaps the most commented upon provision during the comment period. Several federal prosecutors commented that they regularly encounter attorneys who assert that they represent every individual in a large corporation or organization. Others stated that these blanket claims of representation extend to all the former employees as well. These prosecutors argued for a bright line rule to prevent such abuse and generally commented favorably on the earlier proposal. Others argued that the earlier proposal was too narrow in scope and would deprive corporations and other organizations of the effective assistance of counsel.

The Department believes that this section, and particularly the definition of "controlling individual" in § 77.10(a), strikes an appropriate balance, one that ensures government attorneys the ability to enforce federal law, while preserving the opportunity for corporations and other organizations to secure effective assistance of counsel.

Paragraph (a): Communications With Current Employees; Organizational Representation

This paragraph states that a communication with a current employee of an organizational party or person should be treated as a communication with the organization for purposes of this part only if the employee is a controlling individual. If a communication with a current employee is considered to be a communication with a represented organization under these rules (that is, if the communication is with a controlling individual), then that communication is subject to the same limitations that would apply if the communication were directly with the represented organization.

In accord with the basic structure of this part, which distinguishes between represented parties and represented persons, this paragraph effectively provides that when an organization is a represented party, an attorney for the government shall not communicate, or cause another to communicate (subject to the exceptions enumerated in § 77.6), with any controlling individual of the organization without the consent of the organization's attorney. In contrast, when an organization qualifies as a represented person, an attorney for the government may communicate, or cause another to communicate, with any controlling individual if the communication does not involve negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement, or other disposition of actual or potential criminal charges or civil enforcement claims, or sentences or penalties, as prohibited by § 77.8, and if the communication does not violate the provisions of § 77.9.

The definition of "controlling individual" is intended to encompass those individuals who typically are part of the organization's control group. A controlling individual under this definition must: (1) Be a current employee or member of the organization; (2) hold a high level position with the organization; (3) participate "as a decision maker in the determination of the organization's legal position in the proceeding or investigation of the subject matter"; and (4) be known by the government to be engaged in such activities. This definition attempts to identify those limited number of individuals affiliated with the organization who actually are involved in determining the organization's position with regard to the legal proceeding or investigation.

DR 7–104 and Rule 4.2 are intended to protect the attorney-client relationship from unnecessary interference and to protect represented parties from overreaching by opposing counsel. Communications with those high-level individuals affiliated with or employed by an organization who are responsible for employing and directing the organization's counsel and for determining legal positions taken by the organization are the type of communications prohibited by DR 7–104. Accordingly, this paragraph defines "controlling individual" consistent with the principles underlying the disciplinary rules on *ex parte* contacts.

Of all the issues pertaining to 7–104(A)(1), the issue of organizational representation has engendered the greatest confusion and disagreement among the lower federal courts. Courts considering the question have applied a variety of modes of analysis, either singly or in combination. The Department believes the best approach is that adopted by those courts that have attempted to identify an organization's "control group." See, e.g., *Shealy* v. *Laidlaw Bros.*, 34 FEP Cases 1223, 1225 (D.S.C. 1984) (a corporate "party" under DR 7–104(A)(1) includes "a person whose employer's interests are, by virtue of his position of employment, so close to his own and to his heart that he could be depended upon in all events to carry out his employer's direction"); *B.H. by Monahan* v. *Johnson*, 128 F.R.D. 659, 663 (N.D. Ill. 1989) ("only 'those individuals who can bind it [the defendant] to a decision or settle controversies on its behalf' would be considered parties for purposes of DR 7–104"); *Frey* v. *Department of Health &*

Human Servs., 106 F.R.D. 32, 35 (E.D.N.Y. 1985) ("the Rule applies to those employees of a government agency who are the 'alter egos' of the entity, that is, those individuals who can bind it to a decision or settle controversies on its behalf"); *Fair Auto. Repair* v. *Car-X Serv. Systems*, 128 Ill.App.3d 763, 771, 471 N.E.2d 554, 560 (1984) (DR 7–104(A)(1) prohibits *ex parte* contacts with corporate defendant's "control group," defined as "those top management persons who had the responsibility of making final decisions and those employees whose advisory roles to top management are such that a decision would not normally be made without those persons' advice or opinion or whose opinions in fact form the basis of any final decision").

The Department believes that the "control group" approach most accurately reflects the values underlying DR 7–104(A)(1) and Rule 4.2. This approach properly seeks to identify those employees who exercise such sufficient authority within the organization that communications with them should be regarded as communications with the organization itself. The Department also believes that the alternative approaches would impose unacceptable constraints on federal law enforcement.

Paragraph (b): Communications With Former Employees; Organizational Representation

This paragraph authorizes communications with former employees of represented organizations. Because former employees do not direct the affairs of the organization and therefore cannot be considered members of the "control group" or any other controlling entity of an organization, communications with them are not considered communications with the organization for purposes of the proposed rule. This reasoning is consistent with the conclusion of the majority of federal courts that have held that DR 7–104(A)(1) does not bar communications with former employees of a represented corporate party. See, e.g., *Hanntz* v. *Shiley, Inc.*, 766 F. Supp. 258, 267 & n.8 (D.N.J. 1991); *Action Air Freight, Inc.* v. *Pilot Air Freight Corp.*, 769 F. Supp. 899, 904 (E.D.Pa. 1991); *Shearson Lehman Bros., Inc.* v. *Wasatch Bank*, 139 F.R.D. 412, 417–18 (D.Utah 1991); *Sherrod* v. *Furniture Center*, 769 F. Supp. 1021, 1022 (W.D. Tenn. 1991); *Dubois* v. *Gradco Systems, Inc.*, 136 F.R.D. 341, 345 n.4 (D.Conn. 1991); *Polycast Technology Corp.* v. *Uniroyal, Inc.*, 129 F.R.D. 621, 628 (S.D.N.Y. 1990). See also ABA Comm. on Ethics and Professional Responsibility, Formal Op. 359 (1991) ("Accordingly, it is the opinion of the Committee that a lawyer representing a client in a matter adverse to a corporate party that is represented by another lawyer may, without violating Model Rule 4.2, communicate about the subject of the representation with an unrepresented former employee of the corporate party without the consent of the corporation's lawyer."). But see *PPG Industries, Inc.* v. *BASF Corp.*, 134 F.R.D. 118, 121 (W.D.Pa. 1990); *Public Serv. Elec. & Gas* v. *Associated Elec. & Gas*, 745 F. Supp. 1037, 1042 (D.N.J. 1990).

Paragraph (c): Communications With Former or Current Employees; Individual Representation

This paragraph provides that if a former or current employee or a member of an organization retains his or her own counsel, the government shall provide the same protection to him or her that would be provided under this part to any other represented person or represented party. Communications with that individual are subject to the limitations set forth in this part. Although this section provides the general rule for such communications, paragraph (d) addresses the specific situation in which a controlling individual of a represented organization retains separate counsel.

This paragraph also provides that the government will not accept, for purposes of this rule, blanket claims by counsel that he or she represents all or a large number of employees of the organization. It is important to note that this provision is only relevant when the attorney for the government would be prohibited by some other provision of this part from contacting an individual falling under the broad claims of representation under question. For example, an attorney for the government may contact a low-level employee of a corporation, without consent of that employee's counsel or the corporation's counsel, regarding a matter for which the corporation has already been indicted as part of an undercover or overt factual investigation, if that individual has not been arrested or named as a defendant in a criminal or civil law enforcement proceeding. Therefore, the fact that an attorney has stated that he or she represents that individual will have no bearing on whether the communication is proper.

However, if a particular communication with an individual employee included in such a claim of representation would be improper under these regulations if he or she were in fact represented by counsel (for example, communications to negotiate a plea agreement), then this paragraph provides that a government attorney must first inquire whether the employee is in fact represented before undertaking substantive communications with the employee. As part of this inquiry, the government attorney is not required to disclose to the employee the fact that counsel has asserted that he or she represents the employee. If the employee indicates that he or she is not represented by counsel, it is proper for the government attorney to treat the employee as unrepresented. If the employee indicates that he or she is represented by counsel with regard to the relevant subject matter, the attorney for the government shall treat that employee as a represented person or represented party, and any further communications with that individual shall be governed by this part.

Paragraph (d): Communications With Separately Represented Controlling Individuals

This paragraph ensures that communications with a controlling individual of an organization that qualifies as a represented party are subject to basically the same limitations, regardless of whether the controlling individual has retained separate counsel on the same subject matter. Thus, this paragraph only applies in the circumstances in which a controlling individual of a represented organizational party retains separate counsel. In such circumstances, a government attorney may not communicate with the controlling individual without the consent of that individual's separate counsel unless the communication satisfies one of the exceptions contained in §§ 77.6 or 77.9 of this part. The paragraph also allows such communications if the individual does not qualify as a represented party, initiates the communication, and waives the presence of counsel. Thus, the same rules apply to contacts with controlling individuals of represented organizational parties who retain separate counsel as apply to controlling individuals of represented organizational parties who are not separately represented.

Paragraph (e): Communications With Unrepresented Controlling Individuals

This paragraph addresses a relatively narrow circumstance: when a controlling individual who is not individually represented by counsel initiates a communication with the government outside the presence of counsel for the organization. An attorney for the government may participate in such communications if:

(1) The controlling individual indicates that he or she is speaking exclusively in his or her personal capacity and not as a representative of the organizational party; and (2) he or she indicates that the waiver of counsel is voluntary, knowing and informed and, if willing, signs a statement to that effect. The fact that the controlling individual indicates that he or she is speaking in his or her personal capacity does not mean, however, that incriminating testimony received from the controlling individual cannot be used against the represented organization.

If the controlling individual is also a named defendant in a civil enforcement proceeding or has been arrested or charged in a criminal action, the requirements set forth in § 77.6(c) must be satisfied before any substantive communications are made.

Paragraph (f): Multiple Representation

This paragraph makes clear that the proposed regulations should not be construed as altering existing legal and ethical rules regarding the propriety of multiple representation.

Section 77.11 Enforcement of Rules Paragraph (a): Enforcement by Attorney General

In order to ensure consistency and uniformity in the interpretation of the proposed rule, this paragraph provides that the Attorney General shall have exclusive authority to enforce these regulations. Thus, neither state courts nor state disciplinary boards may impose sanctions on a Department attorney for violations of this rule or state or local rules governing communications with represented parties except as provided in § 77.12. This paragraph further provides the framework for investigating allegations that a Department attorney has violated these regulations. It provides that the Department's Office of Professional Responsibility ("OPR") shall have jurisdiction to investigate such allegations and that violations will be treated as matters of attorney discipline. See 28 CFR 0.39 (establishing and defining duties of OPR). It also makes clear that the Attorney General's determination as to whether a violation has occurred shall be final and conclusive except to the extent that the Department attorney enjoys a right of review provided by other laws.

Paragraph (b): No Private Remedies

This paragraph provides that the proposed regulations are not intended and will not create any substantive rights for any person other than an attorney for the government. In particular, a violation of the rule will not provide a basis for the dismissal of civil or criminal charges or for the suppression of evidence that is otherwise admissible. This provision accords with existing law. Traditionally, matters relating to communications with represented persons have been treated as matters of attorney discipline without granting substantive rights to defendants or any other persons. See, e.g., ABA Code of Professional Responsibility, Preliminary Statement; ABA Model Rules of Professional Conduct, Scope. Of course, when the communication with a represented person or represented party violates the Constitution, the federal courts retain the power to fashion appropriate remedies.

Section 77.12: Relationship to State and Local Regulation

Both DR 7–104 and Model Rule 4.2 provide that communications that are "authorized by law" are not prohibited by the rule. Virtually all the states have adopted some version of DR 7–104 or Model Rule 4.2 that includes an "authorized by law" exception. These proposed rules, as substantive regulations duly promulgated by the Attorney General pursuant to statutory authority, have the force and effect of law. See e.g. *Batterton* v. *Francis*, 432 U.S. 416, 425 n.9 (1977). Accordingly, communications with represented persons that are undertaken pursuant to these rules should be considered "authorized by law" within the meaning of rules adopted by the various states. Such communications will therefore be consistent with state rules wherever state bar authorities have adopted a rule containing the "authorized by law" exception. Furthermore, no conflict will arise between state and federal law in those jurisdictions with regard to communications with represented persons.

In those states that do not currently include an "authorized by law" exception or repeal current provisions, the proposed rule may conflict with their provisions governing communications with represented parties. The second sentence of this section provides that in those cases the proposed regulations will preempt the application of conflicting state and local rules as they relate to contacts by Department of Justice attorneys. The longstanding position of the Department is that the Supremacy Clause bars "any attempt by a state bar association to impose sanctions on a government attorney who is acting lawfully and in pursuance of his federal law enforcement responsibilities." See Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations, 4B Op. O.L.C. 576, 601–02 (1980). It is clear that a Department regulation published after notice and comment constitutes "federal law." See, e.g., *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 295 (1979) ("It has been established in a variety of contexts that properly promulgated, substantive agency regulations have the 'force and effect of law' "). It is also clear that a properly promulgated Department rule is binding upon state authorities and supersedes contrary provisions of state law. The Supreme Court has recognized that "[f]ederal regulations have no less pre-emptive effect than federal statutes." *Fidelity Fed. Sav. & Loan Ass'n* v. *De La Cuesta*, 458 U.S. 141, 153 (1982). Accord, e.g., *City of New York* v. *FCC*, 486 U.S. 57, 63 (1988) ("[t]he phrase 'Laws of the United States' [in the Supremacy Clause] encompasses both federal statutes themselves and federal regulations that are properly adopted in accordance with statutory authorization"); *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 698–700 (1984).

Accordingly, to the extent the proposed regulations conflict with state law, the regulations preempt the conflicting state law.

This section does, however, provide an important exception. If the Attorney General finds that a Department attorney has willfully violated these regulations, preemption will not apply. As a result, a government attorney who willfully engages in communications that violate these rules will be subject to disciplinary proceedings both by the Department and by the appropriate state disciplinary authorities.

IV. United States Attorneys' Manual

In addition to the promulgation of the proposed regulations discussed above, the Department proposes to add several new provisions to the United States Attorneys' Manual to provide additional guidance to Department attorneys when dealing with individuals or entities represented by counsel during criminal or civil law enforcement investigations and proceedings. Those provisions are set forth in full below as part of this commentary.

The decision to include some restrictions in the Manual while other restrictions are contained in the rule was an important one. In the process of determining what the appropriate Departmental policy should be, it became clear that any regulation would have to apply to a variety of circumstances, including: White collar and organized crime investigations,

complex conspiracy investigations, individuals whose counsel are paid by a third party, and individuals fearful of their counsel for various reasons. Accordingly, the Department determined that the regulations should be broad in scope and should provide unambiguous guidance that would not adversely affect federal law enforcement efforts. Thus, the regulations distinguish between the investigative period before indictment, arrest, or the filing of a complaint and the period after arrest or the commencement of formal proceedings. They also distinguish between communications that are part of a factual investigation and negotiations of plea agreements, settlements and similar legal arrangements. At the same time, the Manual revisions require that government attorneys consider the principles underlying the basic prohibitions in a much wider variety of circumstances.

The Department expects all Department attorneys involved in criminal or civil law enforcement proceedings to adhere to these provisions. Failure to do so will result in appropriate departmental discipline.

There are two especially important provisions that should be addressed.

First, § 9–13.240 prohibits a government attorney from communicating with a person known to be represented by counsel who the government attorney knows is a target of a federal criminal or civil enforcement investigation. The Manual provides several exceptions to this general prohibition, including the following: When the communication is initiated by the target; when the communication occurs at the time of arrest and the represented person has waived his or her Constitutional rights; when the government attorney believes the contact is necessary to protect against a risk to human life or safety; or when a senior Department official determines that exigent circumstances exist, making the communication necessary for effective law enforcement. In addition, § 9–13.220 provides an exception to the general prohibition if the communication is made in the course of an undercover investigation.

"Target" is defined as a "person as to whom the attorney for the government has substantial evidence linking that person to the commission of a crime or to other wrongful conduct and as to whom the attorney for the government anticipates seeking an indictment or naming as a defendant in a civil law enforcement proceeding." Because an individual who is a target of a federal investigation is typically in a clearly adversarial relationship with the federal government, the Department believes that the principles underlying DR 7–104 and Rule 4.2 are implicated and an extension of the prohibition contained in the rule is appropriate.

In its enforcement of this provision, the Department intends to give substantial deference to a federal attorney's good faith judgment regarding the likelihood that a particular person will ultimately become a defendant. Even if the attorney for the government believes that an individual will probably be named as a defendant, that individual is not considered a target until the government has actually obtained substantial evidence linking that individual to the commission of a crime or to unlawful conduct. The government attorney's uncorroborated belief that an individual will ultimately be named as a defendant is not enough. Thus, an individual is not considered a target under this rule until both the attorney for the government believes that he or she will probably be named as a defendant and substantial evidence has been obtained.

The second provision that should be noted is the approval procedure provided in § 9–13.250. Under that provision, before an attorney for the government communicates with any represented party or target, the government attorney should obtain the approval of the United States Attorney if the attorney is an Assistant United States Attorney, or the approval of another appropriate supervisor. The provision also permits contacts when prior approval is not feasible, and requires post-contact documentation.

Additions to the United States Attorneys' Manual

The entire text of the planned additions to the Manual follows:

The following new section is added to title 9, chapter 13.

9–13.200 Communications With Represented Persons

9–13.210 Generally

28 CFR part 77 generally governs communications with represented persons in law enforcement investigations and proceedings. This section sets forth several additional departmental policies and procedures with regard to such communications.

Department of Justice attorneys should recognize that communications with represented persons at any stage may present the potential for undue interference with attorney-client relationships and should undertake any such communications with great circumspection and care. This Department as a matter of policy will respect bona fide attorney-client relationships whenever possible, consistent with our law enforcement responsibilities and duties.

The rules set forth in 28 CFR part 77 are intended, among other things, to clarify the circumstances under which government attorneys may communicate with represented persons. They are not intended to create any presumption that communications are necessary or advisable in the course of any particular investigation or proceeding. Whether such a communication is appropriate in a particular situation is to be determined by the government attorney (and, when appropriate, his or her supervisors) in the exercise of his or her discretion, based on the specific circumstances of the individual case.

Furthermore, the application of this section, like the application of 28 CFR part 77, is limited to communications between Department of Justice attorneys and persons known to be represented by counsel during criminal investigations and proceedings or civil law enforcement investigations and proceedings. These provisions do not apply to Department attorneys engaged in civil suits in which the United States is not acting under its police or regulatory powers. Thus, state bar rules and not these provisions will generally apply in civil suits when the government is a defendant or a claimant.

Attorneys for the government are strongly encouraged to consult with appropriate officials in the Department of Justice when the application or interpretation of 28 CFR part 77 may be doubtful or uncertain. The primary points of contact at the Department of Justice on questions regarding 28 CFR part 77 and this section are the Assistant Attorneys General of the Criminal and Civil Divisions, or their designees.

9–13.220 Communications During Investigative Stage

Section 77.7 of title 28, Code of Federal Regulations, generally permits communications with represented persons outside the presence of counsel that are intended to obtain factual information in the course of criminal or civil law enforcement investigations before the person is a defendant or is arrested in a federal criminal case, or is a defendant in a federal civil enforcement proceeding. Such communications must, however, have a valid investigative purpose and comply with the procedures and considerations set forth below.

During the investigative stage of a case, an attorney for the government may communicate, or cause another to communicate, with any represented person, including a "target" as defined in section 9–13.240, concerning the subject matter of the representation if the communication is made in the course of an undercover investigation of possible criminal or wrongful activity. Undercover communications during the investigative stage must be conducted in accordance with 28 CFR § 77.2(f), and relevant policies and procedures of the Department of Justice, as well as the guidelines for undercover operations of the federal law enforcement agency conducting the investigation (e.g., the Attorney General's Guidelines on FBI Undercover Operations).

Overt communications during the investigative stage are subject to the procedures and considerations set forth in sections 9–13.230 - 9–13.233 and 9–13.240 - 9–13.242, below.

9–13.230 Overt Communications With Represented Persons

During the investigative stage of a criminal or civil enforcement matter, an attorney for the government as a general rule should communicate overtly with represented persons outside the presence of counsel only after careful consideration of whether the communication would be handled more appropriately by others. Attorneys for the government may not, however, cause law enforcement agents to make communications that the attorney would be prohibited from making personally.

28 CFR 77.8 prohibits an attorney for the government from initiating or engaging in negotiations of a plea agreement, immunity agreement, settlement, sentence, penalty or other disposition of actual or potential civil or criminal charges with a represented person without the consent of counsel. Discussion of the terms of a particular plea agreement, immunity agreement or other agreement covered by the rule is prohibited. However, the attorney for the government is not prohibited from responding to questions regarding the general nature of such agreements, potential charges, potential penalties or other subjects related to such agreements. In such situations, an attorney for the government should take care not to go beyond providing information on these and similar subjects, and generally should refer the represented person to his or her counsel for further discussion of these issues, as well as make clear that the attorney for the government will not negotiate any agreement with respect to the disposition of criminal charges, civil claims or potential charges or claims or immunity without the presence or consent of counsel.

9–13.231 Overt Communications With Represented Persons—Presence of Witness

An attorney for the government should not meet with a represented person without at least one witness present. To the extent feasible, a contemporaneous written memorandum should be made of all communications with the represented person.

9–13.232 Overt Communications With Represented Persons—Restrictions

When an attorney for the government communicates, or causes a law enforcement agent or other agent to communicate, with a represented person without the consent of counsel, the restrictions set forth in 28 CFR §§ 77.8 and 77.9 must be observed.

9–13.233 Overt Communications—Assurances Not To Contact Client

During the investigative stage, and absent compelling law enforcement reasons, an attorney for the government should not deliberately initiate an overt communication with a represented person outside the presence of counsel if the attorney for the government has provided explicit assurances to counsel for the represented person that no such communication will be attempted and no intervening change in circumstances justifying such communications has arisen.

9–13.240 Overt Communications With Represented Targets

Except as provided in section 9–13.241 or as otherwise authorized by law, an attorney for the government should not overtly communicate, or cause another to communicate overtly, with a represented person who the attorney for the government knows is a target of a federal criminal or civil enforcement investigation and who the attorney for the government knows is represented by an attorney concerning the subject matter of the representation without the consent of the lawyer representing such person. A "target" is a person as to whom the attorney for the government has substantial evidence linking that person to the commission of a crime or to other wrongful conduct and as to whom the attorney for the government anticipates seeking an indictment or naming as a defendant in a civil law enforcement proceeding. An officer or employee of an organization that is a target is not to be considered a target automatically even if such officer's or employee's conduct contributed to the commission of the crime or wrongful conduct by the target organization; likewise, organizations that employ, or employed, an officer or employee who is a target are not necessarily targets themselves.

9–13.241 Overt Communications With Represented Targets—Permissible Circumstances

An attorney for the government may communicate overtly, or cause another to communicate overtly, with a represented person who is a target of a criminal or civil law enforcement investigation concerning the subject matter of the representation if one or more of the following circumstances exist:

(a) Determination if Representation Exists. The communication is to determine if the target is in fact represented by counsel concerning the subject matter of the investigation or proceeding.

(b) Discovery or Judicial Administrative Process. The communication is made pursuant to discovery procedures or judicial or administrative process, including but not limited to the service of a grand jury or trial subpoena, testimony before a grand jury, service of a summons and complaint, notice of deposition, taking of a deposition, administrative summons or subpoena or civil investigative demand.

(c) Initiation of Communication by Represented Person. The represented person initiates the communication directly with the attorney for the government or through an intermediary and, prior to the commencement of substantive discussions on the subject matter of the representation and after being advised by the attorney for the government of the represented person's right to speak through his or her attorney and/or to have the attorney present for the communication, manifests that his or her waiver of counsel for the communication is voluntary, knowing and informed, and, if willing to do so, signs a written statement to this effect.

(d) Waivers at the Time of Arrest. The communication is made at the time of the arrest of the represented person, and he or she is advised of his or her constitutional rights and voluntarily and knowingly waives them.

(e) Investigation of Additional, Different or Ongoing Crimes or Wrongful Conduct. The communication is made in the course of an investigation of additional, different or ongoing criminal or wrongful conduct that is separate from or committed after the criminal or wrongful activity as to which the person is a target.

(f) Threat to Safety or Life. The attorney for the government believes that there may be a threat to the safety or life of any person; the purpose of the communication is to obtain or provide information to protect against the risk of harm; and the attorney for the government believes that the communication

is reasonably necessary to protect against such risk.

(g) Effective Performance of Law Enforcement Functions. The Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General or a United States Attorney: (i) Determines that exceptional circumstances exist such that, after giving due regard to the importance as reflected in 28 CFR part 77 and this section of avoiding any undue interference with the attorney-client relationship, the direct communication with a represented party is necessary for effective law enforcement; and (ii) authorizes the communication. Communications with represented parties pursuant to this exception shall be limited in scope consistent with the exceptional circumstances of the case and the need for effective law enforcement.

9–13.242 Overt Communications With Represented Targets Organizations and Employees

Overt communication with current high-level employees of represented organizations should be made in accordance with the procedures and considerations set forth in section 9–13.241 above, in the following circumstances:

(a) The current high-level employee is known by the government to be participating as a decision maker in the determination of the organization's legal position in the proceeding or investigation of the subject matter of the communication; and

(b) the organization is a target.

9–13.250 Communications During Investigative Stage Office Approval Procedure

Before communicating, or causing another to communicate, with a target the attorney for the government knows is represented by counsel regarding the subject matter of the communication, the attorney for the government should write a memorandum describing the facts of the case and the nature of the intended communication. The memorandum should be sent to and approved by the appropriate supervisor before the communication occurs. In United States Attorney's Offices, the memorandum should be reviewed and approved by the United States Attorney. If the circumstances of the communication are such that prior approval is not feasible, the attorney for the government should write a memorandum as soon after the communication as practicable and provide a copy of the memorandum to the appropriate supervisor. This memo should also set forth why it was not feasible to obtain prior approval. The provisions of this section do not apply if the communication with the represented target is made at the time of arrest pursuant to section 9–13.241(d).

9–13.260 Enforcement of the Policies

Appropriate administrative action may be initiated by Department officials against prosecutors who violate the policies regarding communication with represented persons.

* * * * *

The following new section is added to title 4, chapter 8.

4–8.1300 Communications With Represented Persons

Communications with represented persons in civil law enforcement investigations and proceedings are governed generally by the rules set forth in 28 CFR part 77 and by USAM 9–13.200 *et seq.*

* * * * *

V. Certifications

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule was not reviewed by the Office of Management and Budget pursuant to Executive Order No. 12866.

List of Subjects in 28 CFR Part 77

Government employees, Investigations, Law enforcement, Lawyers.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 77 to read as follows:

PART 77—COMMUNICATIONS WITH REPRESENTED PERSONS

Sec.

77.1 Purpose and authority.
77.2 Definitions.
77.3 Represented party; represented person.
77.4 Constitutional and other limitations.
77.5 General rule for civil and criminal enforcement; represented parties.
77.6 Exceptions; represented parties.
77.7 Represented persons; investigations.
77.8 Represented persons and represented parties; plea negotiations.
77.9 Represented persons and represented parties; respect for attorney-client relationships.
77.10 Organizations and employees.
77.11 Enforcement of rules.
77.12 Relationship to state and local regulation.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515(a), 516, 519, 533, 547.

§ 77.1. Purpose and authority.

(a) The Department of Justice is committed to ensuring that its attorneys perform their duties in accordance with the highest ethical standards. The purpose of this part is to provide a comprehensive, clear, and uniform set of rules governing the circumstances under which Department of Justice attorneys may communicate or cause others to communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings. This part ensures the Department's ability to enforce federal law effectively and ethically, consistent with the principles underlying Rule 4.2 of the American Bar Association Model Rules of Professional Conduct, while eliminating the uncertainty and confusion arising from the variety of interpretations given to that rule and analogous rules by state and federal courts and by bar association organizations and committees. (Copies of the ABA Model Rule are available through Order Fullfillment Office, American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611.

(b) This part is issued under the authority of the Attorney General to prescribe regulations for the government of the Department of Justice, the conduct of its employees, and the performance of its business, pursuant to 5 U.S.C. 301; to direct officers of the Department of Justice to secure evidence and conduct litigation, pursuant to 28 U.S.C. 516; to direct officers of the Department to conduct grand jury proceedings and other civil and criminal legal proceedings, pursuant to 28 U.S.C. 515(a); to supervise litigation and to direct Department officers in the discharge of their duties, pursuant to 28 U.S.C. 519; and otherwise to direct Department officers to detect and prosecute crimes, to prosecute offenses against the United States, to prosecute civil actions, suits, and proceedings in which the United States is concerned, and to perform such other functions in an appropriate and ethical manner as may be provided by law, pursuant to 28 U.S.C. 509, 510, 533, and 547.

§ 77.2 Definitions.

As used in this part, the following terms shall have the following meanings, unless the context indicates otherwise:

(a) *Attorney for the government* means the Attorney General; the Deputy Attorney General; the Associate Attorney General; the Solicitor General; the Assistant Attorneys General for, and any attorney employed in, the Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, or Tax Division; any United States Attorney; any Assistant United States Attorney; any Special Assistant to

the Attorney General or Special Attorney duly appointed pursuant to 28 U.S.C. 515; any Special Assistant United States Attorney duly appointed pursuant to 28 U.S.C. 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States; or any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement proceedings on behalf of the United States. The term *attorney for the government* does not include any attorney employed by the Department of Justice as an investigator or other law enforcement agent who is not authorized to represent the United States in criminal or civil law enforcement litigation or to supervise such proceedings.

(b) *Person* means any individual or organization.

(c) *Organization* means any corporation, partnership, association, joint-stock company, union, trust, pension fund, unincorporated association, state or local government or political subdivision thereof, or non-profit organization.

(d) *Employee* means any employee, officer, director, partner, member, or trustee.

(e) *Cooperating witness or individual* means any person, other than a law enforcement agent, who is acting to assist the government in an undercover or confidential capacity.

(f) *Undercover investigation* means any investigation undertaken in good faith to fulfill law enforcement objectives, in which a person communicates with a federal, state or local law enforcement agent or a cooperating witness or individual whose identity as an official of the government or a person acting at the behest thereof is concealed or is intended to be concealed.

(g)(1) *Civil law enforcement proceeding* means a civil action or proceeding before any court or other tribunal brought by the Department of Justice under the police or regulatory powers of the United States to enforce federal laws, including, but not limited to, civil actions or proceedings brought to enforce the laws relating to:

(i) Antitrust;

(ii) Banking and financial institution regulation;

(iii) Bribery, kickbacks, and corruption;

(iv) Civil rights;

(v) Consumer protection;

(vi) Environment and natural resource protection;

(vii) False claims against the United States;

(viii) Food, drugs, and cosmetics regulation;

(ix) Forfeiture of property;

(x) Fraud;

(xi) Internal revenue;

(xii) Occupational safety and health;

(xiii) Racketeering; or

(xiv) Money-laundering.

(2) The term *civil law enforcement proceeding* shall not include proceedings related to the enforcement of an administrative subpoena or summons or a civil investigative demand. An action or proceeding shall be considered "brought by the United States" only if it involves a claim asserted by the Department of Justice on behalf of the United States, whether the claim is asserted by complaint, counterclaim, cross-claim, or otherwise.

(h) *Civil law enforcement investigation* means an investigation of possible civil violations of, or claims under, federal law that may form the basis for a civil law enforcement proceeding.

§ 77.3 Represented party; represented person.

(a) A person shall be considered a "represented party" within the meaning of this part only if all three of the following circumstances exist:

(1) The person has retained counsel or accepted counsel by appointment or otherwise;

(2) The representation is ongoing and concerns the subject matter in question;

(3) The person has been arrested or charged in a federal criminal case or is a defendant in a civil law enforcement proceeding concerning the subject matter of the representation.

(b) A person shall be considered a "represented person" within the meaning of this part if circumstances set forth in paragraphs a (1) and (2) of this section exist, but the circumstance set forth in paragraph (a)(3) of this section does not exist.

§ 77.4 Constitutional and other limitations.

Notwithstanding any other provision of this part, any communication that is prohibited by the Sixth Amendment right to counsel, by any other provision of the United States Constitution, by any federal statute, by the Federal Rules of Criminal Procedure (18 U.S.C. App.) or by the Federal Rules of Civil Procedure (28 U.S.C. App.) shall be likewise prohibited under this part.

§ 77.5 General rule for civil and criminal enforcement; represented parties.

Except as provided in this part or as otherwise authorized by law, an attorney for the government may not communicate, or cause another to communicate, with a represented party who the attorney for the government knows is represented by an attorney concerning the subject matter of the representation without the consent of the lawyer representing such party.

§ 77.6 Exceptions; represented parties.

An attorney for the government may communicate, or cause another to communicate, with a represented party without the consent of the lawyer representing such party concerning the subject matter of the representation if one or more of the following circumstances exist:

(a) *Determination if representation exists.* The communication is to determine if the person is in fact represented by counsel concerning the subject matter of the investigation or proceeding.

(b) *Discovery or judicial or administrative process.* The communication is made pursuant to discovery procedures or judicial or administrative process, including, but not limited to, the service of a grand jury or trial subpoena, testimony before a grand jury, service of a summons and complaint, notice of deposition, taking of a deposition, administrative summons or subpoena or civil investigative demand.

(c) *Initiation of communication by represented party.* The represented party initiates the communication directly with the attorney for the government or through an intermediary and:

(1) Prior to the commencement of substantive discussions on the subject matter of the representation and after being advised by the attorney for the government of the client's right to speak through his or her attorney and/or to have the client's attorney present for the communication, manifests that his or her waiver of counsel for the communication is voluntary, knowing and informed and, if willing to do, signs a written statement to this effect; and

(2) A federal district judge, magistrate judge or other court of competent jurisdiction has concluded that the represented party has:

(i) Waived the presence of counsel and that such waiver is voluntary, knowing, and informed; or

(ii) Obtained substitute counsel or has received substitute counsel by court appointment, and substitute counsel has consented to the communication.

(d) *Waivers at the time of arrest.* The communication is made at the time of the arrest of the represented party and he or she is advised of his or her constitutional rights and voluntarily and knowingly waives them.

(e) *Investigation of additional, different or ongoing crimes or civil violations.* The communication is made in the course of an investigation, whether undercover or overt, of additional, different or ongoing criminal activity or other unlawful conduct. Such additional, different or ongoing criminal activity or other unlawful conduct may include, but is not limited to, the following:

(1) Additional, different or ongoing criminal activity or other unlawful conduct that is separate from or committed after the criminal activity for which the represented party has been arrested or charged or for which the represented party is a defendant in a civil law enforcement proceeding; or

(2) Criminal activity that is intended to impede or evade the administration of justice including, but not limited to, the administration of justice in the proceeding in which the represented party is a defendant, such as obstruction of justice, subornation of perjury, jury tampering, murder, assault, or intimidation of witnesses, bail jumping, or unlawful flight to avoid prosecution.

(f) *Threat to safety or life.* The attorney for the government in good faith believes that there may be a threat to the safety or life of any person; the purpose of the communication is to obtain or provide information to protect against the risk of injury or death; and the attorney for the government in good faith believes that the communication is necessary to protect against such risk.

§ 77.7 Represented persons; investigations.

Except as otherwise provided in this part, an attorney for the government may communicate, or cause another to communicate, with a represented person in the process of conducting an investigation, including, but not limited to, an undercover investigation.

§ 77.8 Represented persons and represented parties; plea negotiations.

An attorney for the government may not initiate or engage in negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement, or other disposition of actual or potential criminal charges or civil enforcement claims, or sentences or penalties with a represented person or represented party who the attorney for the government knows is represented by an attorney without the consent of the attorney representing such person or party; provided, however, that this restriction will not apply if the communication satisfies § 77.6(c).

§ 77.9 Represented persons and represented parties; respect for attorney-client relationships.

When an attorney for the government communicates, or causes a law enforcement agent or cooperating witness to communicate, with a represented person or represented party pursuant to any provision of these regulations without the consent of counsel, the following restrictions must be observed:

(a) *Deference to attorney-client relationship.* (1) An attorney for the government, or anyone acting at his or her direction may not, when communicating with a represented person or represented party:

(i) Inquire about information regarding lawful defense strategy or legal arguments of counsel;

(ii) Disparage counsel for a represented person or represented party or otherwise seek to induce the person to forgo representation or to disregard the advice of the person's attorney; or

(iii) Otherwise improperly seek to disrupt the relationship between the represented person or represented party and counsel.

(2) Notwithstanding paragraph (a)(1) of this section, if the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General or a United States Attorney finds:

A substantial likelihood that there exists a significant conflict of interest between a represented person or party and his or her attorney; and that it is not feasible to obtain a judicial order challenging the representation, then an attorney for the government with prior written authorization from an official identified above may apprise the person of the nature of the perceived conflict of interest, unless the exigencies of the situation permit only prior oral authorization, in which case such oral authorization shall be memorialized in writing as soon thereafter as possible.

(b) Attorney-client meetings. An attorney for the government may not direct or cause an undercover law enforcement agent or cooperating witness to attend or participate in lawful attorney-client meetings or communications, except when the agent or witness is requested to do so by the represented person or party, defense counsel, or another person affiliated or associated with the defense, and when reasonably necessary to protect the safety of the agent or witness or the confidentiality of an undercover operation. If the agent or witness attends or participates in such meetings, any information regarding lawful defense strategy or trial preparation imparted to the agent or witness shall not be communicated to attorneys for the government or to law enforcement agents who are directly participating in the ongoing investigation or in the prosecution of pending criminal charges, or used in any other way to the substantial detriment of the client.

§ 77.10 Organizations and employees.

This section applies when the communication involves a former or current employee of an organization that qualifies as a represented party or represented person, and the subject matter of the communication relates to the business or affairs of the organization.

(a) *Communications with current employees; organizational representation.* A communication with a current employee of an organization that qualifies as a represented party or represented person shall be considered to be a communication with the organization for purposes of this part only if the employee is a controlling individual. A "controlling individual" is a current high level employee who is known by the government to be participating as a decision maker in the determination of the organization's legal position in the proceeding or investigation of the subject matter.

(b) *Communications with former employees; organizational representation.* A communication with a former employee of an organization that is represented by counsel shall not be considered to be a communication with the organization for purposes of this part.

(c) *Communications with former or current employees; individual representation.* A communication with a former or current employee of an organization who is individually represented by counsel may occur only to the extent otherwise permitted by this part. However, a claim by an attorney that he or she represents all or a large number of individual current and/or former employees of an organization does not suffice to establish that those employees are represented persons or represented parties under this part. In such circumstances, prior to engaging in communications that would be prohibited under this part as a result of the individual representation, the attorney for the government shall communicate with the individual current or former employee to determine if in fact that employee is represented by counsel concerning the subject matter of the investigation or proceeding.

(d) *Communications with separately represented controlling individuals.*

When this part would preclude discussions with a controlling individual as defined in § 77.10(a) and the controlling individual has retained separate counsel on the relevant subject matter, an attorney for the government may communicate with such individual in the following circumstances:

(1) If the controlling individual's separate counsel consents;

(2) If the communication falls within one of the exceptions set forth in §§ 77.6 or 77.9; or

(3) In the case in which the individual does not qualify as a represented party, if the individual initiates the communication and states that he or she is communicating exclusively in his or her personal capacity and not on behalf of the represented organizational party, and manifests that his or her waiver of counsel for the communication is voluntary, knowing and informed, and, if willing to do so, signs a written statement to this effect.

(e) *Communications with unrepresented controlling individuals.* Notwithstanding any other provision of this part, an attorney for the government may communicate with a controlling individual who is not individually represented as to the subject matter of the communication when the controlling individual initiates the communication and states that he or she is communicating exclusively in his or her personal capacity and not on behalf of the represented organizational party, and manifests that his or her waiver of counsel for the communication is voluntary, knowing, and informed, and, if willing to do so, signs a written statement to this effect.

(f) *Multiple representation.* Nothing in this section is intended or shall be construed to affect the requirements of Rule 44(c) of the Federal Rules of Criminal Procedure, or to permit the multiple representation of an organization and any of its employees, or the multiple representation of more than one such employee, if such representation is prohibited by any applicable law or rule of attorney ethics.

§ 77.11 Enforcement of this part.

(a) *Exclusive enforcement by Attorney General.* The Attorney General shall have exclusive authority over this part and any violations of it, except as provided in § 77.12. Allegations of violations of this part shall be investigated exclusively by the Office of Professional Responsibility of the Department of Justice, and shall be addressed when appropriate as matters of attorney discipline by the Department. The findings of the Attorney General or her designee as to an attorney's compliance or non-compliance with this part shall be final and conclusive except insofar as the attorney for the government is afforded a right of review by other provisions of law.

(b) *No private remedies.* This part is not intended to and does not create substantive rights on behalf of criminal or civil defendants, targets or subjects of investigations, witnesses, counsel for represented parties or represented persons, or any other person other than an attorney for the government, and shall not be a basis for dismissing criminal or civil charges or proceedings against represented parties or for excluding relevant evidence in any proceeding in any court of the United States.

§ 77.12 Relationship to state and local regulation.

Communications with represented parties and represented persons pursuant to this part are intended to constitute communications that are "authorized by law" within the meaning of Rule 4.2 of the American Bar Association Model Rules of Professional Conduct, DR 7–104(A)(1) of the ABA Code of Professional Responsibility, and analogous state and local federal court rules. (Copies of the ABA Model Rules and Code are available through Order Fulfillment Office, American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611.) In addition, this part is intended to preempt the application of state and local laws or rules to the extent that they relate to contacts by attorneys for the government, and those acting at their direction or under their supervision, with represented parties or represented persons in criminal and civil investigations and litigation. This part is designed to govern the conduct of attorneys for the government in the discharge of their duties to the extent that state and local laws or rules are inconsistent with this part. When the Attorney General finds a willful violation of any of the rules in this part, however, sanctions for the violation of this part may be applied, if warranted by the appropriate state disciplinary authority.

Dated: February 22, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–4510 Filed 3–2–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 177

[CGD02–93–036]

RIN 2115–AE47

Drawbridge Operation Regulations; Illinois River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking docket number, which was published Friday, January 7, 1994 (59 FR 986). This notice of proposed rulemaking proposes to amend a drawbridge regulation and add a new regulation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539–3724.

SUPPLEMENTARY INFORMATION:

Background

This document corrects the docket number of the notice of proposed rulemaking to add a new drawbridge regulation which will allow the remote operation of the Chicago and Northwestern Transportation Company railway bridge at Pekin, Illinois.

Need for Correction

As published, the notice of proposed rulemaking contained an error in the docket number which would be misleading and is in need of correction. This action is needed because the published docket number had already been used for another rulemaking.

Correction of Publication

Accordingly, the publication on January 7, 1994, of the notice of proposed rulemaking (CGD02–93–003), which was the subject of FR Doc. 94–271, is corrected as follows: The Coast Guard docket number on page 986, third line from the top is corrected to read CGD02–93–036.

Dated: February 10, 1994.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Second Coast Guard District.

[FR Doc. 94–4764 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Chapter VI

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 14–16, 1994 from 9 a.m. to 5 p.m..

ADDRESSES: The Marriott Tyson's Corner, 8028 Leesburg Pike, Vienna, VA, (703) 734–3200.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4082, ROB–3, Washington, DC 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the Direct Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following items:

—Borrower Provisions (e.g.: Deferment, Forbearance)

—Repayment (e.g.: Standard, Graduated & Extended Plans)

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: February 25, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–4813 Filed 3–2–94; 8:45 am]

BILLING CODE 4000–01–M

34 CFR Chapter VI

Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 17–18, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Marriot Tyson's Corner, 8028 Leesburg Pike, Vienna, VA, (703) 734–3200.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 4082, ROB–3, Washington, DC 20202–5100, telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee is established by sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing advances for reserve funds of State and nonprofit private loan insurance programs. These standards, criteria, procedures and regulations will implement section 422 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 beginning with the academic year 1995–1996 (20 U.S.C. 1072).

The meeting is open to the public. The agenda will include the following items:

—Procedures for Administrative Due Process

—Definition of Reserve Funds

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: February 25, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–4814 Filed 3–2–94; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL83–2–6284; FRL–4845–6]

Federal Highway Funding Assistance Limitations and Emissions Offset Requirements; Illinois

AGENCY: United States Environmental Protection Agency.

ACTION: Proposed rule; withdrawal; cancellation of the public hearings.

SUMMARY: On January 24, 1994, the United States Environmental Protection Agency (USEPA) published a proposed rule proposing to impose sanctions on Illinois under the discretionary authority granted USEPA under the Clean Air Act as amended in 1990 (amended Act) for failure by the State to meet its commitment to adopt and submit a basic and enhanced motor vehicle inspection and maintenance (I/M) State Implementation Plan (SIP) revision as required by the amended Act for the Chicago and East St. Louis ozone nonattainment areas. The Illinois

General Assembly passed the legislation required to support such a SIP revision and on January 18, 1994, Illinois Governor Edgar signed the legislation. Because of this favorable action, USEPA is withdrawing the January 24, 1994 proposed rule initiating the process to impose discretionary sanctions. The USEPA is also canceling the previously announced hearings scheduled for March 2, 1994, in Chicago and on March 4, 1994, in Collinsville.

DATES: The public hearings scheduled for March 2, 1994 and March 4, 1994 are canceled.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Engineer, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061.

SUPPLEMENTARY INFORMATION: On January 24, 1994 (59 FR 3540), USEPA published a proposed rule proposing to impose sanctions on Illinois under the discretionary authority granted USEPA under section 110(m) of the amended Act for failure by the State to meet its commitment to adopt and submit a basic and enhanced motor vehicle I/M SIP revision as required by the amended Act for the Chicago and East St. Louis ozone nonattainment areas. The USEPA had notified Illinois by letter dated December 30, 1993, of its finding that Illinois had failed to submit the required SIP revision.

The Illinois General Assembly subsequently passed the legislation required to support such a SIP revision and on January 18, 1994, Illinois Governor Edgar signed the legislation. Because of this favorable action, USEPA is withdrawing the January 24, 1994, proposed rule initiating the process to impose discretionary sanctions. The USEPA is also canceling the previously announced hearings scheduled for March 2, 1994, in Chicago and for March 4, 1994, in Collinsville. This withdrawal terminates the discretionary sanctions process initiated by the January 24, 1994, proposed rule. The mandatory sanctions process under Section 179 of the Act initiated by USEPA's December 30, 1993, finding that Illinois failed to submit the required SIP revision is not affected by this action. Under that process, USEPA must impose sanctions within 18 months of that December 30, 1993, finding of failure to submit unless Illinois adopts and formally submits a complete I/M SIP revision within 18 months of that failure to submit finding.

Dated: February 22, 1994.

William H. Sanders II,

Acting Regional Administrator.

[FR Doc. 94–4981 Filed 3–1–94; 12:12 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

RIN 0905–AE13

42 CFR Part 57

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans; Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would revise the regulations governing the program for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry authorized by section 777(b) of the Public Health Service Act (the Act), to implement amendments made by the Health Professions Extension Amendments of 1992 by: (1) Adding a definition for the term "Geriatric psychiatry" to implement the statutory requirement for the expansion of project support to include the training of physicians who plan to teach geriatric psychiatry; (2) adding a definition for the term "Relevant advanced training or experience" to implement the statutory requirement for dentists who are awarded a 2-year internal medicine or family medicine fellowship (Dentists must have completed postdoctoral dental training, including postdoctoral dental education programs or who have "relevant advanced training or experience".); and (3) removing a section in the regulations regarding the period of time for appointments to fellowships to allow for less restrictive requirements for those individuals who may benefit from further fellowship or retraining experience in a life time. Additionally, technical and ministerial revisions are being made to conform the existing regulations with the amendments made by the statute.

DATES: As discussed below, comments are invited. To be considered, comments must be received by April 4, 1994.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, room 8A–55, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Neil H. Sampson, Director, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, room 8–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–6853.

SUPPLEMENTARY INFORMATION: This proposed rule amends the existing regulations for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry, authorized under section 777(b) of the Public Health Service Act (the Act) (42 U.S.C. 294o). The Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408) amended and renumbered former section 789(b) of the Act (42 U.S.C. 295g–9(b)) to section 777(b).

Section 777(b) of the Act, as amended, authorizes the Secretary to make grants to and enter into contracts with accredited schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs, for the purpose of providing support (including traineeships and fellowships) for geriatric training projects to train physicians and dentists who plan to teach geriatric medicine, geriatric dentistry, or geriatric psychiatry. programs supported by these grants emphasize the principles of primary care as demonstrated through continuity, ambulatory, preventive, and psychosocial aspects of the practice of geriatric medicine, dentistry, and psychiatry.

The proposed amendments made by the Health Professions Extension Amendments of 1992 (Pub. L. 102–408) to section 777(b) are described below, according to the section numbers and headings of the regulations they affect.

Section 57.4102 Definitions

The Department is proposing to add the following terms to this section:

"*Geriatric psychiatry*" means the prevention, diagnosis, evaluation and treatment of mental disorders and disturbances seen in older adults.

This definition is adapted from the definition used by the American Association of Geriatric Psychiatrists and is added to the section to

incorporate the statutory requirement for the expansion of project support to include the training of physicians who plan to teach geriatric psychiatry.

"*Relevant advanced training or experience*" means at least one of the following: (1) Completion of at least a 12-month graduate training program in a health-related discipline, the basic sciences, or education; or (2) a minimum of 2 years of clinical practice, of which at least 12 months were devoted in part to managing older dental patients in a hospital, long-term care facility, or other setting.

This definition was developed with consultation from an Ad Hoc Committee of Geriatric Dentists and with positive internal review. The definition is added to the section to incorporate the statutory requirement for the expansion of fellowship eligibility of dental fellows in the program.

Section 57.4111 Duration of fellowships.

The Department is proposing to remove this section from the regulations. The regulatory language currently reads:

> An appointment to a fellowship may be made for a period not to exceed 12 months. Fellowship assistance for participants in a 1-year fellowship program and a 1-year retraining program is limited to 12 months. Participants in 2-year fellowship programs may receive a second 12-month appointment for a total period of 24 months.

Public Law 102–408 no longer provides for a 1-year fellowship program. Further, the language regarding the period of time for appointments to a fellowship is unnecessarily restrictive to individuals who may benefit from further fellowship or retraining experience in a life time. For example, a faculty fellow who completed a 1-year retraining to have the skills required to incorporate geriatrics into course content and clinical rotations may discover 5 years later that another fellowship experience would provide the opportunity to develop research skills in geriatrics required to expand the scope and depth of practice-based geriatric research.

In addition to the changes proposed above, a number of technical, clarifying, and ministerial changes are included to conform the existing regulations with amendments made by Public Law 102–408. These changes affecting the program for Faculty Training Projects in Geriatric Medicine and Dentistry are being made to the regulations to:

1. Revise the section number of the Act from "789(b)" to "777(b)" wherever it appears in subpart PP, as renumbered, and the United States Code citation from "(42 U.S.C. 295g–9(b))" to "(42 U.S.C. 294o)", in accordance with Public Law 102–408.

2. Revise § 57.4101, entitled "To what projects do these regulations apply?", by adding the words "geriatric psychiatry" to reflect statutory language which expands project support to include the training of physicians who plan to teach geriatric psychiatry.

3. Revise § 57.4102, entitled "Definitions.", amend the following terms to:

a. Remove the definition of "*Council*" regarding the National Advisory Council on Health Professions Education, in accordance with Public Law 102–408. The statute repealed the Council effective October 1, 1992;

b. Revise the phrase "by an organized medical staff" to "by an organized health care staff" at the end of the definition of "*Extended care facility*" to clarify that staff of health care institutions includes nurses, physical therapists, social workers and other health care staff who provide "medically-prescribed skilled nursing care or rehabilitative services";

c. Revise the introductory text to the definition of "*Fellowship program*" by removing the reference to a 1-year fellowship program which is no longer a statutory provision for project support; and revise paragraph (2) of the definition to reflect new statutory requirements for the training of dentists who have "demonstrated a commitment to an academic career and who have postdoctoral dental education programs or who have relevant advanced training or experience"; and

d. Revise the section number of the Act in the definition of "School of medicine or school of osteopathic medicine" from "701(5)" to "799(1)(E)", in accordance with Public Law 102–408.

4. Amend § 57.4105, entitled "Project requirements.", to:

a. Revise paragraph (d) regarding the requirement that projects be based in a graduate medical education program by adding the words "or psychiatry" after the phase "or in a department of geriatrics" to reflect statutory language which expanded project support to include the training of physicians who plan to teach geriatric psychiatry. Paragraph (d) is further revised by removing the phase "in existence as of December 1, 1987" at the end of the sentence, in accordance with Public Law 102–408;

b. Revise paragraph (e) regarding the requirement that projects be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine by adding the words "or geriatric psychiatry", in accordance with Public Law 102–408; and

c. Revise the introductory text to paragraph (f) regarding the requirement that the project must provide fellows "with training in geriatrics and exposure to the physical and mental disabilities of" a diverse population of elderly individuals, to more appropriately reflect the language in Public Law 102–408.

5. Revise § 57.4106, entitled "How will applications be evaluated?", by:

a. Removing the reference to the National Advisory Council on Health Professions Education, in accordance with Public Law 102–408, in paragraph (a) introductory text and revising the introductory text to reflect current statutory language regarding the evaluation and recommendation process of awarding grant applications; and

b. Adding a comma and the words "psychiatry, or" after the words "geriatric medicine" in paragraph (a)(5) to reflect statutory language which expanded training to include geriatric psychiatry.

5. Redesignate § 57.4112, entitled "Termination of fellowships.", as § 57.4111, and § 57.4113, entitled "For what purposes may grant funds be spent?", as § 57.4112, and § 57.4114, entitled "What additional Department regulations apply to grantees?", as § 57.4113.

6. Redesignate § 57.4115, entitled "What other audit and inspection requirements apply to grantees?", as § 57.4114 and revise the section number "705" in the text to "798(e)", in accordance with Public Law 102–408.

7. Redesignate § 57.4116, entitled "Additional conditions.", as § 57.4115.

Regulatory Flexibility Act and Executive Order 12688

This proposed rule governs a financial assistance training grant program in which participation is voluntary. Because these rules make minor changes in an existing grant program, they will have no consequential effect on the economy, small businesses or small governments. Therefore, the Secretary certifies that this rule will not have a significant economic impact on small entities.

Paperwork Reduction Act of 1980

This proposed rule does not affect the recordkeeping or reporting requirements in the existing regulations for the Grants for Faculty Training Projects in Geriatric Medicine and Dentistry.

List of Subjects

Dental health, Education of the disadvantaged, Educational facilities,

Educational study programs, Grant programs—education, Grant programs—health, Medical and dental schools, Student aid.

(*Catalog of Federal Domestic Assistance*, No. 93.156, Grants for Faculty Training Projects in Geriatric Medicine and Dentistry)

Dated: November 12, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Approved: January 24, 1994.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR part 57, subpart PP is proposed to be amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The authority citation for subpart PP is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 789(b) of the PHS Act, as amended by Public Law 100–607, 102 Stat. 3136–3138 (42 U.S.C. 295g–9(b)); renumbered as sec. 777(b), as amended by Public Law 102–408, 106 Stat. 2052–54 (42 U.S.C. 294o).

2. Section 57.4101 is revised to read as follows:

§ 57.4101 To what projects do these regulations apply?

These regulations apply to grants to eligible schools and programs under section 777(b) of the Act (42 U.S.C. 294o) for the purpose of providing support for projects to train physicians and dentists who plan to teach geriatric medicine, geriatric psychiatry, or geriatric dentistry, including traineeships, and fellowships for participation in these programs.

3. Section 57.4102 is amended by removing the definition of "Council"; by amending the definition of "Extended care facility" by revising the phrase "by an organized medical staff" at the end of the sentence to read "by an organized health care staff"; by revising the section number of the Act "789(b)" in the definitions of "Fellow" and "Project director" to read "777(b)"; by revising the section number of the Act "701(5)" in the definition of "School of medicine or school of osteopathic medicine" to read "799(1)(E)"; by revising the definition of "Fellowship program"; and by adding the definitions of "Geriatric psychiatry" and "Relevant advanced training or experience" to read as follows:

§ 57.4102 Definitions.

* * * * *

Fellowship program means a 2-year organized training effort sponsored by an allopathic or osteopathic medical school, a teaching hospital, or a graduate medical education program which is designed to provide training for—

(1) Physicians who have completed a graduate medical education program in internal medicine, family medicine (including osteopathic general practice), psychiatry, neurology, gynecology, or rehabilitation medicine; and

(2) Dentists who have demonstrated a commitment to an academic career and who have completed postdoctoral dental training, including postdoctoral dental education programs or who have relevant advanced training or experience.

* * * * *

Geriatric psychiatry means the prevention, diagnosis, evaluation and treatment of mental disorders and disturbances seen in older adults.

* * * * *

Relevant advanced training or experience means at least one of the following: (1) Completion of at least a 12-month graduate training program in a health-related discipline, the basic sciences, or education; or (2) a minimum of 2 years of clinical practice, of which at least 12 months were devoted in part to managing older dental patients in a hospital, long-term care facility, or other setting.

* * * * *

4. Section 57.4105 is amended by revising paragraphs (d), (e), and the introductory text to paragraph (f) to read as follows:

§ 57.4105 Project requirements.

* * * * *

(d) The project must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice) or in a department of geriatrics or psychiatry;

(e) The project must be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine or geriatric psychiatry and be staffed, or enter into an agreement with an institution staffed, by at least one dentist who is employed in a full- or part-time teaching position and has experience or training in geriatrics;

(f) The project must provide fellows with training in geriatrics and exposure to the physical and mental disabilities of a diverse population of elderly individuals. The population must include: * * *

* * * * *

5. Section 57.4106 is amended by revising the introductory text to paragraph (a) and paragraph (a)(5) to read as follows:

§ 57.4106 How will applications be evaluated?

(a) Competing applications are reviewed by a panel of peer reviewers comprised primarily of non-Federal consultants whose recommendations are given to the Secretary. The Secretary will approve projects which best promote the purposes of section 777(b) of the Act. The Secretary will consider, among other factors:

* * * * *

(5) The extent to which the project will increase the number of geriatric fellowship and retraining positions available for individuals who want to prepare for academic careers in geriatric medicine, psychiatry, or dentistry.

* * * * *

§ 57.4111 [Removed]

6. Subpart PP is amended by removing § 57.4111, entitled *Duration of fellowships.*

§ 57.4112 [Redesignated as § 57.4111]

7. Section 57.4112, entitled *Termination of fellowships.*, is redesignated as § 57.4111.

§ 57.4113 [Redesignated as § 57.4112]

8. Section 57.4113, entitled *For what purposes may grant funds be spent?*, is redesignated as § 57.4112.

§ 57.4114 [Redesignated as § 57.4113]

9. Section 57.4114, entitled *What additional Department regulations apply to grantees?*, is redesignated as § 57.4113.

§ 57.4115 [Redesignated as § 57.4114 and Amended]

10. Section 57.4115, entitled *What other audit and inspection requirements apply to grantees?*, is redesignated as § 57.4114, and section number "705" in the text is revised to read "798(e)".

§ 57.4116 [Redesignated as § 57.4115]

11. Section 57.4116, entitled *Additional conditions.*, is redesignated as § 57.4115.

[FR Doc. 94–4901 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–61; DA 94–178]

Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending comment and reply comment periods.

SUMMARY: The Private Radio Bureau issued a Public Notice soliciting additional comment and reply comment on written ex parte presentations received by the Federal Communications Commission from PacTel Teletrac, Southwestern Bell Mobile Systems, Inc. and Mobilevision in late January and early February 1994. Comments were due on or before February 25, 1994 and reply comments were due on or before March 7, 1994. This Order extends the period in which to comment on these ex parte presentations through March 15, 1994, and extends the reply comment period through March 22, 1994. This action provides commenters with additional time to account for alleged difficulty in obtaining the ex parte filings from the Commission and eliminates "confusion" over the scope of comments permitted by stating that comments may be filed on the "technical" issues as well as any other issues raised by these filings.

DATES: Comments must be filed on or before March 15, 1994. Reply comments must be filed on or before March 22, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau (202) 632–7125.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 24, 1994.
Released: February 25, 1994.

In the Matter of Amendment of part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93–61.

By the Chief, Private Radio Bureau:

1. In late January and early February 1994 the Commission received written ex parte presentations from PacTel Teletrac (PacTel), Southwestern Bell Mobile Systems, Inc. (SBMS) and Mobilevision concerning the licensing of Automatic Vehicle Monitoring (AVM) systems, currently under consideration in this docket.

2. On February 9, 1994, the Bureau issued a Public Notice soliciting additional comments and reply comments on these filings.[1] Comment was specifically solicited regarding whether Rand McNally Basic Trading Areas (BTAs)[2] should be used as Commission-defined service areas for the licensing of AVM systems, or whether, alternatively, Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) should be used as licensing boundaries.[3] The Public Notice established a due date of February 25, 1994 for comments and March 7, 1994 for reply comments.

3. On February 18, 1994, Metricom, Inc. (Metricom) requested additional time to respond to the ex parte filings specified in the Public Notice and requested that we clarify that interested parties may comment on the "technical issues" raised by these ex parte filings. Metricom bases this request on alleged difficulty in obtaining all of the ex parte filings from the Commission and on "confusion" over the scope of the comments requested.

4. Because of the apparent confusion on this question, we believe a short extension of time is warranted. Parties responding to the Public Notice may comment on the "technical issues" as well as any other issues raised by these filings.

5. For good cause shown, and pursuant to sections 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 303(r), *it is ordered that* the period of time for filing comments and reply comments on ex parte filings addressed in our Public Notice, DA 94–129, released on February 9, 1994, *is hereby extended.* Comments must be filed on or before March 15, 1994. Reply comments must be filed on or before March 22, 1994.

6. To file formally in this proceeding, you must file an original and four copies of all comments and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments must be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

7. Ex parte filings, as well as all comments and reply comments in this proceeding, are available for public inspection as part of the record in PR Docket No. 93–61 during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC. All or part of the text of these filings may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, NW., room 246, Washington, DC 20554, telephone (202) 857–3800.

Federal Communications Commission.

Beverly G. Baker,

Deputy Chief, Private Radio Bureau.

[FR Doc. 94–4815 Filed 3–2–94; 8:45 am]

BILLING CODE 6712–01–M

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[1] Public Notice, DA 94–129, released February 9, 1994, 59 Fed. Reg. 7239 (February 15, 1994).

[2] See Rand-McNally Commercial Atlas and Marketing Guide 36–39 (123d ed. 1992).

[3] This additional period to file comments and reply comments on these specific issues did not in any way abrogate the right of any interested party to file ex parte comments on any aspect of this proceeding.

Notices

Federal Register
Vol. 59, No. 42
Thursday, March 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 25, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service

7 CFR Part 59, Regulations for Inspection of Eggs and Egg Products.

PY–38, PY–76, PY–155, PY–156, PY–214, PY–222, PY–240, PY–518–1.

Recordkeeping; On occasion; Monthly; Quarterly; Semi-annually; Annually; Daily.

State or local governments; Businesses or other for-profit; Small businesses or organizations; 46,030 responses; 30,833 hours.

C. Sheilds Jones, Jr. (202) 720–3506.

Extension

- Food and Nutrition Service

Vendor Activity Monitoring Profile (VAMP) data.

Recordkeeping; Annually.

State or local governments; 81 responses; 578 hours.

Laurie Hickerson (703) 305–2715.

New Collection

- Agricultural Stabilization and Conservation Service

7 CFR 1427.100–109—Upland Cotton First Handler and Domestic User/Exporter Agreement and Payment Program—Addendum.

CCC–1045, 1046.

Recordkeeping; On occasion; Weekly.

Farms; Small businesses or organizations; 30,550 responses; 12,035 hours.

Janice Zygmont (202) 720–6734.

- Office of Operations

Procedure for Donation of Excess Research Equipment.

SF–122.

Recordkeeping; On occasion.

State or local governments; Non-profit institutions; 50 responses; 100 hours.

Linda W. Oliphant (202) 690–4434.

Reinstatement

- Soil Conservation Service

Application for Payment.

SCS–FNM–141.

On occasion.

Individuals or households; Farms; 18,600 responses; 4,650 hours.

Roy R. Twidt (202) 720–5904.

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 94–4817 Filed 3–2–94; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

Opportunity for Designation in the Denver (CO), East Indiana (IN), and Kansas Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and Kansas State Grain Inspection Department (Kansas), will end August 31, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before March 31, 1994.

ADDRESSES: Applications must be submitted to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Denver, main office located in Commerce City, Colorado, East Indiana, main office located in Muncie, Indiana, and Kansas, main office located in Topeka, Kansas, to provide grain inspection services under the Act on September 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Denver, East Indiana, and Kansas end on August 31, 1994.

The geographic area presently assigned to Denver, in the States of

Colorado, Nebraska, and Wyoming, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

The entire State of Colorado.

In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

Goshen and Platte Counties, Wyoming.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Albin Elevator, Albin; Farmers Coop, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and Grain, Pine Bluffs, all in Laramie County, Wyoming (located inside Wyoming Department of Agriculture's area). Exceptions to Denver's assigned geographic area are the following locations inside Denver's area which have been and will continue to be serviced by the following official agency: Hastings Grain Inspection, Inc.: Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

The geographic area presently assigned to East Indiana, in the States of Indiana and Ohio, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In Indiana:

Bounded on the North by the northern Lagrange and Steuben County lines;

Bounded on the East by the eastern Stueben, De Kalb, Allen, Adams, Jay, Randolph, Wayne, and Union County lines;

Bounded on the South by the southern Union and Fayette County lines; the eastern Rush County line south to State Route 244; State Route 244 west to the Rush County line; and

Bounded on the West by the western Rush and Henry County lines; the southern Madison County line west to State Route 13; State Route 13 north to State Route 132; State Route 132 northwest to Madison County; the western and northern Madison County lines; the northern Delaware County line; the western Blackford County line north to State Route 18; State Route 18 west to County Highway 900E; County Highway 900E north to Huntington County; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

Darke County, Ohio.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Payne Cooperative Association, Payne, Paulding County, Ohio (located inside Lima Grain Inspection Service, Inc.'s, area).

The geographic area presently assigned to Kansas, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Kansas.

Interested persons, including Denver, East Indiana, and Kansas are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning September 1, 1994, and ending August 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1994.

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–4732 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Gibson City (IL), Central Illinois (IL), Indianapolis (IN), Springfield (IL), and Decatur (IL) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Gibson City Grain Inspection Department (Gibson City), Central Illinois Grain Inspection, Inc. (Central Illinois), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), Springfield Grain Inspection, Inc. (Springfield), and Decatur Grain Inspection, Inc. (Decatur), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 30, 1993, **Federal Register** (58 FR 51047), FGIS announced that the designations of Gibson City, Indianapolis, and Springfield Agencies end on March 31, 1994, and asked persons interested in providing official services in the geographic areas assigned to Gibson City, Indianapolis, and Springfield to submit an application for designation. Applications were due by October 29, 1993.

Indianapolis applied for designation in the entire area it is currently assigned. There were two applicants for the Gibson City area. Donald Swanstrom dba Gibson City Grain Inspection Department proposing to incorporate and do business as Gibson City Grain Inspection, Inc., applied for designation in the area currently assigned to Gibson City, except for: the area north of Highway 116, west of Highway 47, and southeast of the Southern Pacific Railroad; and Farm Service, Arrowsmith, McLean County (located inside Central Illinois Grain Inspection, Inc.'s, area).

Central Illinois Grain Inspection, Inc. (Central Illinois), applied for designation to serve the area north of Highway 116, west of Highway 47, and southeast of the Southern Pacific Railroad; and Farm Service, Arrowsmith, McLean County, in addition to the area they are already designated to serve. The Gibson City and Central Illinois agencies are contiguous official agencies.

There were two applicants for the Springfield area. Springfield applied for designation in the entire area currently assigned to it except for: Chestervale Elevator Company, Chestervale, Logan County (located inside Decatur Grain Inspection, Inc.'s, area).

Decatur Grain Inspection , Inc. (Decatur), applied for designation to

serve Chestervale Elevator Company, Chestervale, Logan County, in addition to the area they are already designated to serve. The Springfield and Decatur agencies are contiguous official agencies.

FGIS requested comments on the applicants in the December 1, 1993, Federal Register (58 FR 63331). Comments were due by December 31, 1993. FGIS received one comment supporting the designation of Springfield by the deadline.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Gibson City, Central Illinois, Indianapolis, Springfield, and Decatur are able to provide official services in the geographic areas for which they applied.

Effective April 1, 1994, and ending March 31, 1995, Gibson City is designated to provide official inspection services in the geographic area specified in the September 30, 1993, Federal Register, except for the area north of Highway 116, west of Highway 47, and southwest of the Southern Pacific Railroad; and Farm Service Arrowsmith, McLean County, Illinois.

Effective April 1, 1994, and ending May 31, 1996, Central Illinois is designated to provide official inspection services in the area north of Highway 116, west of Highway 47, and southwest of the Southern Pacific Railroad; and Farm Service Arrowsmith, McLean County, Illinois, in addition to the area they currently serve. Gibson City and Central Illinois are contiguous agencies.

Effective April 1, 1994, and ending March 31, 1995, Indianapolis is designated to provide official inspection services in the geographic area specified in the September 30, 1993, Federal Register.

Effective April 1, 1994, and ending March 31, 1997, Springfield is designated to provide official inspection services in the geographic areas specified in the September 30, 1993, Federal Register, except for Chesterfield Elevator Company, Chesterfield, Logan County (located inside Decatur's area).

Effective April 1, 1994, and ending December 31, 1996, Decatur is designated to provide official inspection services at Chesterfield Elevator Company, Chesterfield, Logan County in addition to the area they currently serve. Springfield and Decatur are contiguous agencies.

Interested persons may obtain official services by contacting Central Illinois at 309–827–7121, Decatur at 217–429–2466, Gibson City at 217–784–5411, Indianapolis at 317–782–8938, and Springfield at 217–522–5233.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1994.

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–4730 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicants for the Sioux City (IA) and Tischer (IA) Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS is requesting comments on the applicants for designation to provide official services in the geographic areas currently assigned to Sioux City Inspection & Weighing Service Company (Sioux City), and A. V. Tischer and Son, Inc. (Tischer).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by March 31, 1994.

ADDRESSES: Comments must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 30, 1993, Federal Register (58 FR 69316), FGIS asked persons interested in providing official services in the geographic areas assigned to Sioux City and Tischer to submit an application for designation. Applications were due by January 31, 1994. There were three applicants. Sioux City and Tischer each applied for designation in the entire area currently assigned to them. The D. R. Schaal Agency, Inc. (Schaal), applied for designation to serve part of the Tischer area: Big Six Elevator, Burt, and West Bend Elevator Co., Algona, Kossuth County; Gold-Eagle Coop., Goldfield, and Clarion Farmers Elevator Cooperative, Wright County; Iowa, (located inside Schaal's area) in addition to the area they are already designated to serve. Tischer and Schaal are contiguous official agencies.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the Federal Register, and FGIS will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1994.

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–4728 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Michigan (MI) Agency to Serve Hillsdale and Branch Counties, Michigan

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Michigan Grain Inspection Services, Inc. (Michigan), to provide official inspection services under the United States Grain Standards Act, as amended (Act) in Hillsdale and Branch Counties in addition to the area they currently serve.

EFFECTIVE DATE: April 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 8, 1993, Federal Register (58 FR 52475), FGIS announced that Schneider Inspection Service, Inc. (Schneider), has asked that their designation be amended to remove Hillsdale and Branch Counties from their assigned geographic area. FGIS asked persons interested in providing official services in these counties to submit an application for designation. Applications were due by November 9, 1993. Michigan, the sole applicant, applied for designation in Hillsdale and Branch Counties in addition to the area currently assigned to them.

FGIS requested comments on the applicant in the December 3, 1993, Federal Register (58 FR 63910). Comments were due by January 3, 1994. FGIS received no comments by the deadline. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Michigan is able to provide official services in the geographic area for which they applied.

Effective April 1, 1994, and ending April 30, 1995, Michigan is designated to provide official inspection services in Hillsdale and Branch Counties, Michigan, in addition to the area they are currently serving.

Interested persons may obtain official services by contacting Michigan at 616–781–2711.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 24, 1994.

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–4731 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Sheppard-Griffin, Flathead National Forest, Tally Lake Ranger District, Flathead and Lincoln Counties, State of Montana; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental effects of watershed and fisheries restoration activities in Sheppard and Griffin Creeks and their tributaries.

The area is located in the area west of Whitefish, Montana and north of the town of Marion, Montana.

The need for this proposal stems from vegetative conditions that have deteriorated due to insect and weather events and will have slow recovery if no action is taken. Current watershed and fisheries conditions do not fully support cold-water fisheries and aquatic life. These conditions, taken in combination with the vegetative conditions, will persist in the long-term.

The purpose of the project is to restore watershed and fisheries conditions in Sheppard and Griffin Creeks.

The proposals's actions to regenerate predominantly dead lodgepole pine stands and wind damaged stands, construct temporary roads and recondition roads necessary to access these stands, correct chronic sediment sources primarily by rehabilitation of roads not needed for future land management activities, remove sediment from stream pools, and stabilize stream channels are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

This EIS will tier to the Flathead National Forest Land and Resource Management Plan (LRMP) and EIS of January, 1986, which provide overall guidance of all land management activities on the Flathead National Forest.

Extensive scoping has been done for this project during the initial stages of preparation of an Environmental Assessment, and during the analysis of alternatives over the past fourteen months. The Forest Service has determined that an EIS will be prepared for this project. The Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. These comments will be used in preparing the Draft EIS.

DATES: Comments concerning the scope of the analysis should be received on or before April 18, 1994.

ADDRESSES: Submit written comments and suggestions or a request to be placed on the project mailing list to Bert Stout, District Ranger, Tally Lake Ranger District, Highway 93 West, Whitefish, MT 59937.

FOR FURTHER INFORMATION CONTACT: Doug Berglund, EIS Team Leader, Phone (406) 862–2508.

SUPPLEMENTARY INFORMATION: The need of the proposal is a result of a mountain pine beetle outbreak which has caused significant mortality and stands damaged by an intense storm which caused significant blowdown. In both conditions, if no action is taken, regeneration of conifers would occur slowly over several decades. This slow rate of vegetative recovery would result in slow recovery of watershed and fisheries conditions. Also, several chronic sources of sediment in Sheppard and Griffin Creeks are causing degradation of cold-water fisheries. Sections of many of the tributaries of Sheppard and Griffin Creeks are deficient in woody debris and native shrubs which is important in stabilizing stream channels and protecting fisheries habitat.

The purpose of the proposal is to restore watershed and fisheries conditions by a variety of management practices where existing conditions are not fully supporting identified beneficial uses of cold-water fisheries and aquatic life. Specifically, the purpose is to:

(1) Accelerate regeneration of conifer species in stands with high amounts of lodgepole pine mortality caused by mountain pine beetle and in stands with significant amounts of blowdown.

(2) Reduce chronic sediment sources in Sheppard and Griffin Creeks and their tributaries by rehabilitation and revegetation of existing roads.

(3) Improve fisheries habitat by sediment removal from pools.

(4) Stabilize stream channels lacking woody debris and native shrubs.

(5) Conduct management practices in a manner to provide economic opportunity and to provide a timber supply to the local lumber manufacturing industry.

Regeneration of primarily dead lodgepole pine stands is proposed on approximately 1520 acres, regeneration of wind damaged stands on approximately 115 acres, maintenance and minor intermittent reconditioning of approximately 55 miles of existing roads, construction of approximately 5 miles of temporary roads, rehabilitation of 13 miles of roads, placement of large woody debris intermittently in 39 miles of streamcourses, native shrub planting on approximately 55 acres and sediment removal at 15 sites in Sheppard, Griffin and Squaw Meadows Creeks.

The decision to be made is what, if anything, should be done in the Sheppard-Griffin area to: (a) Accelerate regeneration of primarily dead lodgepole pine stands and wind damaged mixed conifer stands, (b) rehabilitate sediment sources that are primarily roads not needed for long-term management, (c) stabilize stream channels by placement of large woody debris and planting native shrubs to reduce the erosive power of streamflow during peak flows, and (d) improve

fisheries habitat by sediment removal from pools.

The LRMP for the Flathead National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction.

Most areas of proposed management activities for the Sheppard-Griffin project are within Management Area (MA) 15. Some activity is also planned in MA 17. Management Area 15 consists of lands where timber management with roads is economical and feasible. The management goal is to manage these lands for the long-term growth and production of commercially valuable wood products, as well as provide for soil and water protection, wildlife habitat, and roaded recreation opportunities. Management Area 17 includes adjacent forested riparian lands. The primary goal is to protect and maintain this riparian zone, including fish and wildlife habitat, while maintaining a sustained yield of timber. The proposal is designed to meet the Forest Plan standards and guidelines.

Public participation has occurred at various times during the analysis. Initially, scoping was done separately for the Sheppard project and the Griffin project, in November of 1991, and May of 1992, respectively. Since that time, the two projects have been combined into one analysis based on similarities in purpose, issues and close proximity. Two additional periods of time are identified for the receipt of comments on the analysis. One period will be during the 45 days after this notice is published in the **Federal Register**, and another during the 45-day review and comment period of the Draft EIS. Scoping at the local level has already commenced. If comments have been submitted, there is no need for additional comment. No public meetings are scheduled at this time.

Based on public scoping the following issues have been identified:

(1) There is concern how the vegetation restoration may affect wildlife, particularly big game species such as elk, deer and moose.

(2) Road construction and management are a concern because of the potential impact to water quality, wildlife and fisheries habitat and recreation use.

(3) Harvest methods used in vegetative restoration are a concern to many people, especially in regard to fragmentation of a forested landscape.

(4) There is a concern that vegetative restoration may result in further adverse effects on watershed and fisheries values.

The analysis is essentially complete and has included a full range of alternatives that respond to issues received from scoping over the past year. One of these is the "no-action" alternative, in which no management activities would take place. As a result of the scoping and analysis that has taken place to date, alternatives to the proposed action would include:

(1) Restoration of chronic sediment sources and unstable stream channels only. No restoration of dead lodgepole pine stands.

(2) Modify the proposed action to use existing roads only. No restoration of lodgepole pine stands in the drainages containing the most unstable stream channels.

(3) Modify the proposed action to emphasize big-game habitat effectiveness.

(4) Modify the proposed vegetative treatments to minimize fragmentation of old-growth management indicator species habitat.

The EIS will document the direct, indirect, and cumulative environmental effects of the alternatives. Past, present and reasonable foreseeable actions on both private and National Forest lands will be considered. The EIS will disclose the site-specific features that reduce or eliminate potential environmental impacts.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in May, 1994. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The public comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage because of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider them, and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Following this comment period, the comments received will be analyzed, considered and responded to by the Forest Service in the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by July 1994. Joel Holtrop, Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901, is the responsible official for the preparation of the EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: February 18, 1994.

Bert Stout,

District Ranger, Tally Lake Ranger District, Flathead National Forest.

[FR Doc. 94–4787 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–11–M

Helena National Forest and Deerlodge National Forest Counties: Lewis and Clark, Powell, Jefferson, Broadwater, and Meagher; State: Montana

AGENCY: Forest Service, USDA, and Bureau of Land Management, USDI.

ACTION: Notice; extension of public review period for the Helena National Forest and Elkhorn Portion of the Deerlodge National Forest Oil and Gas Leasing Draft Environmental Impact Statement.

SUMMARY: The period of Public Review for the Helena National Forest and Elkhorn Mountains portion of the Deerlodge National Forest Oil and Gas Leasing draft environmental impact statement (EIS) has been extended until March 31, 1994. The Forest Service and the Bureau of Land Management as joint lead agencies agreed to extend the time for public review an additional 30 days from March 1, 1994 to March 31, 1994.

DATES: This action is effective upon the publication of this notice.

ADDRESSES: Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, MT 59601; and Robert H. Lawton, State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107–6800.

FOR FURTHER INFORMATION CONTACT: Tom Andersen, Environmental Analysis Team Leader, Helena National Forest, as above, or phone: (406) 449–5201.

Dated: February 25, 1994.

Joel Marshik,

Acting Forest Supervisor, Helena National Forest.

[FR Doc. 94–4833 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

East Side Green River, P–1 Channel: SW Grady Way to SW 16th, King County, WA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East Side Green River, P–1 Channel: SW Grady Way to SW 16th St. King County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, Rock Pointe Tower West 316 Boone Avenue, suite 450, Spokane, Washington 99201, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are watershed protection and flood prevention. The planned works of improvement include the construction of approximately 400 feet of channel that connects previously installed channels. The proposed project is part of the East Side Green River Watershed Project started in 1966. The P–1 connecting channel is part of the remaining segments to be installed according to the plan. The proposed project will have a low flow channel in the main channel. The low flow channel will have a 12-foot bottom width and the main channel, including the low flow channel, will be 65 feet wide. This proposed channel will be constructed adjacent to the existing natural drainage way. The natural drainage way will be managed as a wetland and wildlife area. It will share some of the flows with the proposed channel during high runoff periods. Trees, scrubs, and grass will be established in the wetland area and all disturbed areas of the proposed channel. These plantings will provide food and cover for small birds and mammals in addition to erosion control and bank stabilization.

The fish habitat components consist of placing several groups of boulders and root wads from trees to provide habitat for resting areas, hiding areas, and will diversify the path of the water flow.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Frank R. Easter, Assistant State Conservationist (Programs).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: February 22, 1994.

Lynn A. Brown,

State Conservationist.

[FR Doc. 94–4790 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Industry Classification Questionnaire.

Form Number: Agency—BE–507; OMB—0608–0032.

Type of Request: Extension of a currently approved collection.

Burden: 600 respondents; 1 response per respondent per year; 300 reporting hours.

Average Hours per Response: ½ hour.

Needs and Uses: The survey is required in order to classify, by industry, information collected on related forms for U.S. direct investment abroad (i.e., Forms BE–577, BE–133B, and BE–133C). These data are needed, by country and industry, for compiling the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, for annual estimates of the U.S. direct investment position abroad, and for semi-annual estimates of property, plant, and equipment expenditures of majority-owned foreign affiliates. They are also needed to measure the economic significance of U.S. direct investment abroad, monitor changes in such investments, analyze its effect on the U.S. and foreign economies, and based upon this assessment, make informed policy decisions regarding U.S. investment abroad.

Affected Public: Business or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room H5310, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed

information collection should be sent to Paul Bugg, OMB Desk Officer, room 3228, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–4906 Filed 3–2–94; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Office of Procurement.

Title: Revisions to the Commerce Acquisition Regulation (CAR) entitled "Insurance Requirements".

Form Number: Agency: N/A OMB #: New.

Type of Request: New

Burden: Reporting Requirement: 33 respondents totalling 33 hours. Average reporting time is one hour.

Needs and Uses: Commerce operates approximately 24 research ships. In contracts for constructing and maintaining these ships, the contractor must have certain kinds of insurance. This insurance is necessary to protect the multi-million dollar ships and the interests of the U.S. taxpayers. The information collected is used to verify that the contractor has acquired the levels of insurance necessary to protect the interests of the Government.

Affected Public: Businesses or other for-profit, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Gary Waxman (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–4905 Filed 3–2–94; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

[Docket No. 940121–4021]

Annual Survey of Communication Services

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, sections 131, 182, 224, and 225, I have determined that 1993 operating revenue and expenses are needed for the telephone, radio and television broadcasting, cable and pay television, and other communication services industries to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data also apply to a variety of public and business needs. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, on (301) 763–5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on communication services for the period between economic censuses. The latest economic census was conducted in 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Bureau of the Census needs reports only from a limited sample of communication firms in the United States. The probability of a firm's selection is based on payroll size. The sample will provide, with measurable reliability, national level statistics on operating revenue and expenses for these industries. We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

This survey has been approved by the Office of Management and Budget (OMB) under OMB approval control number 0607–0706 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: January 28, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–4980 Filed 3–1–94; 12:09 pm]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 021594H]

Atlantic Bluefin Tuna; Peer Review of the Scientific Basis of Management of the Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NOAA has requested that the National Research Council (NRC) undertake a technical review of the scientific basis of management of the fisheries for Atlantic bluefin tuna. This notice solicits comments pertaining to the review to be forwarded to the NRC.

DATES: Comments must be received by NMFS on or before March 18, 1994.

ADDRESSES: Comments should be directed to: Dr. Kevin Chu, Executive Secretary, ICCAT Advisory Committee, room 14247, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kevin Chu (301)713–2276.

SUPPLEMENTARY INFORMATION: At the 1993 Annual Meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), the United States announced that it would undertake a peer review of the scientific basis of management of the fisheries for Atlantic bluefin tuna. To ensure that the review is independent and unbiased, NOAA has asked the NRC to undertake a technical review of this subject. In order to prepare for the 1994 Annual Meeting of ICCAT, the NRC has been asked to complete an approved report of its review by June 30, 1994.

NOAA has given the NRC the following general questions for the review to address:

- Are the current Standing Committee on Research and Statistics (SCRS) assessments of the status of eastern and

western Atlantic bluefin the most valid interpretation of the available data?

• Is uncertainty in the assessments adequately expressed?

• What is the status of the Atlantic bluefin tuna stocks, relative to the Convention's goal of managing tuna to achieve maximum sustainable yield?

• Does the available information support treating bluefin tuna as separate eastern and western management units (i.e., how much mixing is likely and is it enough to invalidate two separate management units)?

NOAA has stated that the list of questions should be considered preliminary. It has requested that the NRC provide an opportunity to receive the views of the public and that the list of issues addressed be refined and, if necessary, expanded based on that input.

By this notice, NMFS is soliciting comments on any matters that pertain to the peer review. All comments received by the closing date will be forwarded to the NRC for its consideration.

Dated: February 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–4911 Filed 3–2–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Finding of No Significant Impact for the Establishment of a Reserve of Ozone Depleting Substances

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Notice.

SUMMARY: An environmental assessment on the Establishment of a Reserve of Ozone Depleting Substances was prepared pursuant to the National Environmental Policy Act (NEPA) as amended (42 U.S.C. 4321 (*et seq*) and the Council on Environmental Quality Guidelines (40 CFR Parts 1500–1508). The environmental assessment concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. Interested parties may submit comments to the address listed below for a 30-day period from the date of this notice.

EFFECTIVE DATE: 25th of February 1994.

FOR FURTHER INFORMATION CONTACT: Mr, Jan Reitman, CAAE, Staff Director, Environmental and Safety Policy Office, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, (703) 274–6124.

SUPPLEMENTARY INFORMATION: DLA has been directed to establish a reserve of Ozone Depleting Substances (ODS) to ensure that supplies for mission-critical uses will be available. An environmental assessment has been prepared to address the proposed strategy for establishing the ODS Reserve, possible alternative approaches, environmental consequences of the proposed action, and measures recommended to mitigate potentially adverse effects. This environmental assessment has been prepared in accordance with Council on Environmental Quality (CEQ) regulations and DLA implementing regulation DLAR 1000.22, Environmental Consideration in DLA Actions.

The proposed action involves the establishment of a Defense Reserve to support mission-critical requirements for CFC refrigerants and halon fire extinguishing agents. CFC solvents may be maintained in the Reserve if requirements are fully justified. Although the Reserve may receive deposits from all sources within the DoD, material will be issued only to mission-critical systems and users as identified to the DLA by the Military Services. The establishment of the Reserve will give DoD the capability to centrally receive, recontainerize, recycle and reclaim ODS. This reclamation capability will be established at the Defense Distribution Depot Richmond, Virginia, which already has extensive operations involving compressed gas receipt, storage, and distribution and cylinder refurnishment. The Reserve will be located within structures currently used for cylinder storage and refurbishment and will require no new construction. DLA will institute a variety of safeguards including personnel training, equipment upgrades, and leak detection programs to maintain the inventory and avoid unnecessary emissions. Reserve operations will not require air emission, water discharge, or hazardous waste management permits.

DLA will manage inventory levels in order to ensure that excess quantities of materials are not maintained in the Reserve and will phase out materials when no longer needed for mission-critical purposes. Any excess will be disposed of in compliance with environmental regulatory requirements. New purchases of ODS will be necessary in order to establish inventories at levels which can be sustained through recovery and reclamation. The quantity of new ODS purchases will be validated in coordination with the DoD Inspector General. The total quantity of ODS expected to be acquired for the initial establishment of the Reserve will be less than the average quantity of ODS purchased annually by DoD in recent years. Specific measures have been identified in the assessment to mitigate potentially adverse effects which might occur during establishment or operation of the Reserve. The establishment of a Reserve and the initiation of central recovery, recycling and reclamation operations will allow DoD to conserve ODS inventories, maintain mission-critical systems which are dependent on ODS, and avoid the need for an exemption to the production phase out pursuant to Section 604(f) of the Clean Air Act Amendments.

The establishment of a defense Reserve for mission-critical ODS is not considered a major action significantly affecting the quality of the human environment or requiring the preparation of an Environmental Impact Statement. A public comment period regarding the environmental assessment will begin at the time of publication of this notice and will conclude 30 days following. Copies of the environmental assessment are available for inspection at the address listed above.

Dated: February 25, 1994.

Jan B. Reitman,

Staff Director, (Environmental and Safety Policy).

[FR Doc. 94–4782 Filed 3–2–94; 8:45 am]

BILLING CODE 3620–01–M

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Arroyo Pasajero Investigation, California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is a feasibility investigation to identify and assess potential measures to provide additional flood protection for the study area including the cities of Coalinga and Huron, Lemoore Naval Air Station, surrounding agricultural land, and the California Aqueduct, and to prevent sediment and water contaminated with asbestos from entering the aqueduct. The feasibility investigation area includes the Arroyo Pasajero basin in southwest Fresno County. Measures to be investigated include enlarging the retention basin west of the aqueduct, constructing an overchute structure, upstream reservoirs, conducting local

levee and channel work, and implementing an asbestos hazard abatement treatment.

FOR FURTHER INFORMATION CONTACT: Questions regarding this DEIS should be addressed to Mr. Robert Koenigs, Planning Division, Corps of Engineers, 1325 J Street, Sacramento, California, 95814–2922, telephone (916) 557–6712.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Corps of Engineers, and a non-Federal sponsor (California State Department of Water Resources) are conducting a feasibility investigation to identify and assess alternative measures for providing additional flood protection to the cities of Coalinga and Huron, to Lemoore Naval Air Station, to the California Aqueduct, and to agricultural lands, and for preventing sediment and water contaminated with asbestos from entering the aqueduct. In 1958 and 1969 major flooding occurred in the area causing over $5 million in property loss.

Alternatives

The feasibility report and EIS will address the full range of alternatives discussed in the 1992 reconnaissance report on the basin including evaluation of plans to:

(1) Enlarge the retention basin west of the California Aqueduct.

(2) Provide an overchute structure over the aqueduct or an aqueduct canal siphon and provide a retention basin on the east side of the aqueduct.

(3) Construct a channel from the aqueduct and/or the retention basin to a natural channel at the valley trough. Also included will be an evaluation of upstream reservoirs, local levees and channel work, the potential for groundwater injection, potential water treatment methods to permit Arroyo Pasajero runoff into the aqueduct, special asbestos hazard abatement treatment for construction, operation and maintenance requirements for any constructed facilities, and environmental mitigation and restoration. The No-Action alternative will also be explored during the study.

Scoping Process

a. A notice of initiation for the Arroyo Pasajero Investigation will be sent to public agencies, organizations, and individuals in the study area. This notice will invite those parties to participate in the scoping process for this investigation. This will include an opportunity for the public to identify the significant flood control problems, potential solutions, and resources within the study area which may be affected by a project. Responses to the notice, will be used in determining the scope of the feasibility report and accompanying environmental impact statement.

b. Significant topics that will be discussed in the DEIS include the hydrology of the basin; planning objectives; alternatives analysis; impacts on fish and wildlife resources, endangered species, vegetation, water quality, air quality, esthetics, cultural resources, and cumulative impacts of related projects in the study area. The potential for contamination of air and water resources by naturally occurring asbestos will also be addressed.

c. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS.

d. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the DEIS. A public hearing will be held during the comment period. All interested persons are encouraged to respond to this notice and to provide scoping comments and a current address if they wish to be contacted about the DEIS.

Public Meeting

A public scoping meeting has been scheduled for Tuesday, March 29, 1994 at 7 p.m. in the Coalinga area to initiate coordination with local governmental representatives, elected officials, State and Federal agencies, special interest groups, and the general public.

Availability

The DEIS is scheduled to be available for public review and comment in mid 1997.

Gregory D. Showalter,

Alternative Army Federal Register Liaison Officer.

[FR Doc. 94–4784 Filed 3–2–94; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare Environmental Impact Statement for Permit Application for Proposed Activities at Bolsa Chica, Orange County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers is considering an application for section 404 and section 10 permits to conduct dredge and fill activities at Bolsa Chica near the City of Huntington Beach, Orange County, California. The proposed project incorporates components of residential housing and associated infrastructure, habitat restoration of the estuarine marsh, and modifications to the existing East Garden Grove-Wintersburg Flood Control Channel.

The primary Federal concern is the dredging and discharging of materials within waters of the United States, including wetlands, and potential significant impacts on the human environment. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to consideration of any permit action.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding scoping of the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch, ATTN: Bruce Henderson, P.O. Box 2711, Los Angeles, California 90053–2325.

SUPPLEMENTARY INFORMATION:

Project Site

The Bolsa Chica site consists of approximately 1,973 acres of land located in northwestern coastal Orange in southern California. Of the total acreage, approximately 1,312 acres consists of lowlands situated between two upland mesas (Bolsa Chica Mesa to the north and Huntington Mesa to the south).

The site is surrounded by residential neighborhoods to the north, east, and southeast, and by the Pacific Coast Highway (State Route 1) and Bolsa Chica State Beach to the southwest. At present the site is largely undeveloped and is traversed by numerous compacted dirt berm roads associated with ongoing oil production activities. A 300-acre State Ecological Reserve, of which 170 acres have been restored, is also located in the Bolsa Chica lowland adjacent to Pacific Coast Highway.

In February 1989, the U.S. Environmental Protection Agency determined that 927 acres of waters of the United States, including wetlands, are present at the site. Approximately 916 acres are the subject of the applicant's permit request.

Proposed Action

The applicant's proposed project is comprised of three primary components:

(1) Construction of residential housing and associated infrastructure on approximately 270 acres of the Bolsa Chica Mesa as well as approximately 194 acres of the lowlands (comprised of 119 acres of wetlands and/or waters of

the U.S. and 75 non-jurisdictional acres adjacent to existing homes;

(2) Consolidation and restoration of degraded wetlands and creation of new wetlands from on site non-jurisdictional areas;

(3) Modifications to the existing East Garden Grove-Wintersburg Flood Control Channel. The proposed wetlands restoration work includes the construction of a new non-navigable tidal inlet beneath Pacific Coast Highway and through Bolsa Chica State Beach.

The permit application states that completion of the residential construction component in the lowlands will enable the landowner to finance and complete the wetlands restoration component.

Issues

Potentially significant environmental issues associated with implementation of the applicant's proposed project to be addressed in the EIS include:

a. Geological issues including subsidence, seismic concerns and landform alteration.

b. Impacts to terrestrial and aquatic biological resources, including Federally listed threatened and endangered species.

c. Impacts to surface and ground water quality and hydrology.

d. Impacts to prehistoric and historic cultural resources.

e. Land use patterns, including recreation and coastal access.

f. Impacts to air quality.

g. Noise impacts.

h. Impacts to public services and utilities.

i. Impacts to aesthetic resources.

j. Oceanography and fishing impacts.

k. Impacts to local traffic circulation.

l. Socioeconomic concerns including population, housing and infrastructure costs and benefits.

m. Public health and safety concerns.

n. Cumulative impacts.

Alternatives

The EIS will consider an appropriate range of alternatives for the proposed project at Bolsa Chica. For purposes of this analysis, separate alternatives will be analyzed for each of the plan's three primary components, keeping in mind the overall project purpose. Because the applicant proposes to develop the Bolsa Chica Mesa regardless of any action in the lowlands, the following applies primarily to the applicant's permit application for that portion of the project in the lowlands. Accordingly, the following list of alternatives is set for in three categories: (I) Residential housing; (II) wetlands restoration; and (III) flood control modifications.

I. Residential Housing Component

1. Residential housing and associated road construction on 119 acres of degraded wetlands and 75 non-jurisdictional acres along the inland edge of the site (Applicant's Preferred Action). The applicant contends that this alternative will provide it with sufficient usable property in the lowland to enable it to restore and convey in perpetuity the balance of its lowland holdings (approximately 767 acres) to the County of Orange. This conveyed property would be restored by the applicant in accordance with one of the restoration alternatives listed in Section II below.

2. Residential development and construction of a navigable ocean entrance and public marina with associated commercial uses. Like alternative I.1, this alternative is intended to enable the applicant to restore and convey the remainder of the lowland to the County of Orange.

3. Residential development in the areas known as the Bolsa Pocket and Edward's Thumb. The Bolsa Pocket is an area situated between the East Garden Grove-Wintersburg Flood Control Channel and the base of the Bolsa Chica mesa. Edward's Thumb is an area situated in the northeast corner of the lowland. Like alternative I.1, this alternative is intended to enable the applicant to restore and convey the remainder of the lowland to the County of Orange.

4. Creation of wetlands mitigation bank in the lowland with no lowland residential development.

5. Acquisition of the lowland by a public entity or a non-profit organization and restoration by same in accordance with one of the restoration alternatives listed in Section II below. This alternative will be analyzed with and without the development of a public parkland area along the inland edge of the site. In either case, there would be no lowland residential development.

6. No action.

II. Wetlands Restoration Component

1. Full tidal restoration with construction of a non-navigable tidal inlet (Applicant's Preferred Action). This alternative includes the removal of many of the roads and oil drilling pads that traverse the Bolsa Chica lowland and requires significant excavation and discharge of fill in the central portion of the lowland in order to create a suitable tidal prism for enhancement of the ecosystem.

2. Muted tidal restoration without construction of a tidal inlet. This alternative differs in significant respects from alternative II.1 in that it would rely on an increased tidal exchange from the adjoining Huntington Harbour instead of the non-navigable inlet.

3. Minimal restoration without increased tidal action either from Huntington Harbor or from a new tidal inlet. The roads and drilling pads that traverse the lowland would largely be left intact. New water sources to the lowland would be created by breaching the California department of Fish and Game levee and the Freeman Creek corridor.

4. No action.

III. Flood Control Modifications

1. Modifications to the East Garden Grove-Wintersburg Flood Control Channel that involve removing approximately 1.2 acres of embankment dirt for purposes of widening the existing channel and discharge flow into the lowland area. (Applicant's Preferred Action).

2. Modifications to the flood control channel that involve excavating the Outer Bolsa Bay at the channel outlet.

3. No action.

IV. Plan Packages

Based on a preliminary review of a reasonable range of alternatives, the following plan packages have been identified for a more comprehensive review in the EIS. All of the following include residential development on the Bolsa Chica Mesa. It is anticipated that the final design may encompass one or more of the components described in sections I, II, and III, but not necessarily as described below.

1. Applicant's Preferred Action: Residential development in the lowlands adjacent to the existing homes (I.1); full tidal restoration (II.1); in-channel flood control modifications (III.1).

2. Residential development in the Bolsa Pocket and Edward's Thumb areas (I.3); minimal wetlands restoration (II.3); flood control modifications involving Outer Bolsa Bay (III.2).

3. Acquisition and restoration of the lowland by a public agency or nonprofit organization (I.5); muted tidal restoration (II.2); flood control modifications involving Outer Bolsa Bay (III.2). This alternative will be analyzed with and without the development of a public parkland area in the lowlands adjacent to the existing homes.

4. Creation of a wetlands mitigation bank (I.4); full tidal restoration (II.1); in-channel flood control modifications (III.1).

5. Residential development and creation of a public marina with a

navigable ocean entrance (I.2); full tidal restoration (II.1); in-channel flood control modifications (III.1).

6. No action (I.6); no action (II.4); no action (III.3).

Scoping Process

The Corps of Engineers invites input from other Federal, state, and local agencies, Native Americans, and other interested private organizations and individuals to comment on the scope of this EIS, including the range of alternatives and issues to be addressed. In addition, a public notice in area newspapers will be published for purposes of soliciting public comments so as to assess public concerns regarding the appropriate scope and preparation of the draft EIS.

Other related public environmental assessments that have been prepared for this project include the Draft Environmental Impact Report for the Bolsa Chica Project, prepared by the Orange County Environmental Management Agency (December 20, 1993).

The Corps of Engineers will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and Fish and Wildlife Coordination Act, and with the State Office of Historic Preservation under the National Historic Preservation Act. Additionally, the EIS will assess the consistency of the proposed action with the Coastal Zone Management Act, as well as executive orders on wetlands and floodplain protection.

Availability of the Draft EIS

The Draft EIS is expected to be published and circulated in late Spring 1994, and a Public Hearing will be held after its publication.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–4834 Filed 3–2–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Levisa Fork Basin Flood Damage Reduction Plan, Kentucky and Virginia

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Huntington District, currently has underway a study of potential flood damage reduction alternatives for the Levisa Fork Basin of the Big Sandy River Drainage, Kentucky and Virginia. The possibility of significant environmental and socio-economic impacts as the result of the implementation of these potential flood damage reduction alternatives, necessitates the preparation of a Draft Environmental Impact Statement (DEIS) on the Levisa Fork Basin Flood Damage Reduction Plan, Kentucky and Virginia, to analyze these potential impacts.

DATES AND LOCATION: The Huntington District is scheduling a public scoping meeting on the Levisa Fork Basin Flood Damage Reduction Plan DEIS for 28 February 1994, at 6:30 p.m. The meeting will be held at the Birchleaf Elementary School in Birchleaf, Virginia. All interested parties are encouraged to attend and participate in this meeting. This meeting will be held to determine the scope and significant issues to be analyzed in depth in the DEIS. Notice of this meeting will be published in local papers. Written comments concerning the scope of the analysis must be received by 31 March 1994.

ADDRESSES: Planning Division, Huntington District Corps of Engineers, 502 8th Street, Huntington, West Virginia 25701–2070.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard G. Drum, (304) 529–5644 or Mr. Wallace E. Dean, (304) 529–5712.

1. Location and Description of Proposed Action

The project area includes those floodplain areas that would be affected by a recurrence of the April 1977 flood within the Levisa and Russell Forks of the Big Sandy River Basin in Kentucky and Virginia. These floodplain areas extend from the confluence of Indian Creek and Russell Fork in Dickerson County, Virginia downstream on the Russell Fork to the confluence of the Russell Fork and Levisa Fork at Millard, Kentucky (a distance of approximately 50 miles) and from the downstream extent of the incorporated limits of the Town of Grundy, Virginia on the Levisa Fork to Louisa, Kentucky a distance of approximately 138 miles (excluding the area included within the Government property boundary of the Fishtrap Lake project in Pike County, Kentucky). Also included are the floodplain areas located along tributaries of the Russell and Levisa Forks that would be affected by backwater flooding from a recurrence of the April 1977 flood including mainstream and tributaries a total of approximately 220 stream miles are being investigated under the study. Approximately 4,500 structures are located within the floodplain areas being investigated under this study.

2. Components of Proposed Action

A total of five (5) project alternatives have been formulated for reducing flood related damages in the Levisa Fork Basin. These five alternatives will be further studied under the authority of Section 202 of the Energy and Water Resources Development Appropriations Act of 1980 (Pub. L. 96–367) to determine the most cost-effective method of reducing flood related damages in the basin. Project alternatives being evaluated under this study include a flood control dam with permanent pool located approximately 4.6 miles upstream from the Town of Haysi, Virginia on the Russell Fork, a "dry" flood control dam (no permanent pool) located approximately 4.6 miles upstream from the Town of Haysi, Virginia on the Russell Fork, voluntary nonstructural measures (floodproofing by raising structures in-place, ringwalls or veneer walls or permanent relocation of floodplain structures to flood-safe sites), no action and a flood control dam with permanent pool located approximately 4.6 miles upstream of the Town of Haysi, Virginia on the Russell Fork, that would include seasonal storage to facilitate downstream whitewater recreation uses in the Breaks of the Russell Fork. Flood warning and emergency evacuation systems will be included for all floodplain areas where nonstructural measures are proposed.

3. Draft General Plan Supplement (GPS)

A draft General Plan Supplement (GPS) containing a summary of investigations with specific recommendations is currently scheduled for completion by February 1995, with a final report to be completed by January 1996. Public involvement will continue throughout the development of the DEIS in the form of workshops and information furnished to the local media. Federal, State, and local agencies, as well as, other affected and concerned organizations will be notified of all scheduled meetings through published notices in local newspapers and direct notification with concerned parties.

4. Potentially Significant Impacts

Several potentially significant impacts have been identified and studies have been designed and are presently underway to assess and qualify the significance of each. Potentially significant impacts are:

a. Impacts on the present aquatic and terrestrial resources.

b. Impacts on lifestyle and traditional values.

c. Impacts on cultural resources.
d. Socio-economic impacts.
e. Impacts on the possibility of Endangered and Threatened species being present in the project area.

In addition to the above potential impacts any significant impacts developed during the environmental impact analysis or brought out as part of the scoping meeting shall be addressed and presented in the DEIS.

5. The DEIS

The DEIS will be developed under guidance, requirements, and format in 40 CFR 1502.10, "Recommended Format". Consultation will be conducted with the U.S. Fish and Wildlife Service and Environmental Protection Agency during the DEIS process, pursuant to the requirements of the Fish and Wildlife Coordination Act of 16 U.S.C. 661 *et seq.* (Pub. L. 85–624), the Endangered Species Act, 16 U.S.C. 1531 *et seq.* (Pub. L. 93–205), the Heritage Conservation and Recreation Service and State Historical Preservation Act of 1966 (80 Stat. 915), (Pub. L. 89–655), and the Preservation of Historic and Archaeologic Data (88 Stat. 174), (Pub. L. 93–291) and E.O. 11593. In addition, any other interested groups or organizations will be welcomed as active participants in the DEIS process. It is anticipated that the DEIS will be made available for public review during Fiscal Year 1995.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 94–4789 Filed 3–2–94; 8:45 am]
BILLING CODE 3710–FM–M

Corps of Engineers

Notice of Open Meeting Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board

Date of Meeting: March 29, 1994

Place: U.S. Army Corps of Engineers, New Orleans District Office, Foot of Pyrtania Street on Leake Avenue, New Orleans, Louisiana 70118 (Tel: 504–862–2066)

Time: 8:30 a.m. to 4:30 p.m.

Proposed Agenda

AM Session

8:30 Registration
9:05 Welcoming Remarks and Introductions
9:15 Business Session
—Administrative Announcements
—Chairman's Call to Order
—Executive Director's Comments
—Approval of Prior Meeting Minutes
9:45 Status of Inland Waterways Trust Fund
10:15 High Performance, Lower Cost Lock Projects
10:45 Break
11:15 Investment Prioritization Work Group Report
12:00 Lunch

PM Session

1:30 Major Rehabilitation Process Discussion
2:00 Inner Harbor Navigation Canal Lock and Gulf Intracoastal Waterway Studies
2:30 Gulf Intracoastal Canal Association Comments and Perspectives
2:45 Break
3:15 Public Comment Period
4:30 Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 94–4788 Filed 3–2–94; 8:45 am]
BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Clearance Request for Novation/ Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Novation/ Change of Name Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 27.5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 1,000; responses per respondent, 1; total annual responses, 1,000; preparation hours per response, 458; and total response burden hours, 458.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: February 18, 1994.

Beverly Fayson,
FAR Secretariat.
[FR Doc. 94–4882 Filed 3–2–94; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award to the State of Nebraska, Governors' Ethanol Coalition

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The DOE, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), DOE intends to make a noncompetitive financial assistance award to the Governors' Ethanol Coalition, State of Nebraska Energy Office (Administrator), to support the development, production and distribution of an educational reference document for alternative fuels and vehicles. The coalition activities are jointly funded by DOE and nineteen cooperating states.

SUPPLEMENTARY INFORMATION: The Nebraska Energy Office (NEO) administers the program plan and grant for the Governors' Ethanol Coalition (GEC) consisting of nineteen states (IL, AR, NE, CO, HI, IN, IA, KS, KY, MI, MN, MO, MT, NM, ND, OH, SD, TX, WN). The GEC has requested funding for development, producing and distributing of a document entitled the "Clean Fuels Book" as a resource for educational organizations, legislators, policy makers, media, financial and other institutions interested in the clean fuels subject.

This award recognizes the need to assist states in adopting alternative fuels in transportation markets and accelerating the implementation of EPACT '92 activities. The results from the activity accomplished will be shared with the participating GEC states and DOE for replication in other states and projects. Due to their prior experience the GEC is uniquely qualified to continue the efforts associated with their assigned tasks. The grant application is being accepted because DOE knows of no other opportunity to conduct such a program by any other organization or entity.

The project period for the grant award is 12 months and is expected to begin in March 1994. DOE plans to provide funding in the amount of $25,000 for this effort.

FOR FURTHER INFORMATION CONTACT: John Stacy, Director, Technology Marketing Division, U.S. Department of Energy, Kansas City Support Office, 911 Walnut St., 14th Flr., Kansas City, MO 64106. (816) 426–5182 or FAX (816) 426–6860.

Issued in Chicago, Illinois on February 15, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–4740 Filed 3–2–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–24–000, et al.]

Energy Storage Partners, et al; Electric Rate and Corporate Regulation Filings

February 24, 1994.

Take notice that the following filings have been made with the Commission:

1. Energy Storage Partners

[Docket No. EG94–24–000]

On February 2, 1994, Energy Storage Partners (Energy Storage), a limited partnership formed under the laws of the State of Minnesota, with offices at 34505 N. Scottsdale Road, Scottsdale, Arizona 85262, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

Energy Storage states that it is proposing to construct, own and operate the Lorella Pumped Storage Project in Klamath County, Oregon. The Lorella Project will consist of a closed system pumped storage hydroelectric project. The powerhouse will contain four 250 MW pump turbines. The annual output is estimated to be between 1,050,000 and 1,927,000 MWH. The Lorella Project will be connected to the existing Pacific Intertie 500 Kv lines by means of a four-mile 500 Kv transmission line. Energy Storage states that upon completion the facility will be used for the generation of electric energy exclusively for sale at wholesale, and thus will be an eligible facility.

Energy Storage states that upon completion of the Lorella Project it will be exclusively in the business of being the owner and operator of an eligible facility and of selling energy at wholesale from the eligible facility. Energy Storage further states that no rate or charge for, or in connection with, the construction of the facility or for electric energy produced by the facility was in effect under the laws of any state as of the date of enactment of section 32 of the Public Utility Holding Company Act.

Comment date: March 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power and Light Co.

[Docket Nos. ER93–465–004 and ER93–922–002]

Take notice that on January 24, 1994, Florida Power and Light Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Missouri Public Service, a Division of UtiliCorp United, Inc.

[Docket No. ER94–25–000]

Take notice that on February 16, 1994, Missouri Public Service, a division of UtiliCorp United, Inc. ("MPS") tendered for filing an executed Amendatory Agreement No. 2 (the "Amendment") to the Transmission and Interconnection Agreement between MPS and Associated Electric Cooperative, Inc. ("AEC") dated August 24, 1988 (the "Agreement"). The Amendment provides for the addition of new points of delivery at Faucett and Orrick, Missouri. The Commission accepted the unexecuted Amendment via letter order dated November 12, 1993. MPS states that this filing does not change the terms, conditions or rates applicable to the service, but rather merely replaces the unexecuted Amendment with an executed Amendment.

A copy of the filing was served on AEC and the Missouri Public Service Commission.

Comment date: March 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Tenaska Power Services Co.

[Docket No. ER94–389–000]

Take notice that on Tenaska Power Services Company, on February 1, 1994, tendered for filing an amendment to its December 23, 1994, filing in this docket.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PSI Energy, Inc.

[Docket No. ER94–467–000]

Take notice that PSI Energy, Inc. (PSI), on February 22, 1994, tendered for filing additional supporting information to the FERC Filing In Docket No. ER94–467–000 to comply with a FERC Staff Request.

Copies of the filing were served on Hoosier Energy Electric Cooperative, Inc. Southern Indiana Gas and Electric Company and Indiana Utility Regulatory Commission.

Comment date: March 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Colorado

[Docket No. ER94–516–000]

Take notice that on February 22, 1994, Public Service Company of Colorado tendered for filing additional information in the above-referenced docket.

Comment date: March 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Co.

[Docket No. ER94–645–000]

Take notice that the Notice of Filing issued on February 1, 1994 in Docket No. ER94–925–000 was an amendment in Docket No. ER94–645–000 and should have been issued under Docket No. ER94–645–000.

8. Northern States Power Co.

[Docket No. ER94–862–000]

Take notice that on February 17, 1994, Northern States Power Company tendered for filing an amendment to its December 30, 1993, filing in the above-referenced docket.

Comment date: March 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER94–955–000]

Take notice that on February 7, 1994, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 209. WRI states the purpose of the change is to provide generation deferral service to the City of Herington. The change is proposed to become effective June 1, 1994.

Copies of the filing were served upon the City of Herington and the Kansas Corporation Commission.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Western Resources, Inc.

[Docket No. ER94–956–000]

Take notice that on February 7, 1994, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 243. WRI states the purpose of the change is to provide generation deferral service to the City of Stafford. The change is proposed to become effective June 1, 1994.

Copies of the filing were served upon the City of Stafford and the Kansas Corporation Commission.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. PSI Energy, Inc.

[Docket No. ER94–958–000]

Take notice that on January 18, 1994, PSI Energy, Inc. (PSI) submitted for filing its sixth semi-annual report of requests for firm transmission service. PSI states that this report covers the period July 1, 1993 through December 31, 1993.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Vermont Electric Power Company, Inc.

[Docket No. ER94–965–000]

Take notice that on February 8, 1994, Vermont Electric Power Company, Inc. (VELCO) tendered for filing notification of the merger of Citizens Utilities Company with Franklin Electric Company, effective August 11, 1993.

Comment date: March 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4842 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2833–036, et al.]

Hydroelectric Applications [Public Utilities District No. 1 of Lewis County, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Approval of Amendment to Project's Fish and Wildlife Management Agreement

b. *Project No:* 2833–036.

c. *Date Filed:* February 7, 1994.

d. *Applicant:* Public Utilities District No. 1 of Lewis County.

e. *Name of Project:* Cowlitz Falls Project.

f. *Location:* Cowlitz River, Lewis County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gary Kalich, Public Utilities District No. 1 of Lewis County, P.O. Box 330, Chehalis, WA 98532, (206) 748–9261.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* April 4, 1994.

k. *Description of Project:* Public Utilities District No. 1 of Lewis County, licensee for the Cowlitz Falls Project, requests approval of an amendment to its Fish and Wildlife Management Agreement with the Washington Department of Wildlife. The licensee proposes an off-site children's trout fishing derby as a substitution for the planting of warm water species in the diked subimpoundments.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL94–22–000.

c. *Date Filed:* January 14, 1994.

d. *Applicant:* Alyn and Mary Jane Rensink.

e. *Name of Project:* Rensink Hydro Project (WA).

f. *Location:* Unnamed Stream, near Hamilton, WA.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Alyn F. and Mary J. Rensink, 3610 Cape Horn Road, Concrete, WA 98237–9747, (206) 826–3132.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* April 4, 1994.

k. *Description of Project:* The proposed Rensink Hydro Project will consist of: (1) A 450-foot-long, 6-inch-diameter PVC pipe, with intake under water falling from an existing culvert; (2) a powerhouse containing a 10–12 kilowatt impulse turbine/generator; and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating

capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use all energy on site in a single-family recreational home.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Amendment of License.

b. *Project No:* 3255–011.

c. *Date Filed:* 12/23/93.

d. *Applicant:* Lyonsdale Associates.

e. *Name of Project:* Lyonsdale Hydroelectric Development Project.

f. *Location:* At the Burrows Paper Mill on the Moose River, Lewis County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a) - 825(r).

h. *Applicant Contact:* Kenneth A. Oriole, Project Manager, HYDRA–CO Enterprises, Inc., 100 Clinton Square, Suite 400, Syracuse, NY 13202–1049, (315) 471–2881.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* April 4, 1994.

k. *Description of Amendment:* Licensee proposes to raise project's reservoir level by 2 feet during winter months. This would be accomplished by replacing an existing 3-ft-high flashboards with 5-ft-high hinged flashboards on two sections of the project's dam, and by installing a 5-ft-high rubber dam on a third section of the dam. License is requesting the amendment to alleviate winter ice problems, which is affecting the project's electrical generation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11451–000.

c. *Date Filed:* December 27, 1993.

d. *Applicant:* Fall Line Hydro Company, Inc.

e. *Name of Project:* Horse Creek Project.

f. *Location: On Horse Creek, near North Augusta, Aiken County, South Carolina.*

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Robert A. Davis, III, Fall Line Hydro Company, Inc., P.O. Box 957265, Duluth, GA 30136, (404) 995–0891.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* April 18, 1994.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam 800 feet long and 15 feet high; (2) an existing reservoir approximately 250 acres with a storage capacity of 1,700 acre-feet and a normal maximum surface elevation of 178 feet mean sea level; (3) a proposed penstock 4 feet in diameter and 85 feet long; (4) a proposed powerhouse with one proposed turbine-generator unit having a total installed capacity of approximately 220 kilowatts; (4) a proposed transmission line 100 feet long; and (5) appurtenant facilities. The average annual generation is estimated to be 1,156,300 kilowatthours. The estimated cost of the studies is $500. The owner of the dam is United Merchants and Manufacturers.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Subsequent License (see 18 CFR 16.2(d) for definition).

b. Project No. 2607–001.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Spencer Mountain Project.

f. *Location:* On the South Fork Catawba River in Gaston County, North Carolina, near the town of Gastonia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* John E. Lansche, Esq., Duke Power Company, Legal Department, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8125; Steve C. Griffith, Jr., Esq., Duke Power Company, Legal Department, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8100.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842

j. *Comment Date:* April 18, 1994

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The existing project would consist of: (1) A 12-foot-high, 636-foot-long masonry and rubble low head dam with a crest elevation of 634.7 feet msl; (2) a 68-acre reservoir with a storage capacity of 166 acre-feet, at an elevation of 634.7 feet msl; (3) a 58.9-foot-long canal headworks, consisting of four 6-foot wide wood gates with a crest elevation of 641.9 feet msl; (4) a 53.8-foot-long canal spillway connected to the downstream side of the canal headworks, with a crest elevation of 634.7 feet msl; (5) a 30-foot-wide, 10-foot-deep, 3,644-foot-long open earthen canal; (6) a 32-foot-wide trashrack at powerhouse forebay; (7) a 36-inch-diameter bypass pipe; (8) a 22.5-foot-high, 49.5-foot-long powerhouse containing two Francis-type turbines and horizontal generators each with a capacity of 320 kilowatts each, totaling 640 kilowatts; (9) a concrete lined tailrace discharging flows back into the South Fork Catawba River; (10) two substations containing a 2.3/44-kV transformer; (11) a 3,300-foot-long, 44-kV transmission line tying into an existing line; and (12) related facilities.

The project generates on an average 2,581,000 kilowatthours of energy annually.

m. *Purpose of Project:* Project power is utilized by the Rutherford Electric Membership Cooperation, the city of Gastonia, and the applicant's customers.

n. This notice also consists of the following standard paragraphs: D9.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 2969–006.

c. *Date Filed:* February 1, 1994.

d. *Applicant:* Borough of Weatherly, Pennsylvania.

e. *Name of Project:* Francis E. Walter Dam Project.

f. *Location:* On the Lehigh River, in Luzerne and Carbon Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Norman P. Baron, P.E., Quad Three Group, Inc., 37 North Washington Street, Wilkes-Barre, PA 18701, (717) 427–8640.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* April 25, 1994.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Francis E. Walter Dam and Reservoir, as proposed to be modified and authorized by Congress, and would consist of the following new facilities: (1) A set of trashracks at the existing intake structure; (2) a 10-foot-diameter and 500-foot-long steel penstock; (3) a powerhouse containing two generating units for a total installed capacity of 10.31 MW; (4) a 67-foot-wide, 250-foot-long tailrace; (5) a 7.5-mile-long, 12.47-kV transmission line; and (6) appurtenant facilities. The average annual generation would be 56.1 GWh.

The applicant estimates that the cost of the studies under the terms of the permit would be $35,000. All power generated would be sold to a local utility company. The project lock and dam is owned and operated by the U.S. Army Corps of Engineers, District Engineer, U.S. Custom House, 2nd and Chesternut Streets, Philadelphia, PA 19106.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Surrender of License.

b. *Project No:* 9175–023.

c. *Date Filed:* February 3, 1994.

d. *Applicant:* Rivers Electric Co., Inc.

e. *Name of Project:* Eddyville Falls Hydroelectric Project.

f. *Location:* Located in Eddyville, in Ulster County, New York, at the existing Eddyville Falls Dam on Rondout Creek.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rivers Electric Co., Inc., Attn: Charles R. Pepe, P.O. Box 707, Alpine, NJ 07620, (201) 768–4040.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* April 7, 1994.

k. *Description of Proposed Action:* The licensee states that it is no longer feasible to construct the Eddyville Falls Hydroelectric Project because of unforeseen economic conditions. No construction has taken place.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

8 a. *Type of Application:* Declaration of Intention.

b. *Docket No:* EL94–32.

c. *Date Filed:* 02/10/94.

d. *Applicant:* Master Power Corporation, Inc.

e. *Name of Project:* Hills Mill Dam.

f. *Location:* On Sulphur Fork Creek, a tributary of the Red River, near the town of Adams, Tennessee, in Robertson County.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* John E. O'Bryan, Vice President, Master Power Corporation, Inc., 4324 Harmony Church Road, Adams, TN 37010, (205) 880–3383.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* April 8, 1994.

k. *Description of Project:* The proposed project would consist of: (1) A 40.8-acre-foot reservoir; (2) a 120-foot-long and 13-foot-high concrete gravity dam; (3) a small forebay; (4) two open flumes; (5) two turbine-generator units with an installed capacity of 240 kilowatts (Kw); (6) a proposed switchyard consisting of two 3-phase transformers, protective relaying, metering cubicles, and two load disconnect switches. The Switchyard will be paralleled through a 13-kilovolt (kV) connection to the Cumberland Electric Cooperative Distribution line; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* To operate two 50,000-board-feet lumber drying dehumidification kilns. Power will be purchased from the Cumberland Electric Cooperative when needed and any excess power produced will be interchanged with the cooperative to offset power purchases.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION', "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street,

N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (April 18, 1994 for Project No. 2607–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 1, 1994 for Project No. 2607–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: February 25, 1994, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4843 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–228–000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

February 24, 1994.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co. and Columbia Gas Transmission Corp.

[Docket No. CP94–228–000]

Take notice that on February 14, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, and Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–228–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas service between ANR and Columbia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR and Columbia propose to abandon an exchange service pursuant to a Letter Agreement (agreement) between ANR and Columbia dated March 23, 1983, under ANR's Rate Schedule X–136 and Columbia's Rate Schedule X–115. ANR and Columbia state that the agreement provides for the exchange of up to 100,000 Mcf of natural gas per day at an interconnection in Paulding County, Ohio in the event of an emergency arising on either pipeline system.

ANR and Columbia state that ANR advised Columbia in a letter dated September 2, 1993, that ANR was exercising its right, with thirty days written notice by either party, to terminate the exchange service effective October 15, 1993.

No facilities are proposed to be abandoned herein.

Comment date: March 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP94–227–000]

Take notice that on February 14, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP94–227–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale Winnie Pipeline Company (Winnie) certain gas supply facilities located in Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests permission and approval to abandon its Lake Creek Lateral Gathering System by sale to Winnie. Trunkline states that the Lake Creek Lateral Gathering System extends from Trunkline's 24-inch mainline in Harris County, Texas, connects to the Mobil-Lake Creek Gas Plant in Montgomery County, Texas, and extends north of the plant to the East Lake Creek and North Lake Creek Fields in Montgomery County, Texas. Trunkline further states that it would sell the facilities to Winnie for a sum equal to the net depreciated book value of the facilities as of the date of closing, estimated to be $48,553. Trunkline also states that upon conveyance of the facilities to Winnie, Trunkline would close and lock the gate valve between the lateral and Trunkline's mainline.

Trunkline states that Winnie intends to operate the Lake Creek Lateral Gathering System as part of its intrastate system.

Comment date: March 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Pipeline Co.

[Docket No. CP93–564–001]

Take notice that on February 18, 1994, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed an amendment, pursuant to section 7(c) of the Natural Gas Act and section 215 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 385.215, to its July 19, 1993, application for a certificate of public convenience and necessity authorizing the Applicant to construct, own, and operate pipeline and related facilities at the United States-Canada International Boundary near St. Clair, Michigan (ANR Link), all as more fully set forth in the amendment and application which are on file with the Commission and open to public inspection.

The Applicant states that one aspect of its application is an interconnection between ANR Link and facilities of Michigan Consolidated Gas Company (MichCon). As originally contemplated in the application, MichCon would have constructed the necessary interconnection facilities with ANR Link. Subsequent to the filing of the original application, ANR and MichCon agreed that ANR would construct the interconnection facilities.

The Applicant further states that the purpose of this filing is to amend its application to make clear that ANR will construct the interconnection facilities at a total estimated cost of $14,602,531.

Comment date: March 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4844 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–140–000]

Black Marlin Pipeline Co.; Filing

February 25, 1994.

Take notice that on January 7, 1994, Black Marlin Pipeline Company (Black Marlin), requests approval to continue filing a FERC Form No. 2–A: Annual Report of Nonmajor Natural Gas Companies (Form 2A), even though Black Marlin's volumes transported for a fee now meet the criteria of a major natural gas company which would require the filing of a FERC Form No. 2: Annual Report of Major Natural Gas Companies (Form 2).

Black Marlin states that it believes the information provided on the Form 2A is sufficient, because: (1) Recent incremental volumes transported by the Company are primarily on behalf of an intrastate pipeline and, (2) additional Form 2 reporting and independent audit requirements would require extensive resources disproportionate to any benefits gained.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4848 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

Central Maine Power Co., et al.; Authorizations for Continued Project Operation

[Project Nos. 2329–000, et al.]

January 21, 1994.

On the date listed in the appendix, the licensee for the project named in the appendix, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The location of each project is also listed in the appendix.

The license for each named project was issued for a period ending December 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for each of the projects listed in the appendix is issued to the licensee for a period effective January 1, 1994, through December 31,

1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee is authorized to continue operation of the project until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

Appendix

Notices of Authorizations were issued January 21, 1994, to the following licensees. The list provides the date of the application for new or subsequent license, name of the licensee, the project name and number, and the location of the project.

1. December 10, 1991; Central Maine Power Company, licensee for the Wayman Project No. 2329–000; Kennebec River in Somerset County, Maine.

2. September 27, 1991; James River-New Hampshire Electric, Inc., licensee for the Cross Project No. 2326–000; Androscoggin River in Coos County, New Hampshire.

3. December 23, 1991; Upper Peninsula Power Company, licensee for the Prickett Project No. 2402–000; Sturgeon River in Baraga County, Michigan.

4. December 10, 1991; Central Maine Power Company, licensee for the Gulf Island-Deer Rips Project No. 2283–000; Androscoggin River in Androscoggin County, Maine.

5. October 21, 1991; Wisconsin Electric Power Company, licensee for the White Rapids Project No. 2357–000; Menominee River in Menominee County, Michigan and Marinette County, Wisconsin.

6. December 27, 1991; Washington Water Power Company, licensee for the Meyers Falls Project No. 2544–000; Colville River in Stevens County, Washington.

7. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Arnold Falls Project No. 2399–000; Passumpsic River in Caledonia County, Vermont.

8. December 24, 1991; Niagara Mohawk Power Corporation, licensee for the Raquette Project No. 2330–000; Raquette River in St. Lawrence County, New York.

9. December 30, 1991; Thunder Bay Power Company, licensee for the Hillman Dam Project No. 2419–000; Thunder Bay River in Montmorency County, Michigan.

10. December 30, 1991; City of Watertown, New York, licensee for the Watertown Project No. 2442–000; Black River in Jefferson County, New York.

11. December 27, 1991; New England Power Company, licensee for the Deerfield River Project No. 2323–000; Deerfield River in Windham and Bennington Counties, Vermont and Franklin and Berkshire Counties, Massachusetts.

12. December 23, 1991; Beebee Island Corporation, licensee for the Beebee Island Project No. 2538–000; Black River in Jefferson County, New York.

13. December 20, 1991; Central Maine Power Company, licensee for the Weston Project No. 2325–000; Kennebec River in Somerset County, Maine.

14. December 4, 1991; Central Maine Power Company, licensee for the Rice Rips Project No. 2557–000; Messalonskee Stream in Kennebec County, Maine.

15. December 30, 1991; Bangor Hydro-Electric Company, licensee for the Stillwater Project No. 2712–000; Penobscot River in Penobscot, Maine.

16. December 17, 1991; Rochester Gas and Electric Corporation, licensee for the Station No. 5 Project No. 2583–000; Canesee River Monroe County, New York.

17. December 17, 1991; Central Maine Power Company, licensee for the Project No. 2527–000; Saco River In York County, Maine.

18. December 17, 1991; Great Northern Paper Company, licensee for the Ripogenus Project No. 2572–000; West Branch Penobscot River in Piscataquis County, Maine.

19. November 29, 1991; Niagara Mohawk Power Corporation, licensee for the Black River Project No. 2569–000; Black River in Jefferson County, New York.

20. December 27, 1991; Rochester Gas and Electric Corporation, licensee for the Station No. 2 Project No. 2582–000; Genesee River in Monroe County, New York.

[FR Doc. 94–4845 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. GP94–2–000]

Columbia Gas Transmission Corp.; Petition for Declaratory Order

February 25, 1994.

Take notice that on February 18, 1994, Columbia Gas Transmission Corporation (Columbia) petitioned the Commission for an order declaring that Columbia's interest obligation with respect to the funds which Columbia has held in trust for its customers and the Gas Research Institute (GRI) in a restricted investment arrangement (RIA) is to pay its customers and GRI the interest actually earned on those funds. Columbia states that the funds consist of (i) certain refund amounts received by Columbia from its upstream pipeline suppliers; and (ii) certain surcharges collected by Columbia on behalf of GRI.

As previously ordered by the Bankruptcy Court and the Commission, Columbia states that it has deposited in the RIA (i) approximately $131.2 million in upstream pipeline supplier order No. 528 refunds received after Columbia's filing for bankruptcy on July 31, 1991 (post-petition); (ii) approximately $11.7 million in other upstream pipeline supplier refunds also received post-petition; and (iii) approximately $1 million in post-petition GRI collections. Columbia states that these funds were escrowed pending the outcome of litigation as to whether the funds are property of Columbia's bankruptcy estate or are held in trust by Columbia for its customers and GRI.

Columbia requests that the Commission issue an order declaring that Columbia's interest obligation with regard to the funds deposited and held in the RIA is to pay to its customers and GRI the interest actually earned on such funds, and not the interest rate prescribed by the Commission's regulation at 18 CFR 154.102(c)(2) (1993).

Columbia states that the filing has been served on Columbia's current customers, affected state commissions and public interest agencies, and the Gas Research Institute.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4849 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

Columbia Gas Transmission Corp.; Application

[Docket No. CP94–252–000]

February 25, 1994.

Take notice that on February 24, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–252–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas

facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia states that to ensure reliable operation of its pipeline facilities, Columbia has initiated a program to install pig launching and receiving facilities in segments of its existing storage fields which, in certain storage fields, would result in the need to replace short segments of pipeline to provide for a uniform pipe size between launchers and receivers.

As part of this program, Columbia says that it proposes to construct and operate approximately 0.8 mile of 16-inch pipeline to replace approximately 0.8 mile of 6-, 8-, 10-, 12- and 16-inch pipeline on its Line SL–2709, a bidirectional launcher and receiver, as well as various appurtenant facilities, located in Columbia's Medina Storage Field, Medina County, Ohio.

Columbia states that it does not request authorization for any new or additional service. Columbia further states that the estimated cost of the proposed construction is $686,400 and would be financed with funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 14, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4850 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–26–000]

Distrigas of Massachusetts Corp.; Notice of Electronic Filing of FERC Gas Tariff

February 25, 1994.

Take notice that on February 17, 1994, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing on electronic media, its currently effective FERC Gas Tariff. DOMAC states that the purpose of this filing is to bring its Gas Tariff into conformance with the Commission's standards for electronic filings.

DOMAC states that in addition to the electronic version of DOMAC's currently effective tariff, DOMAC submitted for filing, the following tariff sheets:

Original Sheet No. 3
Twenty-Fourth Revised Sheet No. 3A
First Revised Sheet No. 29A
First Revised Sheet No. 33
Fourth Revised Sheet No. 53.

DOMAC states that these sheets have been edited to correct numbering errors and do not change the substantive content of the FERC Gas Tariff.

DOMAC states that copies of this filing were mailed to all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4851 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2385–000, et al.]

Finch, Pruyn and Co., et al.; Authorizations for Continued Project Operation

January 21, 1994.

On the date listed in the appendix, the licensee for the project named in the appendix, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The location of each project is also listed in the appendix.

The license for each named project was issued for a period ending December 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for each of the projects listed in the appendix is issued to the licensee for a period effective January 1, 1994, through December 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license

under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee is authorized to continue operation of the project until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

Appendix

Notices of Authorizations were issued January 21, 1994, to the following licensees. The list provides the date of the application for new or subsequent license, name of the licensee, the project name and number, and the location of the project.

1. December 4, 1991; Finch, Pruyn and Company, licensee for the Glens Falls Project No. 2385–000; Hudson River in Warren County, New York.
2. December 18, 1991; Central Maine Power Company, licensee for the Bonney Eagle Project No. 2529–000; Saco River in York and Cumberland Counties, Maine.
3. December 4, 1991; Rochester Gas and Electric Corporation, licensee for the Station No. 160 Project No. 2596–000; Genesee River in Livingston County, New York.
4. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Gage Project No. 2397–000; Passumpsic River in Caledonia County, Vermont.
5. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Passumpsic Project No. 2400–000; Passumpsic River in Caledonia County, Vermont.
6. December 30, 1991; Rumford Falls Power Company, licensee for the Rumford Falls Project No. 2333–000; Androscoggin River in Oxford County, Maine.
7. December 27, 1991; Flambeau Paper Company, licensee for the Upper Hydro Project No. 2640–000; North Fork Flambeau River in Price County, Wisconsin.
8. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Taftsville Project No. 2490–000; Ottauquechee River in Windsor County, Vermont.
9. December 19, 1991; Central Vermont Public Service Corporation, licensee for the Cavendish Project No. 2489–000; Black River in Windsor County, Vermont.
10. December 31, 1991; Central Vermont Public Service Corporation, licensee for the Pierce Mills Project No. 2396–000; Passumpsic River in Caledonia County, Vermont.
11. December 18, 1991; Northern States Power Company, licensee for the Superior Falls Project No. 2587–000; Montreal River in Iron County, Wisconsin.
12. December 19, 1991; Niagara Mohawk Power Corporation, licensee for the Hoosic Project No. 2616–000; Hoosic River in Rensselaer and Washington Counties, New York.
13. December 23, 1991; Northern States Power Company, licensee for the Hayward Project No. 2417–000; Namekagon River in Sawyer County, Wisconsin.
14. December 6, 1991; Niagara Mohawk Power Corporation, licensee for the Oswego Project No. 2474–000; Oswego River in Oswego County, New York.
15. December 19, 1991; Niagara Mohawk Power Corporation, licensee for the Hudson Project No. 2482–000; Hudson River in Saratoga County, New York.
16. November 25, 1991; Puget Sound Power and Light Company, licensee for the Snoqualmie Project No. 2493–000; Snoqualmie River in King County, Washington.
17. December 20, 1991; Northern States Power Company, licensee for the White River Project No. 2444–000; White River in Ashland County, Wisconsin.
18. December 20, 1991; Mead Corporation, licensee for the Escanaba River Project No. 2506–000; Escanaba River in Delta and Marquette Counties, Michigan.
19. December 9, 1991; Indiana Michigan Power Company, licensee for the Twin Branch Project No. 2579–000; St. Joseph River in St. Joseph and Elkhart Counties, Indiana.
20. December 27, 1991; Scott Paper Company, licensee for the Oconto Falls Project No. 2689–000; Oconto River in Oconto County, Wisconsin.

[FR Doc. 94–4846 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–142–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 25, 1994.

Take notice that on February 22, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed on Appendix A of the filing, with an effective date of April 1, 1994.

FGT states that on June 16, 1993 FGT filed, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure a Stipulation and Agreement of Settlement (Settlement) resolving all issues in these proceedings except curtailment issues. On September 17, 1993, the Commission issued its Second Order on Compliance Filing and First Order on Rehearing (September 17 Order) finding that the Settlement with modifications as directed therein implemented the fundamental concepts underlying Order No. 636. The September 17 Order accepted the Settlement and approved the accompanying tariff sheets, with certain exceptions and modifications, directed FGT to refile final tariff sheets, and accepted such tariff sheets to be effective on October 1, 1993. Various parties requested rehearing of certain aspects of the September 17 Order.

On September 23, 1993, FGT filed its Third Revised Volume No. 1 which reflected the revisions required by the Commission's September 17 Order. The proposed effective date of the tariff was October 1, 1993.

In response to a motion filed September 7, 1993, by Peoples Gas System, Inc., on September 24, 1993, the Commission issued an order delaying implementation of FGT's Order No. 636 tariff until November 1, 1993.

On December 16, 1993, the Commission issued its Third Order on Compliance Filing and Second Order on Rehearing granting in part and denying in part the various requests for rehearing of the September 17 Order and directing FGT to make certain additional changes to its FERC Gas Tariff, Third Revised Volume No. 1. On January 18, 1994, FGT filed tariff sheets reflecting the changes in compliance with the December 16 Order. The instant filing proposes certain additional changes to FGT's FERC Gas Tariff, generally to correct minor errors and clarify certain provisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4852 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2422–000, et al.]

James River—New Hampshire Electric, Inc., et al.; Authorizations for Continued Project Operation

January 24, 1994.

On the date listed in the appendix, the licensee for the project named in the appendix, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder.

The location of each project is also listed in the appendix.

The license for each named project was issued for a period ending December 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for each of the projects listed in the appendix is issued to the licensee for a period effective January 1, 1994, through December 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee is authorized to continue operation of the project until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

Appendix

Notices of Authorizations were issued January 24, 1994, to the following licensees. The list provides the date of the application for new or subsequent license, name of the licensee, the project name and number, and the location of the project.

1. November 11, 1991; James River—New Hampshire Electric, Inc., licensee for the Sawmill Project No. 2422–000; Androscoggin River in Coos County, New Hampshire.

2. December 20, 1991; Edwards Manufacturing Company and the City of Augusta, Maine, licensee for the Edwards Project No. 2389–000; Kennebec River in Kennebec County, Maine.

3. December 26, 1991; the City of Eugene, licensee for the Walterville Project No. 2510–000; McKenzie River in Lane County, Oregon.

4. November 25, 1991; Central Maine Power Company, licensee for the Fort Halifax Project No. 2552–007; Sebasticook River in Kennebec County, Maine.

5. November 13, 1991; Central Maine Power Company, licensee for the North Gorham Project No. 2519–000; Presumpscot River in Cumberland County, Maine.

6. December 2, 1991; Wisconsin Electric Power Company, licensee for the Brule Project No. 2431–000; Brule River in Iron County, Michigan, and Florence County, Wisconsin.

7. December 20, 1991; Moreau Manufacturing Corporation, licensee for the Feeder Dam Project No. 2554–000; Hudson River in Saratoga and Warren Counties, New York.

8. December 23, 1991; Wisconsin Electric Power Company, licensee for the Pine Project No. 2486–000; Pine River in Florence County, Wisconsin.

9. December 26, 1991; Public Service Company of New Hampshire, licensee for the Ayers Island Project No. 2456–000; Pemigewasset River in Grafton and Belnap Counties, New Hampshire.

10. December 23, 1991; Niagara Mohawk Power Corporation, licensee for the School St. Cohoes Project No. 2539–000; Mohawk River in Schenectady County, New York.

11. December 24, 1991; Kennebec Water Power Company, licensee for the Moosehead Lake Project No. 2671–000; Kennebec River in Somerset County, Maine.

12. December 24, 1991; STS Hydropower, Ltd. and Dan River, Inc., licensees for the Schoolfield Project No. 2411–000; Dan River in Pittsylvania County, Virginia.

13. December 23, 1991; Citizens Utilities Company, licensee for the Clyde River Project No. 2306–000; Clyde River in Orleans County, Vermont.

14. December 24, 1991; Niagara Mohawk Power Corporation, licensee for the Raquette Project No. 2320–000; Raquette River in St. Lawrence County, New York.

15. December 17, 1991; Wisconsin Public Service Corporation, licensee for the Grand Rapids Project No. 2433–000; Menominee River in Menominee County, Michigan and Marinette County, Wisconsin.

16. December 27, 1991; Minnesota Power and Light Company, licensee for the St. Louis River Project No. 2360–000; St. Louis, Cloquet, Whiteface, Skunk, Beaver, and Otter Rivers in Carlton and St. Louis Counties, Minnesota.

17. December 17, 1991; Alabama Power Company, licensee for the Thurlow Project No. 2408–000; Tallapoosa River in Tallapoosa and Elmore Counties, Alabama.

18. December 17, 1991; Alabama Power Company, licensee for the Yates Project No. 2407–000; Tallapoosa River in Elmore and Tallapoosa Counties, Alabama.

19. December 26, 1991; Green Mountain Power Corporation, licensee for the Essex No. 19 Project No. 2513–000; Winooski River in Chittenden County, Vermont.

20. December 17, 1991; Great Northern Paper, Inc., licensee for the Penobscot Mills Project No. 2458–000; West Branch Penobscot River in Penobscot County, Maine.

21. December 11, 1991, Indiana Michigan Power Company, licensee for the Buchanan Project No. 2551–000; St. Joseph River in Berrien County, Michigan.

22. December 30, 1991, Thunder Bay Power Company, licensee for the Thunder Bay River Project No. 2404–000; Thunder Bay River in Alpena County, Michigan.

23. November 29, 1991, Niagara Mohawk Power Corporation, licensee for the Beaver River Project No. 2645–000; Beaver River in Lewis and Herkimer Counties, New York.

24. December 16, 1991, Niagara Mohawk Power Corporation, licensee for the E. J. West Project No. 2318–000; Sacandaga River in Saratoga County, New York.

[FR Doc. 94–4847 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–143–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

February 25, 1994.

Take notice that on February 22, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as a limited application under section 4 of the Natural Gas Act, Second Revised Sheet Nos. 237–A and 237–B to be part of its FERC Gas Tariff, Third Revised Volume No. 1, with a proposed effective date of March 1, 1994.

National states that the proposed tariff sheets include approximately $144,000 associated with the balances in Account No. 191 and 186 as of December 31, 1993. Also, this filing includes $127,000 of stranded costs recorded in Account No. 858, which costs the Commission has authorized National to recover through limited section 4 filings.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 or 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4853 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–141–000]

Richfield Gas Storage System; Petition for Waiver

February 25, 1994.

Take notice that on February 9, 1994, Richfield Gas Storage System (Richfield) tendered for filing a petition pursuant to Rule 207 of the Rules of Practice and Procedure of the Commission's 18 CFR 385.207, either for waiver or exemption from the requirement set forth at § 260.2 of the Commission's regulations to file the annual FERC Form No. 2–A report.

Richfield states that since the Form No. 2–A is due by March 31, 1994, and that the Commission may not act on the instant petition until after the Form 2–A is due to be filed, Richfield also requests that the Commission waive compliance with the Form No. 2–A filing requirement while consideration of Richfield's petition is pending.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4854 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–14–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 25, 1994.

Take notice that on December 10, 1993, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Proposed to be Effective November 1, 1993

Revised 2nd Sub Original Sheet No. 34

Proposed to be Effective December 1, 1993

Second Revised Sheet No. 34

Texas Eastern states that this filing is submitted in light of the Commission's June 18, 1993 "Order on Compliance With Restructuring Rule" for Granite State Gas Transmission, Inc. (Granite State) in Docket Nos. RS93–1 *et al.*, (June 18 Order) and Texas Eastern's filing dated October 28, 1993, which reflects the base tariff rates applicable for the period December 1, 1993 through November 30, 1994, pursuant to the terms of the Stipulation and Agreement in Texas Eastern's Docket Nos. RP88–67 *et al.* (Phase II/PCBs) ("Year 4 PCB Filing").

Texas Eastern states that it is filing the tariff sheets for the purpose of reflecting that, pursuant to the June 18 Order, certain customers of Granite State became direct customers of Texas Eastern (Converting Customers),[1] effective November 1, 1993, by taking assignment of their respective service rights attributable to Granite State's service agreement as of October 31, 1993 with Texas Eastern under Texas Eastern's Rate Schedule FTS. Revised 2nd Sub Original Sheet No. 34 reflects the reallocation of contractual quantities under Rate Schedule FTS from Granite State to the Converting Customers. Second Revised Sheet No. 34 updates the Year 4 PCB Filing to reflect this same reallocation.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4855 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[1] The Converting Customers from Granite State under Rate Schedule FTS are Bay State Gas Company and Northern Utilities, Inc.

Federal Energy Regulatory Commission

[Docket No. CP93–667–004]

Valero Interstate Transmission Co.; Final Refund Report

February 25, 1994.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 31, 1994, as supplemented on February 1, 1994, tendered for filing a "Final Refund Report" as required by Ordering Paragraph E of the Commission's November 2, 1993, order in the above referenced docket which authorized the abandonment of Vitco's jurisdictional facilities and services effective January 1, 1994.

Vitco states that its "Final Refund Report" reflects a total amount of $519,572 payable to Vitco due to the net effects of (i) the overcollection and undercollection of gas costs in Account 191 and (ii) the balance remaining in Vitco's Take-or-Pay account.

Copies of the "Final Refund Report" were served on all parties listed on the service list in this docket.

Vitco requests that the Commission accept this "Final Refund Report" as being in compliance with Ordering Paragraph E. Vitco also requests a waiver of any Commission order or regulations which would prohibit this filing.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4856 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–196–000]

Williams Natural Gas Co.; ERRATA to Notice of Application

February 25, 1994.

In the notice issued February 15, 1994, (59 FR 8966, February 24, 1994), paragraph two, first sentence, change "88 miles" to "800 miles" so that the sentence reads:

WNG will convey approximately 800 miles of predominantly small diameter pipeline, 38,286 horsepower of compression, two drip control plants and various appurtenant facilities, all used to gather gas from approximately 700 wells in the states of Texas, Oklahoma, and Kansas.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4857 Filed 3–2–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4845–2]

Acid Rain Program: Allowance Tracking System

AGENCY: Environmental Protection Agency.

ACTION: Notice of opening for business of the Allowance Tracking System.

SUMMARY: The Environmental Protection Agency is announcing the commencement of operation of the Allowance Tracking System (ATS) on March 14, 1994. As of that date, EPA will record transfers of allowances between accounts in the ATS.

Subpart C of 40 CFR part 73 directs EPA to establish an allowance tracking system for the allocation, transfer, and use of SO_2 emissions allowances, as required by section 403(b) of the Clean Air Act. Section 403(b) specifically provides that allowance transfers are not effective, for purposes of compliance with the allowance holding requirements of the Acid Rain Program, until EPA receives and records a written certification of the transfer signed by a responsible official of each party to the transfer (e.g., a completed Allowance Transfer form). Subpart D of 40 CFR part 73 establishes the procedure by which EPA will record transfers of allowances to and from accounts established within the ATS.

An ATS unit account has been established for each utility unit that was allocated allowances under 40 CFR 73.10 (58 FR 15634, March 23, 1993) and general accounts have been established for those who have submitted an Allowance Account Information form. Allowances allocated to each unit as well as any allowances that were purchased at the 1993 EPA allowance auctions have been assigned unique serial numbers and placed in the appropriate unit and general accounts. ATS does not currently contain any additional allowances to which a utility may be entitled, such as those associated with Phase I compliance plans, the Conservation and Renewable Energy Reserve, Early Reduction Credits, and Phase I Extension. These additional allowances will be placed in the appropriate ATS accounts later this year, when the next version of ATS is completed.

All information in the ATS is publicly available. To receive instructions on how to place an information request, call the Acid Rain Hotline at the phone number listed below.

ADDRESSES: Any correspondence in this matter shall be sent to: U.S. Environmental Protection Agency, Acid Rain Division (6204J), Attn: Allowance Tracking System, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Janice K. Wagner, Chief, Allowance Market Section, Acid Rain Division, (202) 233–9170 or by mail at the address above. To obtain written materials describing ATS or any of the forms mentioned above, call the Acid Rain Hotline at (202) 233–9620 and leave a message in the allowance system voice mailbox.

Dated: February 24, 1994.

Janice K. Wagner,

Acting Director, Acid Rain Division, Office of Air and Radiation.

[FR Doc. 94–4924 Filed 3–2–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00148; FRL–4758–1]

Grants To Develop and Carry Out Authorized State Accreditation and Certification Programs for Lead-Based Paint Professionals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability; solicitation of applications for financial assistance.

SUMMARY: This notice announces EPA's intent to enter into cooperative agreements with states and territories which provide financial assistance for purposes of developing and carrying out authorized accreditation and certification programs for professionals engaged in lead-based paint activities pursuant to the Toxic Substances Control Act (TSCA), as amended by Title IV of the Residential Lead-Based Paint Hazard Reduction Act of 1992. EPA also intends to enter into cooperative agreements with federally-recognized Indian governing bodies to provide financial assistance for the development of similar accreditation and certification programs. The notice describes eligible activities, application procedures and requirements, and funding criteria. EPA anticipates that a minimum of $11,200,000 will be available during federal fiscal year 1994 (FY94) for awards to eligible recipients. There are no matching share requirements for this assistance. Subject to future budget limitations, EPA plans to provide this support on a continuing multi-year or program basis. All cooperative agreements will be administered by the appropriate EPA regional office. The Catalog of Federal Domestic Assistance number assigned to this new program is 66.707.

DATES: In order to be considered for funding during the FY94 award cycle, all applications must be received by the appropriate EPA regional office on or before May 1, 1994. EPA will make its award decisions and execute its FY94 cooperative agreements by September 30, 1994.

FOR FURTHER INFORMATION CONTACT: For general information, contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551. For technical information, contact the appropriate Regional Primary Lead Contact person listed in Unit VI of this notice.

SUPPLEMENTARY INFORMATION: TSCA section 404(g) authorizes EPA to award non-matching grants to states and territories to develop and carry out authorized programs for the accreditation of training programs for individuals engaged in lead-based paint activities, and the certification of contractors engaged in lead-based paint activities. To achieve authorization under Title IV of TSCA, programs must: (1) Be as protective of human health and the environment as the federal program established under TSCA section 402 or

406, or both, and (2) provide adequate enforcement. For states and territories that fail to obtain authorization within 2 years following promulgation of TSCA section 402 or 406 regulations, EPA must, by such date, administer and enforce a program for TSCA section 402 or 406.

Pursuant to Title IV of TSCA, EPA encourages states and territories to develop accreditation and certification programs for lead-based paint activities. EPA therefore recommends that eligible parties seek funding through the TSCA section 404(g) assistance program, which is now being implemented to help achieve these ends. EPA further recommends that eligible parties plan to utilize this grant support in a way that complements any related financial assistance they may receive from other federal sources, most notably funding from the U.S. Department of Housing and Urban Development (HUD). EPA will, however, seek to ensure that all federally-funded lead activities are undertaken in a coordinated fashion.

It is anticipated that forthcoming regulations mandated under sections 402 and 404 of TSCA will address the eligibility of federally-recognized Indian governing bodies to receive assistance under TSCA section 404(g). Until such time as these regulations are published, EPA intends to enter into cooperative agreements with Indian governing bodies pursuant to section 10(a) of TSCA for the development of programs similar to those funded under TSCA section 404(g). As a result, unless otherwise indicated, when used in this notice the term "states" includes Indian governing bodies.

EPA will work with prospective applicants to develop cooperative agreements which promote a variety of objectives deemed critical to the success of its national lead program. These include: (1) Permitting flexible approaches to reducing lead hazards, (2) developing a nationwide pool of qualified lead abatement professionals, (3) encouraging pollution prevention in lead-based paint activities, (4) promoting environmental justice in the reduction of lead exposures and the prevention of lead poisoning, (5) fostering the establishment of comprehensive and integrated lead management programs by states, territories and Indian governing bodies, and (6) promoting reciprocity among authorized programs in the training and certification of lead abatement professionals.

I. Eligibility

All states are eligible to apply for and receive assistance under section 404(g) of TSCA. The term "state," for purposes of eligibility, refers broadly to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States. Federally-recognized Indian governing bodies are eligible to apply for and receive assistance under section 10(a) of TSCA.

II. Authority

The "TSCA Title IV State Lead Grants Program" is a financial assistance program administered by EPA under authority of TSCA section 404(g). EPA plans to award all funds to Indian governing bodies under authority of TSCA section 10(a) during the first-year award cycle (FY94). Each of EPA's 10 regional administrators will be delegated the authority to enter into cooperative agreements with eligible states and Indian governing bodies.

III. Activities to be Funded Under Cooperative Agreements

EPA recognizes that when TSCA Title IV was enacted on October 28, 1992, states had widely varying capabilities for addressing lead hazards. Individual states will eventually fall within one of three broad categories of program development: (1) States without lead programs, (2) states with programs that are likely to qualify for authorization under TSCA section 402 that may need assistance in carrying out these programs, and (3) states with lead programs that will require modification before qualifying for authorization. Each state's need for assistance will vary, in part, according to the level of lead program development the state has attained. The type of program activity a given state seeks to pursue may also vary in a corresponding manner.

Although EPA generally supports all state activities aimed at developing or carrying out authorized state lead programs, the Agency does recognize certain priorities. Because few states currently have programs which parallel the forthcoming TSCA sections 402 and 406 standards, EPA's highest priority will be to support the development of new state programs. A second priority will be to support the continued implementation of existing state programs which are working toward timely authorization.

Although these priorities do not constitute the Agency's criteria for award determinations, EPA will consider these items in its cooperative agreement negotiations with applicants.

EPA has established three general funding categories that reflect the different status, or levels, of state lead program development. These are: (1) Level One - Develop New State Programs, (2) Level Two - Carry Out Authorized State Programs, and (3) Level Three - Carry Out Existing State Programs Which Do Not Yet Qualify For Authorization Under Title IV. Because the regulations required under TSCA sections 402 and 404 which would define the criteria for obtaining program authorization have not yet been promulgated, however, activities in only two of the three funding categories, Level One and Level Three, will be eligible for funding consideration during the FY94 award cycle. Activities in Level Two can only be considered after the TSCA sections 402/404 regulations have taken effect. Numerous examples of activities considered to be eligible for funding are described in a separate EPA publication entitled "Fiscal 1994 TSCA Title IV Cooperative Agreement Guidance" (January 1994) (the "grant guidance"). Copies of the grant guidance may be obtained through any of EPA's 10 regional offices at the addresses listed under Unit VI of this notice. It is important to note, however, that the examples presented in the guidance are not exhaustive, and applicants are not limited in their proposals to the listed tasks. Individual state program innovations are eligible and encouraged, so long as the proposed tasks relate to the purposes set forth in TSCA section 404(g) and fit within the Level One or Three funding category. These two funding categories are not mutually exclusive, and it is permissible for a state's work plan to combine elements from each.

IV. Selection Criteria

During the FY94 award cycle, EPA expects a minimum of $11,200,000 to be available for distribution to eligible applicants. The Agency will use a two-tiered system to allocate these funds. This system is aimed at achieving the broadest possible state participation, while at the same time, targeting areas with the greatest potential lead hazard and risk. It accomplishes this by providing for a tier-one distribution of "base funding," followed by a tier-two distribution of "formula funding," where additional funds are distributed based upon the relative lead burden estimated to exist within a state.

Each state (excluding territories and federally-recognized Indian governing bodies) that submits a qualifying proposal will be entitled to a base funding allotment of $100,000. In addition, base funding of up to $50,000

will be reserved for each of the five "territories" (used generically in this context) that have been administratively assigned to an EPA regional office and that have historically participated in EPA toxics cooperative agreement programs. These "base" territories include the U.S. Virgin Islands (Region 2), the Commonwealth of Puerto Rico (Region 2), the District of Columbia (Region 3), Guam (Region 9) and American Samoa (Region 9). The two remaining "non-base" territories, the Canal Zone and the Northern Mariana Islands, are also eligible to apply for funding up to $50,000 apiece, but are not considered in determining the base funding allotments. Base allotments are primarily intended to ensure that those states and base territories wishing to pursue authorization under TSCA section 404 will be guaranteed a minimum level of funding for this purpose. The maximum amount of base funding set-aside in FY94 will be $5,250,000. Any unsubscribed base funding will be added to the formula funds pool.

Once base funding allotments have been reserved for all eligible applicants, remaining funds will be treated as "formula funds." Before applying the lead burden formula, however, EPA will subtract from the formula account an amount not to exceed $50,000 for each Indian governing body and non-base territory not otherwise factored into the base funding apportionment. EPA cannot reliably predict the level of participation from Indian governing bodies and non-base territories; therefore, where these eligible parties do apply for funds, they will be assigned to an appropriate regional office for administrative oversight, and that regional office will become responsible for determining the appropriate level of funding. These parties, however, will not receive a formula ranking, and will not be eligible to compete for additional formula allocations based upon lead burden calculations.

As a third step, states and base territories with funding requirements exceeding their base allotments will then be apportioned additional sums based upon their relative lead burden. In calculating lead burden for the formula rankings, EPA used readily available data derived from the 1990 Census of Population and Housing, together with other data from HUD. The formula uses four factors to generate an estimate of the potential lead problem, or "lead burden," in each state. Two of these factors, the number of housing units with lead-based paint and the number of children under age 7, express the potential magnitude of the lead problem. The remaining two factors, the fraction of young children in poverty and the fraction of low-income housing units with lead-based paint, express the potential severity of the problem.

In determining formula rankings, each state and base territory is scored independently for each factor, and the four individual factor scores for the state or base territory are then summed to obtain an overall score for that state or base territory (a combined factor score). The combined factor scores of all states and base territories applying for formula funds (or amounts in excess of their base allotment) are then summed, and the percentage of the total sum represented by the individual state's or base territory's score is then identified. When the total formula funding available is then multiplied by the percentage score of an individual state or territory, the state's or base territory's ceiling formula allotment can be obtained. For example, assume that: (1) All 50 states but none of the base territories apply for formula allotments, (2) state X has a percentage score of 2 percent, and (3) a total of $4,000,000 in formula funding is available. In determining how much money to allot to state X, EPA would multiply $4,000,000 by .02. The product, $80,000, represents the maximum additional funding that could be awarded to state X to supplement its base allocation. State X would then qualify for up to $180,000 in total funding for the fiscal year ($100,000 in base funding + $80,000 in formula funding).

In general, the maximum, or ceiling, formula allotments will fluctuate inversely with the number of applicants. The greater the number of applicants, the lower the ceiling will tend to be, and vice versa. Formula allotments will be determined only after the annual application deadline has passed and EPA has full knowledge of the total amount of funds requested. If one or more states or base territories request formula fund amounts below their ceiling allotments, residual formula funds will be available. Where this situation develops, if there are still other states or base territories with unfunded needs, the formula will be run again. This procedure can be repeated until all formula funds have been fully allotted. The FY94 combined factor scores for each state and base territory, derived from the census data, are presented in the grant guidance along with a technical appendix (Appendix A) which explains the formula methodology in greater detail.

V. Submission Requirements

To be considered for funding, each application must include, at a minimum, the following forms and certifications which are contained in EPA's "Application Kit for Assistance": (1) Standard Form 424 (Application for Federal Assistance), (2) EPA Form 5700–48 (Procurement Certification), (3) Drug-Free Workplace Certification, (4) Debarment and Suspension Certification, (5) Disclosure of Lobbying Activities, and (6) a return mailing address. In addition to these standard forms, each application must also include a work program, a detailed line-item budget with sufficient information to clearly justify costs, a list of work products or deliverables, and a schedule for their completion. Work programs are to be negotiated between applicants and their EPA regional offices to ensure that both EPA and state priorities can be addressed. In addition, every application from a state, territory or Indian governing body must clearly demonstrate how the proposed activities will lead to that state's pursuit of authorization. Finally, any applicant proposing the collection of environmentally related measurements or data generation must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control. These requirements are more specifically outlined in the "Guidance Document for the Preparation of Quality Assurance Project Plans" (May 1993) published by EPA's Office of Pollution Prevention and Toxics. This document, as well as the application kits referred to above, may be obtained from EPA's regional offices.

VI. Application Procedures and Schedule

Applications must be submitted to the appropriate EPA regional office in duplicate; one copy to the regional lead program branch and the other to the regional grants management branch. Early consultations are recommended between prospective applicants and their EPA regional offices. Because TSCA Title IV cooperative agreements will be administered at the regional level, these consultations can be critical to the ultimate success of a state's project or program.

For more information about this financial assistance program, or for technical assistance in preparing an application for funding, interested parties should contact the Regional Primary Lead Contact person in the appropriate EPA regional office. The mailing addresses and contact telephone

numbers for these offices are listed below.

Region I: (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont), JFK Federal Building, One Congress St., Boston, MA 02203. Telephone: (617) 565–3836 (Jim Bryson)
Region II: (New York, New Jersey, Puerto Rico, Virgin Islands), Building 5, SDPTSB, 2890 Woodbridge Ave., Edison, NJ 08837–3679. Telephone: (908) 321–6671 (Lou Bevilacqua)
Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), 841 Chestnut Bldg., Philadelphia, PA 19107. Telephone: (215) 597–8322 (Fran Dougherty)
Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., NE, Atlanta, GA 30365. Telephone: (404) 347–1033 (Connie Landers)
Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), SP–14J, 77 W. Jackson St., Chicago, IL 60604. Telephone: (312) 886–7836 (David Turpin)
Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 12th Floor, Suite 2000, 1445 Ross Ave., Dallas, TX 75202. Telephone: (214) 655–7577 (Jeff Robinson)
Region VII: (Iowa, Kansas, Missouri, Nebraska), TOPE/TSC, 726 Minnesota Ave., Kansas City, KS 66101. Telephone: (913) 551–7393 (Doug Elders)
Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th St., Suite 500, Denver, CO 80202. Telephone: (303) 293–1442 (David Combs)
Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), 75 Hawthorne St., San Francisco, CA 94105. Telephone: (415) 744–1128 (Jo Ann Semones)
Region X: (Alaska, Idaho, Oregon, Washington), Toxics Section, 1200 Sixth Ave., Seattle, WA 98101. Telephone: (206) 553–1985 (Barbara Ross)

The deadline for EPA's receipt of final FY94 applications is May 1, 1994. Once the application deadline has passed, EPA will process the formula funding calculations and determine the initial formula ceiling allocations. Final negotiations for the award of cooperative agreements can then proceed, but all FY94 agreements must be executed no later than September 30, 1994.

List of Subjects

Environmental protection, Grants, Lead, Training and Accreditation.

Dated: February 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–4893 Filed 3–2–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability: 80 Acres at Canyon Lake, Comal County, Texas

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the "Canyon Lake Tract" located on the south side of Canyon Lake in Comal County, Texas is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until June 1, 1994.

ADDRESSES: Copies of detailed descriptions of the property can be obtained by contacting the following person: Gloria Parker, Federal Deposit Insurance Corporation, 4440 Piedras Drive South, San Antonio, Texas 78228, Telephone (210) 731–2048, Fax (210) 737–1101.

SUPPLEMENTARY INFORMATION: The 80 acre undeveloped tract is located on the south side of Canyon Lake between San Antonio and Austin, Texas. It is approximately 16 feet northwest of the Canyon Springs Resort development and northwest of Lakeside Drive. The tract is across from Cranes Mill Park and Cranes Mill Marina. At the present time, the tract does not have legal access. A flowage easement along the lake frontage encumbers approximately 22 acres and the placement of permanent structures in this area is restricted.

Written notice of serious interest to purchase the property must be received on or before June 1, 1994 by Gloria Parker at the address above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government,

2. Agencies or entities of state or local government, and

3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice

Notice of serious interest should be in the following form:

Notice of Serious Interest re: Canyon Lake Tract, Comal County, Texas

1. Name of eligible entity.

2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g. price and method of financing).

4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: February 25, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–4888 Filed 3–2–94; 8:45 am]

BILLING CODE 6714–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, March 17, 1994 from 9 a.m. to 4:30 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions on (1) a draft paper on Accounting Concepts, (2) Cost Accounting issues and proposed concepts, and (3) Physical Property.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: February 28, 1994.
Ronald S. Young,
Executive Director.
[FR Doc. 94–4907 Filed 3–2–94; 8:45 am]
BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Sales Branch; Stocking Change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration is changing the stocking requirement of SF 114D, Sale of Government Property—Amendment of Invitation for Bids/Modifications of Contract. This form is now authorized for local reproduction. You can request camera copy of SF 114D from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Collins, Sales Branch, (703) 308–0727.

DATES: Effective upon publication in the Federal Register.

Dated: February 22, 1994.
Lester D. Gray, Jr.,
Director, Property Management Division.
[FR Doc. 94–4883 Filed 3–2–94; 8:45 am]
BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HA (Office of the Assistant Secretary for Health) and Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (42 FR 61318, December 2, 1977, as amended most recently at 58 FR 7140–1, February 4, 1993), and (47 FR 38409–24, August 31, 1982, as amended most recently at 58 FR 38871, November 4, 1993) respectively, are amended to reflect the transfer of the Beneficiary Medical Program from the Bureau of Primary Health Care, Health Resources and Services Administration, to the Office of the Surgeon General, Office of the Assistant Secretary for Health.

1. Office of the Assistant Secretary for Health

Under Section HA–20, Functions, Office of the Assistant Secretary for Health (HA), amend the functional statements as follows:

(a) Under the Office of the Surgeon General (HAN) delete the word "and" before function number (8) and change the period at the end of function number (8) to a semicolon and insert the following:

"and, (9) administers the Beneficiary Medical Program."

(b) Under the Division of Commissioned Personnel (HAN2) delete the word "and" before function number (5) and change the period at the end of function number (5) to a semicolon and insert the following:

"and, (6) administers the Beneficiary Medical Program."

2. Health Resources and Services Administration

Under Health Resources and Services Administration (HB) make the following changes:

(a) Under HB–000, Mission, delete function number 3 and renumber (4), (5) and (6) as (3), (4) and (5) respectively;

(b) Under HB–10, Functions, make the following changes:

(1) Under the Bureau of Primary Health Care (HBC) functional statement delete function number (5) and change function number (6) to read (5).

(2) Under the Bureau of Primary Health Care (HBC) delete the functional statement for the Division of Beneficiary Medical Programs (HBEC) in its entirety.

Sections HA–30 and HB–30, Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Bureau of Primary Health Care, Health Resources and Services Administration, and the Office of the Surgeon General, Office of the Assistant Secretary for Health, which were in effect immediately prior to the effective date of this reorganization will continue in effect in them or their successors, pending further redelegations, provided they are consistent with this reorganization.

This transfer is effective upon date of signature.

Dated: February 23, 1994.
Donna E. Shalala,
Secretary.
[FR Doc. 94–4811 Filed 3–2–94; 8:45 am]
BILLING CODE 4160–15–M

Food and Drug Administration

[Docket No. 93E–0327]

Determination of Regulatory Review Period for Purposes of Patent Extension; Imagent® GI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Imagent® GI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be

subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Imagent® GI. Imagent® GI (perflubron) is indicated for oral use with magnetic resonance imaging to enhance delineation of the bowel in order to distinguish it from adjacent organs and areas of suspected pathology. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Imagent® GI (U.S. Patent No. 3,975,512) from the Board of Trustees of the University of Illinois, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated September 23, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Imagent® GI represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Imagent® GI is 7,493 days. Of this time, 6,469 days occurred during the testing phase of the regulatory review period, while 1,024 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: February 8, 1973. The applicant claims February 9, 1973, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 8, 1973, which was 30 days after FDA's receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: October 25, 1990. The applicant claims June 18, 1990, as the date the new drug application (NDA) for Imagent® GI (NDA 20–091) was initially submitted. FDA refused to file this application and notified the applicant of this fact by a letter dated August 16, 1990. The completed NDA 20–091 was resubmitted on October 25, 1990, the initially submitted date.

3. *The date the application was approved*: August 13, 1993. FDA has verified the applicant's claim that NDA 20–091 was approved on August 13, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 2, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 30, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 28, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–4802 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0387]

Determination of Regulatory Review Period for Purposes of Patent Extension; Pirsue™ Aqueous Gel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Pirsue™ Aqueous Gel and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product Pirsue™ Aqueous Gel (pirlimycin hydrochloride). Pirsue™ Aqueous Gel is indicated for lactating dairy cattle for treatment of clinical and subclinical mastitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Pirsue™ Aqueous Gel (U.S. Patent No. 4,278,789) from The Upjohn Co. and requested FDA's assistance in determining the patent's

eligibility for patent term restoration. In a letter dated November 14, 1993, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of Pirsue™ Aqueous Gel represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Pirsue™ Aqueous Gel is 3,860 days. Of this time, 3,778 days occurred during the testing phase of the regulatory review period, while 82 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective*: February 17, 1983. The applicant claims March 8, 1983, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the date of FDA's official acknowledgment letter assigning a number to the INAD was February 17, 1983, which is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: June 21, 1993. The applicant claims June 17, 1993, as the date the new animal drug application (NADA) was initially submitted. However, a review of FDA records reveals that the date of FDA's official acknowledgment letter assigning a number to the NADA was June 21, 1993, which is considered to be the initial submission date for the NADA 141–036.

3. *The date the application was approved*: September 10, 1993. FDA has verified the applicant's claim that NADA 141–036 was approved on September 10, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,095 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 2, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 30, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–4801 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0021]

Schering-Plough Corp.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Schering-Plough Corp. The NADA provides for the use of Variton (diphemanil methylsulfate) Cream 2 percent. The firm requested the withdrawal of approval.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health, Schering-Plough Corp., P.O. Box 529, Kenilworth, NJ 07033, is the sponsor of NADA 9–997 for Variton (diphemanil methylsulfate) Cream 2 percent for topical use on dogs and cats. By a letter dated November 15, 1993, Schering-Plough Corp. requested withdrawal of approval of the NADA because it no longer manufactures or distributes the product.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 9–997 and all supplements and amendments thereto is hereby withdrawn, effective March 14, 1994.

Dated: February 23, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine

[FR Doc. 94–4799 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; National Diabetes Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on March 28–30, 1994, 8:30 a.m. to approximately 5 p.m., at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland. Notice of the meeting room will be posted in the hotel lobby. The entire meeting will be open to the public, with attendance limited to space available.

Agenda

March 28: Biomedical Research.

March 29: Follow-up discussions on Translation Issues Health Care Reform.

March 30: Diabetes Translation Issues, including recommendations for a National Diabetes Education program.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4806 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 94–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on March 28, 1994 at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina. The meeting will be open to the public on March 28 from 9 a.m. until approximately 10 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public March 28, from approximately 10 a.m. until adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Allen Dearry, or Carol Shreffler, Scientific Review Administrations, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting and rosters of committee members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact any of the above named Scientific Review Administrators in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93–114, Applied Toxicological Research and Testing; 93–115, Biometry and Risk Estimation; 93–894, Resource and Manpower Development, National Institutes of Health.)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4808 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on March 15–16, 1994, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to approximately 5 p.m. on March 15, and from 9 a.m. to adjournment on March 16. This will be the third and final meeting to determine the possibility of programs and activities of the National Library of Medicine, of individuals, of professional associations, and of other institutions that might be undertaken over the next 10 years to assure that our society benefits from the skills of medical librarians. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Susan Buyer.

Ms. Susan P. Buyer, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–8834, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4807 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on April, 22, 1994. The meeting will take place from 10 a.m. to 12 noon in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

Summaries of the Board's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders.)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4791 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Deafness and Other Communication Disorders Programs Advisory Committee, National Institute on Deafness and Other Communication Disorders, March 25, 1994, Conference Room 100, Building 31C, National Institutes of Health, Bethesda, Maryland, which was published in the **Federal Register** January 27, 1994 (59 CFR 3866).

The meeting was cancelled due to a lack of travel funds, and will be rescheduled at a later date as a telephone conference call.

Dated: February 25, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4803 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Cancellation of Meeting

Notice is given of the cancellation of a meeting of the National Institute on Drug Abuse which was published in the **Federal Register** on February 22, 1994 (59 FR 8481): the Extramural Science Advisory Board, NIDA, March 1–2, 1994, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

The meeting was cancelled due to a scheduling conflict. The meeting will be rescheduled.

Dated: February 25, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4804 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings To Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358.
Date of Meeting: March 17–18, 1994.
Place of Meeting: Omni-Shoreham Hotel, Washington, DC.
Time of Meeting: 9 am.

Meetings To Review Individual Grant Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358.
Date of Meeting: March 21, 1994.
Place of Meeting: Westwood Bldg, Rm319C, NIH, Bethesda, MD.
Time of Meeting: 1 pm.

Scientific Review Administrator: Dr. Teresa Levitin (301) 594–7141.
Date of Meeting: April 8, 1994.
Place of Meeting: Univ. of Texas, Houston, TX.
Time of Meeting: 8:30 am.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4809 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting of the Division of Research Grants Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, April 4–5, 1994, Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on April 4 to adjournment on April 5. The topics for the meeting will include, among others, the electronic grant application development (EGAD), the DRG triage experiment, information on restructuring DRG study sections, and the clinical research study group. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, room 433, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 594–7265, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 594–7248, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: February 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4805 Filed 3–2–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Public Law 94–437, Indian Health Care Improvement Act; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities of the Indian Health Care Improvement Act, Public Law (Pub. L. 94–437), as amended, with the exception of the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation supersedes the delegation of June 20, 1977, from the Secretary to the Assistant Secretary for Health for the Indian Health Care Improvement Act, Public Law 94–437.

In addition, I ratify and affirm all previous actions taken by Public Health Service officials that, in effect, involved the exercise of the authorities contained in Public Law 94–437, and all subsequent legislative amendments to this Act, prior to the effective date of this delegation.

Previous redelegations of authority made to officials within the Public Health Service under Public Law 94–437 may continue in effect for no more than 90 days from the effective date of this delegation, provided they are consistent with this delegation.

Dated: February 22, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–4810 Filed 3–2–94; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N–94–3724]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice; Request for public comments.

SUMMARY: The proposed information collection requirement for a survey on the use of Community Development Block Grant (CDBG) funds in promoting the development of microenterprises, has been submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. This survey is to be used to prepare a report directed by Congress for HUD to complete in the Housing and Community Development Act of 1992 (Pub. L. 102–550, section 807(C)(4)).

The Department is soliciting public comments on the subject proposal for a period of seven (7) days. An expedited comment period is necessary to permit the collection of information needed for the report to Congress which is due by the end of April, 1994.

DATES: Comment due date: March 10, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal by March 10, 1994. Comments should refer to this proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410. Telephone: (202) 708–0050 (this is not a toll-free number). Copies of the proposed forms and other available documentation submitted to OMB may be obtained from Mrs. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 350). It is also requested that OMB complete its review within 30 days.

The notice lists the following information: (1) The Title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form numbers, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information collection, including respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement or revision of an information collection requirement; and (9) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 35359d.

Dated: February 17, 1994.

Kenneth C. Williams,

Deputy Assistant Secretary for Grant Programs.

Submission of Proposed Information Collection to OMB

Proposal: Request for expedited approval of a survey needed to complete a report to Congress on the use of Community Development Block Grant (CDBG) Funds in promoting the development of microenterprises.

Office: Office of the Assistant Secretary for Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: In the Housing and Community Development Act of 1992 (Pub. L. 102–550), Congress directed that HUD report on the effectiveness of CDBG funds in promoting the development of microenterprises [Section 807(C)(4)]. This report is due to Congress the end of April, 1994 (within eighteen months after date of enactment of the Act). The report is to contain not only an analysis of the effectiveness of the use of CDBG funds in promoting the development of microenterprises, but a review of any statutory or regulatory provisions that impede such development.

A review of information available with the Department of Housing and Urban Development indicates that insufficient information is available to effectively respond to Congress' request. Two survey instruments have been prepared to be administered via telephone to the entire universe of CDBG grantees (both entitlements and states) and to a purposive sample of microenterprise intermediary organizations. This survey approach is expected to provide useful and usable data regarding both entities that fund microenterprises and those that do not as well as provide greater insights into an existing statutory and/or regulatory impediments.

Respondents: Units of general local governments and states receiving CDBG funds in Fiscal Year 1993 and a selected sample of 20 microenterprise intermediary organizations (taken from the 1992 Membership Directory for the Association for Enterprise Opportunity).

Frequency of Response: This is a one-time information collection effort.

Reporting Burden:

Survey	Estimated No. of respondents	Estimated time	Total burden hours
Grantees	897	½ hour	448.5
Microenterprise Intermediary Organizations	20	½ hour	10.0
Total respondent burden ...	917	½ hour	458.5

Status: This is a one-time collection effort for a report to Congress.

Contact: Barbara Neal, HUD (202) 708–1577.

Dated: February 17, 1994.

Supporting Statement for Collection of Information Community Development Block Grant (CDBG) Microenterprise Report

Part A. Justification

1. Circumstances That Make the Collection of Information Necessary

Section 807(c)(4) of the Housing and Community Development Act of 1992 requires the Department of Housing and Urban Development (HUD) to submit to Congress a report on the effectiveness of the use of CDBG funds in promoting development of microenterprises, including a review of any statutory or regulatory provision that impedes their development. A microenterprise is defined by the 1992 Act to be a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise. HUD does not require grantees to report on the size of the businesses receiving CDBG assistance and thus has only very limited information currently available on this issue.

2. Purpose and Use of the Information

This survey is being undertaken in an effort to provide HUD with current, relevant information regarding the actual experiences of community and economic development practitioners in this area for the Department's consideration in the preparation of the required report to Congress. Such information will contribute to a more accurate appraisal of microenterprise activities. If the survey is not conducted, the report to Congress will clearly fail to fully address all relevant statutory or regulatory provisions that serve to impede the effective use of CDBG funds for microenterprise activities.

3. Use of Information Technology to Reduce Burden

HUD computerized files of Grantee Performance Report (GPR) data had been used to determine a potential sampling frame of grantees for the survey. However, the information provided only limited facts that indicated a sampling frame of grantees would not provide adequate information for the report to Congress. In order to respond most effectively to the intent of the report, HUD needs information on grantees that fund microenterprises, those which do not and what, if any, impediments exist. The GPR data is not a reliable basis for providing this data.

4. Efforts to Identify Duplication

Efforts have been made to identify possible duplication and avoid it by reviewing GPR data files and

information available in reports by interest groups.

5. Availability of Similar Information

There is no systematic and uniform source of information about the effectiveness of CDBG assistance in promoting the development of microenterprises, nor about any existing statutory or regulatory impediments. Information on type of grantee (state, urban county, unit of general local government) and size of 1993 entitlement grant can be obtained through HUD's existing data base. Other than that, however, and as stated above, GPR data files provide limited information. They are most useful in identifying grantees that are making small dollar-value CDBG loans or grants to for-profit businesses. Such information suggests that these activities are to assist microenterprises. The GPR files do not, however, provide much qualitative information regarding the nature of the activities or any statutory or regulatory impediments that the respective grantees had to overcome in designing such activities. Reports prepared by microenterprise interest groups provide some information of this type, but it is limited. Perceived statutory or regulatory impediments identified by some of these entities need to be corroborated by obtaining information from actual practitioners.

6. Effort To Minimize the Burden for Small Entities

Most of the information collection does not involve small entities. Some of the nonprofit intermediary organizations responding to the survey, however, may have small staffs. Efforts have been made to minimize the burden for such entities in the following ways:

a. By making this a one-time information-collection effort;

b. By collecting the data through telephone interviews, rather than self-administered questionnaires. The survey is expected to take less than 30 minutes;

c. By designing the survey in a manner that will not require retrieving detailed activity information from case files or performing extensive calculations or analysis of data.

The overall purpose of the survey is to provide HUD with the most current, relevant information so that its required report to Congress may best address any impediments to using CDBG funds for the development of microenterprises. The input of small entities should serve to provide invaluable input as to any existing statutory and/or regulatory barriers that would serve to benefit all microenterprises.

7. Consequence of Less Frequent Information Collection

This is a one-time collection of information. Therefore, less frequent collection of data is not an issue.

8. Inconsistency With 5 CFR 1320.6

The proposed data collection plan is consistent with the guidelines set forth in 5 CFR 1320.6 (Controlling Paperwork Burdens on the Public—General Information Collection Guidelines). There are no circumstances that require deviation from these guidelines.

9. Consultation Outside of the Agency

HUD has discussed the type of information to be obtained through the survey with the National Community Development Association at the NCDA Legislative Conference on January 18, 1993. NCDA represents CDBG entitlement grantees.

10. Assurances of Confidentiality

The data requested is not considered to be of a confidential nature. No data on individual CDBG grantees or intermediary organizations will be made available outside the agency without the prior written consent of the appropriate party. The report to Congress will analyze and aggregate the data received and will not include identifiers linking back to individuals.

11. Questions of Sensitive Nature

There are no questions of a sensitive nature in this survey.

12. Estimated Cost to the Federal Government and to Respondents

	Number of respondents	×	Estimated hours	×	Average hourly rates	=	Total costs
Grantees (States and Local Governments)	897		½ hour		$15.00		$6,727.50
Microenterprise Intermediary Organizations	20		½ hour		10.00		100.00
Federal Government:							
Operational expenses (staff)			20		15.00		300.00
Printing							100.00
Postage							265.00
							665.00
Survey completion and analysis			575		15.00		8,625.00
							9,290.00

13. Respondent Burden

There will be two categories of respondents: CDBG grantees (states and entitlement) and microenterprise intermediary organizations. Two separate survey forms, one tailored for each group, have been designed. Telephone surveys will be administered to all 897 CDBG entitlement and state grantees and a selected sample of 20 respondents in the microenterprise intermediary organization category. Most of the survey questions are straight-forward and will not require much research or analysis by the respondents. Those questions dealing directly with perceived impediments to assisting microenterprises with CDBG funds will require the most time on the part of respondents. Still, the majority of respondents should be able to answer these questions with minimal research and preparation. Thus, it is anticipated that the phone survey will take each respondent approximately less than one-half hour to answer. The surveys will be mailed to the respondents in advance to familiarize them with the type of information being sought to complete the report to Congress.

Survey	Estimated No. of respondents	Estimated time	Total burden hours
Grantees	897	½ hour	448.5

Survey	Estimated No. of respondents	Estimated time	Total burden hours
Microenterprise Intermediary, Organizations	20	½ hour	10.0
Total respondent burden	917	½ hour	458.5

14. Reasons for Changes in Burden

This is a new information collection effort; therefore, this section is not applicable.

15. Publication for Statistical Use

HUD will analyze the information obtained through the surveys to determine common issues and problems encountered by community and economic development practitioners in undertaking microenterprise activities with CDBG funds. Data will be analyzed by grantee type, regional identity and size of grant in determining if common issues and problems exist. HUD will rely on the evaluation of the survey data in preparing its required report to Congress.

Assuming approval from OMB is received no later than March 15, 1994, the surveys would be mailed no later than March 18, 1994. The follow-up telephone survey is expected to begin March 24 and be completed no later than April 6, 1994. Analysis of the data and preparation of the report, pursuant to Section 807(c)(4) of the 1992 Act, would be completed by April 29, 1994 and forwarded to Congress thereafter.

Part B. Collections of Information Employing Statistical Methods

1. Potential Respondent Universe

Two target populations are of interest to this survey: CDBG grantees and microenterprise intermediary organizations. The data collection approach employs two, statistical methods: A universe of 897 CDBG grantees (states and entitlements) and a purposive sample of 20 microenterprise intermediary organizations. Telephone interviews for this group of 917 will be attempted and it is expected that 807 grantee and 18 intermediary organization interviews will be completed for a 90% response rate.

Target population	Target population size	Expected sample size	Expected response rate (percent)	Completed telephone interviews
Grantees	[1] 897	897	90	807
Microenterprise Intermediary Organizations	[1] 183	20	90	18

[1] Based on 1993 CDBG funding allocations.
[2] Based on 1992 Membership Directory for the Association for Enterprise Opportunity.

2. Procedures for Collection of Information

a. *Universe/Sample Stratification and Selection.* HUD intends to survey all CDBG grantees because of the need to have information on grantees that fund microenterprise organizations and those that do not; there is no sampling frame that provides this information prior to conducting the survey. For instance, if a sample of CDBG grantees was drawn and the survey indicated that few of these grantees funded microenterprises, it would provide little information to permit an analysis of the effectiveness of the use of CDBG funds in promoting the development of microenterprises.

A purposive sample of 20 intermediary organizations will be selected from those listed in the 1992 Association for Enterprise Opportunity Membership Directory. The sample will be selected on the basis of type of intermediary organization (cooperatives/non-profit enterprises, enterprise development organizations, financial intermediaries, and technical assistance providers/consultants) and geographic region to help ensure that the selected sample offers representation and variability on these characteristics.

b. *Estimation Procedure.* Not applicable.

c. *Degree of Accuracy.* Assuming a 90% response rate from grantees and that nonresponse is random, the grantee survey will yield very good estimates even if the proportion of grantees who fund microenterprises is small. The sample of intermediary organizations is not a statistical sample.

d. *Unusual Problems Requiring Specialized Sampling Procedures.* No specialized sampling procedures are required.

e. *Use of Periodic Data Collection Cycles to Reduce Burden.* This is a one-time data collection effort.

3. Methods to Maximize Response Rates

In an effort to maximize response rates, a copy of the survey instrument will be mailed to all respondents prior to the telephone survey in order to familiarize them with its content.

4. Tests of Procedures to be Undertaken

Input has been received from HUD's Office of Policy Development and Research (PD & R) in order to fine-tune the survey instrument and permit the collection of information needed for the report to Congress.

5. Persons Involved in the Survey

Individual consulted on the statistical aspect of the survey instrument: Kevin Neary, HUD's PD & R Program Evaluation Division (202–708–0574).

Individual responsible for completion of report: Barbara Neal, HUD's Office of Community Planning and Development, Entitlement Communities Division (202–708–1577).

Grantee Survey for HUD Microenterprise Report

Section 807(c)(4) of the Housing and Community Development Act of 1992 ("1992 Act") requires the Department of Housing and Urban Development (HUD) to submit to Congress a report on the effectiveness of the use of Community Development Block Grant (CDBG) funds in promoting development of

microenterprises, including a review of any statutory or regulatory provision that impedes their development. This survey is being undertaken in an effort to provide HUD with current, relevant information regarding the actual experiences of community and economic development practitioners in this area for the Department's consideration in the preparation of the required report to Congress. Your participation is voluntary, but failure to respond will hurt HUD's ability to report accurately to Congress on the nature and extent of microenterprise activity in the CDBG program. Therefore, your participation is greatly appreciated.

This survey seeks to obtain information regarding any microenterprise assistance activities you may be undertaking with CDBG funds.

• A "microenterprise" is defined by the 1992 Act to be a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

• For the purposes of this survey, "microenterprise assistance activities" are those that are designed to promote the establishment and expansion of microenterprises, as such entities are defined above. Examples of such activities include:

• Provision of training for persons interested in starting microenterprises.
• Provision of technical assistance and training to existing microenterprises.
• Provision of financial assistance to new and existing microenterprises.

Name of Grantee (Optional): _____
Type of Grantee (State, Urban County, Unit of Local Government): _____
Address, City, State, HUD Region: _____
Name of Contact Person & Phone Number (Optional) _____

1. Does your community use Community Development Block Grant (CDBG) funds for microenterprise assistance activities?

Yes _____ No _____ (If No, go to Q.8)

2. What national objective(s) is/are your CDBG-funded microenterprise assistance activities designed to meet? (Check all that apply.)

_____ Low/mod Area Benefit
_____ Low/mod Jobs
_____ Slum/Blight
_____ Urgent Need

3. a. Are your CDBG-assisted microenterprise activities run directly by the grantee or through a subrecipient or some other entity? (Check all that apply.)

_____ Grantee
_____ Subrecipient
_____ Other (Describe)

_____
_____
_____

b. If the activities are run through a subrecipient, please identify the nature of that entity (e.g., public non-profit agency, Community Development Corporation (CDC), Small Business Investment Company (SBIC), etc.). (Check all that apply.)

_____ Public non-profit agency
_____ CDC
_____ SBIC
_____ Other (Describe)

_____
_____
_____

4. What amount of CDBG funds has been budgeted in your most recent final statement for microenterprise assistance activities? _____

5. What percentage of your annual grant does the above amount represent? _____

6. Would you say the level of CDBG assistance you provide to microenterprises is

_____ To much (End of survey)
_____ About right (End of survey)
_____ Too little (Go to Q.7)

7. Is there anything about the CDBG statute or regulations that prevents you from assisting as many microenterprises as you would like?

_____ No
_____ Yes (Please describe)

_____
_____
_____

(End of Survey)

For respondents that answered "No" to Q.1, please answer Q.8 and Q.9.

8. Would you like to see your community use CDBG to support microenterprise development?

_____ No (End of survey)
_____ Yes

9. If "Yes" to Q.8, is there anything about the CDBG statute or regulations that prevents you from assisting microenterprises with CDBG funds?

_____ No
_____ Yes (Please describe)

_____
_____
_____

This mailing has been sent to familiarize you with the survey questions. An interviewer will contact you by telephone in the near future to obtain you responses. If you have any questions concerning this survey, please contact: Ms. Barbara Neal, Entitlement Communities Division, U.S. Department of Housing & Urban Development, room 7282, 451–7th Street, SW., Washington, DC 20410. Telephone Number: (202) 708–1577.

Survey of Intermediary Organizations HUD Microenterprise Report

Section 807(c)(4) of the Housing and Community Development Act of 1992 ("1992 Act") requires the Department of Housing and Urban Development (HUD) to submit to Congress a report on the effectiveness of the use of Community Development Block Grant (CDBG) funds in promoting development of microenterprises, including a review of any statutory or regulatory provision that impedes their development. This survey is being undertaken in an effort to provide HUD with current, relevant information regarding the actual experiences of community and economic development practitioners in this area for the Department's consideration in the preparation of the required report to Congress. Your participation is voluntary, but failure to respond will hurt HUD's ability to report accurately to Congress on the nature and extent of microenterprise activity in the CDBG program. Therefore, your participation is greatly appreciated.

This survey seeks to obtain information regarding any microenterprise assistance activities you may be undertaking with CDBG funds.

• A "microenterprise" is defined by the 1992 Act to be a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

• For the purposes of this survey, "microenterprise assistance activities" are those that are designed to promote the establishment and expansion of microenterprises, as such entities are defined above. Examples of such activities include:

• Provision of training for persons interested in starting microenterprises.
• Provision of technical assistance and training to existing microenterprises.
• Provision of financial assistance to new and existing microenterprises.

Name of Organization (Optional): _____
Address, City; State/HUD Region: _____
Name & Phone Number of Contact Person (Optional): _____

1. Does your organization use Community Development Block Grant (CDBG) funds for microenterprise assistance activities?

Yes _____ No _____ (If No, please go to Q.6)

2. What national objective(s) is/are your CDBG-funded microenterprise assistance activities designed to meet? (Check all that apply.)

_____ Low/mod Area Benefit
_____ Low/mod Jobs
_____ Slum/Blight
_____ Urgent Need

3. Please identify the nature of your entity (e.g., public non-profit agency, Community Development Corporation (CDC), Small Business Investment Company (SBIC), etc.). (Check all that apply.)

_____ Public non-profit agency
_____ CDC
_____ SBIC
_____ Other Please describe)

4. Would you say that the level of CDBG assistance you provide to microenterprises is

_____ Too much (End of survey)
_____ About right (End of survey)
_____ Too little (Please go to Q.5)

5. Is there anything about the CDBG statute or regulations that prevents you from assisting as many microenterprises as you would like?

_____ No
_____ Yes (Please describe)

(End of Survey)

For respondents that answered "No" to Q.1, please answer Q.6 and Q.7.

6. Would you like to see your organization use CDBG to support microenterprise development?

_____ No
_____ Yes

7. If "Yes" to Q.6, is there anything about the CDBG statute or regulations that prevents you from assisting microenterprises with CDBG funds?

_____ No
_____ Yes (Please describe)

This mailing has been sent to familiarize you with the survey questions. An interviewer will contact you by telephone in the near future to obtain your responses. If you have any questions concerning this survey, please contact: Ms. Barbara Neal, Entitlement Communities Division, U.S. Department of Housing & Urban Development, room 7282, 451–7th Street, SW., Washington, D.C. 20410. Telephone Number: (202) 708–1577.

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Office of the General Counsel

[Docket No. N–94–3728; FR–3670–N–01]

Submission of Proposed Information Collection to OMB

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

Joseph F. Lackey, Jr., OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
Monica Hilton Sussman, Deputy General Counsel, (Finance and Regulations), GD, HUD Building, room 10214, 451 7th St., SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to two guide formats which specify the components of a legal opinion required by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Title II of the National Housing Act, 12 U.S.C. 1702, et seq. or in connection with the making of a capital advance under section 202 of the Housing Act of 1959, as amended, and section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended, for supportive housing for the elderly and supportive housing for persons with disabilities.

The guide clearly articulates those matters upon which HUD requires an opinion from private counsel as well as those matters upon which confirmations are required. The guide also contains detailed instructions pertaining to the form as well as a format for certifications by the mortgagor as to matters particularly within the knowledge of the mortgagor upon which its legal counsel relies in rendering the opinion.

The section 202 and 811 programs currently have an OMB-approved Owner's Attorney's Closing Opinion, form HUD–90166–CA (2502:0470). However, the Department has decided that it would be beneficial to participants and their counsel to have similar formats for all loan and capital advance programs. The section 202 and 811 guide format is essentially the same as the insured loan format except for some differences in terminology and program requirements.

To the extent that the new guides represent any "collection of information," the process is necessary to ensure the Department that the attorney representing the mortgagor or owner has followed the otherwise specified requirements of the Department and to ensure the Department that the attorney has exercised an acceptable degree of due diligence in representing the client and in rendering the opinion to the mortgagee and HUD. The extent of due diligence expected to be performed under the guide is not substantially different from what HUD had anticipated under Form 1725 or Form HUD–90166–CA or from what qualified counsel, in fact, perform in conventional financing transactions.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35);

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the

proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 22, 1994.

Monica Hilton Sussman,

Deputy General Counsel (Finance and Regulations), GD.

Submission of Proposed Information Collection to OMB

Proposal: HUD Guide for Counsel to the Mortgagor and HUD Guide for Counsel to Owner.

Office: Office of the General Counsel.

Description of the Need for the Information and Its Proposed Use: The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Form Number: Guide.

Respondents: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD and counsel to owners of section 202 or section 811 projects which receive capital advances from HUD.

Frequency of Submission: As closings occur in connection with the aforementioned projects.

Reporting Burden:

Number of respondents	×	Frequency of response	=	Hours per response	=	Burden hours
700		1		1		700

Total Estimated Burden Hours: 700.

Status: New.

Contact: Joseph F. Lackey, Jr. OMB (202) 395–6880, Monica Hilton Sussman, HUD (202) 708–0636.

Dated: February 22, 1994.

Supporting Statement for Guide for Opinion of Mortgagor's Counsel and Guide for Opinion of Owner's Counsel

Justification

1. Under the various sections of Title II of the National Housing Act, the Secretary of the Department of Housing and Urban Development (HUD) is authorizing to insure mortgage loans upon certain multifamily rental housing projects and health care facilities (nursing homes, extended care facilities, board and care homes and hospitals). Under section 202 of the Housing Act of 1959, as amended, and section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended, the Secretary of HUD is authorized to make capital advance for supportive housing for the elderly and supportive housing for persons with disabilities. Generally, the mortgages are defined as those "commonly given" in the various States; therefore, State and local law govern virtually the entire mortgage insurance transaction from the formation of the mortgagor entity to the making and securitization of the loan to the construction of the project is accord with local law. Consequently, prior to the making of a capital advance or endorsement of a mortgage note for insurance in connection with a multifamily rental project or a health care facility, it is imperative that HUD know the precise legal status of the mortgagor entity and of the realty and personalty which will comprise the security property. Inasmuch as the transaction is largely coordinated by the counsel to the mortgagor or owner (in the case of the section 202 and 811 programs), HUD has looked to such counsel for an opinion which provides comfort to the insured mortgagee and HUD regarding virtually all legal aspects of the transaction.

24 CFR 200.150 provides the regulatory authority for the collection of "all supporting documents" and "other exhibits as required by the terms of the commitment" once the conditions of the commitment for mortgage insurance have been met and the mortgage note is presented for endorsement by HUD. Similarly, 24 CFR 889.415 and 890.415 provide the regulatory authority for the requirements prior to initial closing and the preparation of the necessary documents including the attorney's opinion.

Although it is unclear that the rendering of a legal opinion is within the ambit of "the collection of information," HUD has determined that the more conservative approach is to treat the opinion as such and let OMB make a definitive determination.

2. The opinion is designed to provide HUD and the mortgagee with assurance that the mortgagor or owner entity has been validly formed, lawfully exists and that the security property and the construction thereupon comply with appropriate local laws such as building codes, zoning, etc. Further, the loan documents must comport with local law and practice and only an attorney licensed in the jurisdiction can complete such documents and provide HUD with the requisite assurance. It would be an enormous burden for HUD and the mortgagee, which often is a national entity, to perform such a legal analysis of the mortgagor or owner entity, the documents and the transaction. It is clear that without the assurance provide by the opinion, HUD and the mortgagee would be performing duplicative legal work and would extend considerably greater time and resources than the mortgagor's or owner's counsel, who would be conducting the analysis as a matter of course in representing the client/mortgagor.

3. None—The form passes from counsel to the mortgagor or owner to HUD and the mortgagee. We are not aware of any new technology which could be employed.

4. Since this is the only legal opinion required by HUD in connection with the transaction, we can find no evidence of duplication.

5. Only counsel for the mortgagor or owner is in a position to render the necessary opinion. HUD counsel do not have access to the mortgagor or owner entity in a fashion that would provide HUD counsel with all of the data and knowledge available to the mortgagor's or owner's counsel. Further, HUD counsel are not in a time management or bar membership position to legally opine as to organizations, real and personal property, local law, etc. which comprise a mortgage loan transaction.

6. HUD generally requires that the mortgagor or owner entity be a sole asset entity and sometimes the HUD-approved mortgagee might also be a small business; however, no burden falls upon these entities. The entire burden is upon the counsel to the mortgagor or owner to represent its client in the mortgage loan transaction. A small portion of such representation involves rendering a legal opinion which can be relied upon by HUD and the mortgagee.

7. Not applicable—The legal opinion, if collected at all, has to be collected prior to endorsement of the mortgage note by HUD. In the case of capital advances, the legal opinion has to be collected prior to initial closing.

8. Not applicable—It is questionable whether obtaining a legal opinion is really a collection of information.

9. An effort was made to consult with other federal governmental agencies involved in mortgage loans, state and local entities involved in HUD's mortgage insurance programs, trade organizations, attorneys in the private sector representing mortgagees and mortgagors and HUD field counsel. Numerous changes have been made to reflect input by all the aforementioned parties.

The guide format was probably developed shortly after enactment of the first multifamily provisions of the National Housing Act no later than the 1940s. The format had not been amended since 1966. Numerous disputes were arising in connection with the guide format (then designated FHA Form No. 1725) because private counsel were uncomfortable with what they regarded as an antiquated format which did not comport with modern opinions practice. Closings were delayed at great cost to HUD and the private sector. Efforts to revise the format were begun in the mid-1970s however no consensus was reached after two efforts to solicit comments from HUD field counsel.

The attached Guide represents the HUD central office decisions made after the input described above. Names and telephone numbers of those consulted can be provided. All consultation took place from December 1993 to date.

There were no major problems which could not be resolved by central office decision-makers.

Public and governmental comments received by HUD can be provided.

The section 202 and 811 programs currently have an OMB-approved Owner's Attorney's Closing Opinion, form HUD–90166–CA. However, the Department has decided that it would be beneficial to participants and their counsel to have similar formats for all loan and capital advance programs. The section 202 and 811 guide format is essentially the same as the insured loan format except for some differences in terminology and program requirements.

10. No assurance of confidentiality was given.

11. No sensitive questions are addressed in the Guide.

12. The estimated annualized cost to the federal government of collecting and storing the opinion based upon an hourly rate of $20.00 per hour and a total of seven hours is $240.00. The opinion is one of many documents which is collected at each loan closing and is stored in the docket file which is maintained for the life of the project loan in the federal records center. For capital advances, the closing opinion would be kept in Field Office Docket. There is also the cost of review of the document by HUD field counsel. We estimate that this review should take approximately one-half hour and based upon an hourly rate of $24.00, the total cost would be $8400.00. Neither of these figures should change substantially from the previous total cost to the federal government under FHA Form No. 1725.

The total annualized cost to mortgagors or owners of retaining private counsel to prepare the opinion is estimated to be $122,500.00, which is based upon a total of 700 hours at an average cost per hour of $175.00. (Although one hour is expended completing the form, 100 to 150 hours are expended by mortgagor's or owner's counsel in representing the mortgagor or owner and a mortgage line item covers such typical total cost of approximately $20,000.00.)

13. The above estimates are based upon an estimated total of 700 multifamily rental project and health care facility loan closings per year, which is based upon last year's totals of approximately 500 FHA insured mortgage loan closings and 200 section 202 elderly closings. It is anticipated that the section 202 elderly closings will decrease and the FHA insured loan closings will increase by an off-setting amount. One legal opinion is required per closing. These estimates are based upon HUD's program staff experience in dealing with the aforementioned mortgage line item, the referenced loan closings and the experience of HUD personnel who have recently acted as counsel to mortgagors in the private sector.

14. Although the guide is longer than the form it replaces, there is no substantial difference in the amount of time which will be expended by the parties involved in the preparation, review and collection of the opinion. The use of word processing technology and its redlining capability will make it possible to handle the increased length without any significant increase in time expended. Further, the new guide, by providing more specific instructions, should resolve many conflicts which had created intolerable delays in many closings. Such delays often resulted in the involvement of central office legal staff thereby further increasing the workload upon all the involved parties to the mortgage loan or capital advance transaction.

15. Not applicable.

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TO BE REPLACED BY GUIDE TO BE REPLACED BY GUIDE TO BE REPLACED BY GUIDE

Capital Advance Program
Owner's Attorney's Closing Opinion

Under Section 202 of the Housing Act of 1959
or Section 811 of the National Affordable Housing Act

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0470 (exp. 8/31/97)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0470), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Project Number: | Project Name:

Location:

To HUD:

I am the attorney for the owner and have prepared or reviewed all of the documents in connection with the organization of the owner entity; together with the regulatory agreement, note, mortgage (deed of trust), use agreement, capital advance agreement, construction contract, assurance of completion, certifications and other collateral documents which have been submitted to and are being relied upon by HUD.

It is my opinion that:

1. The owner is a valid existing legal entity; it has authority to engage in the business contemplated by this transaction; all incorporation fees and taxes have been paid; all pertinent securities requirements have been met; the note, mortgage (deed of trust), use agreement, regulatory agreement and other collateral documents required by HUD to be executed by the owner have been executed by the person(s) authorized to execute the same and are instruments legally binding on the owner; and the mortgage (deed of trust) constitutes a valid first lien on the property herein described.

2. The building permit(s) has (have) been legally issued and construction in accordance with the plans and specifications is authorized by said permit(s).

   The proposed construction complies with all applicable zoning laws and requirements. There is no legal action pending or threatened, or proposed changes in zoning, which would prevent the construction from being completed in accordance with the plans and specifications.

4. There is no default under the Land Disposition Contract between _____ and _____ and the time within which construction must be completed under the loan agreement is within the time specified for completion in said Land Disposition Contract (this paragraph is required only in cases where the project is in an urban renewal area).

I hereby certify that satisfactory arrangements have been made for payment of my fees for legal services and that I will assert no claim or lien by reason of such services against the mortgaged premises, mortgage proceeds or income from said premises.

I hereby certify that I do not represent any development team member or any other party or interest in connection with the above referenced housing project other than the owner except for representation as the personal attorney for an individual associated with a development team member in matters not involving the housing project. If a dispute arises between the owner and a development team member, my efforts will be directed exclusively towards serving the owner. I have submitted to HUD an Identity of Interest and Disclosure Certification.

I hereby agree that I will represent the owner, if it so desires, in connection with the final loan disbursement by HUD, in which event I will be entitled to the 25% payment now being withheld.

Except for the 25% being withheld (amounting to $ _____) I have been paid in full for my services and to the best of my knowledge, information and belief the owner is obligated to no other party on account of legal services, except that $ _____ is payable upon disbursement of the capital advance.

Attorney for the Owner:

TO BE REPLACED BY GUIDE

TO BE REPLACED BY GUIDE

FHA FORM NO. 1725
Rev. 8/66

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

GUIDE FORM OF MORTGAGOR'S ATTORNEY'S OPINION INITIAL CLOSING

Re: FHA Project No. _____
Project Name _____
Location _____

To Mortgagee and Federal Housing Commissioner:

I am the attorney for the mortgagor and have prepared or reviewed all of the documents in connection with the organization of the mortgagor entity; together with the regulatory agreement, note, mortgage (deed of trust), building loan agreement, construction contract, assurance of completion, certifications and other collateral documents which have been submitted to and are being relied upon by the Federal Housing Commissioner.

It is my opinion that:

1. The mortgagor is a valid existing legal entity; it has authority to engage in the business contemplated by this transaction; all incorporation fees and taxes have been paid; all pertinent securities requirements have been met; the note, mortgage (deed of trust), regulatory agreement and other collateral documents required by the Federal Housing Commissioner to be executed by the mortgagor have been executed by the person(s) authorized to execute the same and are instruments legally binding on the mortgagor; and the mortgage (deed of trust) constitutes a valid lien on the property therein described.

2. The building permit(s) has (have) been legally issued and construction in accordance with the plans and specifications is authorized by said permit(s).

3. The proposed construction complies with all applicable zoning laws and requirements. There is no legal action pending or threatened, or proposed changes in zoning, which would prevent the construction from being completed in accordance with the plans and specifications.

*4. There is no default under the Land Disposition Contract between _____ and _____ dated _____ *(insert reference including recording date)* ; and the time within which construction must be completed under the aforesaid building loan agreement is within the time specified for completion in said Land Disposition Contract.

I hereby certify that satisfactory arrangements have been made for payment of my fees for legal services and that I will assert no claim or lien by reason of such services against the mortgaged premises, mortgage proceeds or income from said premises.

(In cases where the mortgagor is a cooperative corporation, the following paragraphs should be substituted in lieu of the preceding paragraph:)

I hereby certify that I do not represent and have not represented any party or interest in connection with the above-referred-to housing project other than the mortgagor corporation, and that I do not have any financial interest in the project or the real estate upon which it is to be constructed other than the legal fee I have or am to receive from the mortgagor corporation.

I hereby agree that I will represent the mortgagor corporation, if it so desires, in connection with the final endorsement for mortgage insurance by the Department of Housing and Urban Development, in which event I will be entitled to the 25% payment now being withheld.

Except for the 25% being withheld (amounting to $_____) I have been paid in full for my services and, to the best of my knowledge, information and belief the mortgagor corporation is obligated to no other party on account of legal services.

_____
Attorney for Mortgagor

*Required only in cases where project is in an urban renewal area.

193963-P Rev. 8/66

FHA-Wash., D. C.

BILLING CODE 4210-01-C

For use in FHA Insured Transactions
February 18, 1994.

Exhibit A To Opinion of Mortgagor's Counsel

Certification of Mortgagor

This Certification of Mortgagor is made the _____ day of _____, 19_____, by _____, (the "Mortgagor") for reliance upon by _____ (the "Mortgagor's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by "Mortgagor's Counsel") as a condition for the provision of mortgage insurance by the Department of Housing and Urban Development ("HUD") of the $_____ loan (the "Loan") from _____ (the "Mortgagee") to Mortgagor. In connection with the Opinion Letter, the Mortgagor hereby certifies to Mortgagor's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Mortgagor or authorizing the Loan, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Loan as reflected in the Loan Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Loan Documents.

3. All tangible personal property of the Mortgagor in which a security interest in granted under the Loan Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personalty] is located at the Property (as defined in the Opinion Letter) and the Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____

4. The execution and delivery of the Loan Documents will not (i) cause the Mortgagor to be in violation of, or constitute a material default under the provisions of any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Mortgagor, the Property, or any other properties of the Mortgagor [,except as identified on Exhibit [ ], List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

In witness whereof, the Mortgagor has executed this Certification of Mortgagor effective as of the date set forth above.

Mortgagor:

_____

_____

_____

_____

_____

For use in the Section 202, Supportive Housing for the Elderly Program and Section 811, Supportive Housing for Persons with Disabilities Program
February 18, 1994.

Department of Housing and Urban Development, Federal Housing Administration

Guide for Opinion of Owner's Counsel

[To Be Typed on Firm Letterhead]

[Insert Capital Advance Initial Closing Date]

Re: Project Name _____
202 or 811 Project No. _____
Location _____

[Owner]
[Address]

Federal Housing Commissioner
[Insert Appropriate Field Office Address]

Ladies and Gentlemen:

We are [I am] [general/special] counsel to _____ [Insert Name of Owner] (the "Owner"), a _____, [Insert Type of Entity] organized under the laws of the State of _____ [Insert State, Includes the District of Columbia and Puerto Rico] (the "Organizational Jurisdiction"), in connection with a first Mortgage (Deed of Trust) and Mortgage Note ("Capital Advance") in the amount of _____ Dollars ($_____) from HUD to the Owner. Such Capital Advance is being made pursuant to a Capital Advance Agreement dated as of the date hereof, by and between HUD and the Owner and will be used to construct, rehabilitate or acquire and maintain the captioned 202 or 811 project ("Project"), commonly known as _____ and located in _____ [Insert County and State] (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described on Exhibit _____ [Attach Legal Description] (together with all improvements and fixtures thereon) (the "Property"). The Capital Advance is being issued, pursuant to [Section 202 of the Housing Act of 1959, as amended, or Section 811 of the Cranston Gonzalez National Affordable Housing Act], a firm commitment dated _____ and which expires on _____ ("Commitment"). The Owner has requested that we [I] deliver this opinion and has consented to reliance by HUD in making the Capital Advance and has waived any privity between Owner and us [me] in order to permit such reliance by HUD. We [I] consent to reliance on this opinion by HUD.

In our [my] capacity as [general/special] counsel to the Owner, we [I] have prepared and or reviewed the following Capital Advance Documents, Organizational Documents and Collateral Documents (will be collectively referred to as "the Documents" unless expressly limited to a group of the above referenced documents) (numerical references in parenthesis following the Documents listed below are to HUD form numbers):

Capital Advance Documents

A. Before Initial Closing

1. Capital Advance Agreement (HUD 90167–CA).
2. Requisition for Disbursement of Capital Advance Funds (HUD–92403–CA).
3. Direct Deposit Sign-up Form (SF 1199A).
4. Project Rental Assistance Contracts (PRAC) documents:
   a. Part I of Agreement to Enter into PRAC (HUD 90172A–CA);
   b. Part II of Agreement to Enter into PRAC (HUD 90172B–CA);
   c. Part I of the PRAC (HUD 90173A–CA); and
   d. Part II of the PRAC (HUD 90173B–CA).

B. Initial Closing

1. Firm Commitment for Capital Advance Financing (HUD–92432–CA) including reissued, revised or amended commitment.
2. Owner's Certificate (HUD 92433–CA).
3. Evidence of Owner's Deposit (minimum capital investment) (escrow agreement, see 6(q)(1) of commitment) and ability to provide moveable furnishings and equipment not covered by capital advance, if necessary.
4. Agreement and Certification (HUD 93566–CA).
5. Mortgage Note (HUD–93432–CA).
6. Mortgage (Deed of Trust) (HUD–90165–CA).
7. Regulatory Agreement (HUD–92466–CA).

8. Use Agreement (HUD 90163–CA).
9. Owner's assurance of funds to cover costs over and above capital advance (if applicable).

Organizational Documents

(Documents regarding Organization of Non-Profit Owner)
1. Approved and certified articles of organization (Certificate of Incorporation (HUD–91732A–CA)).
2. Certificate of Good Standing.
3. By-laws.
4. Incumbency Certificate.
5. Owner's I.R.S. Tax-Exemption Ruling.
6. Corporate Resolution.

Collateral and other Documents ("Collateral Documents")

1. Collateral Agreements, if any.
2. Security Agreement and UCC Financing Statement.
3. Title Policy.
4. Survey.
5. Surveyor's Report (HUD–92457).
6. Evidence of Zoning Compliance.
7. Building Permits.
8. Construction Contract:
a. Lump Sum (HUD 92442–CA) OR Cost Plus (HUD 92442A–CA), as appropriate;
b. Contractor's Requisition (HUD 92448); and
c. Construction Contract, Incentive Payment (HUD 92443–CA), if applicable.
9. Contractor's and/or Mortgagor's Cost Breakdown (HUD 92328).
10. Assurance of Completion:
a. Performance/Payment Bond 100% Dual-Obligee (92452–CA; OR
b. Performance Bond (FHA 2452) and Payment Bond (FHA 2452A) and Surety Company's Telegram or Facsimile; OR
c. Completion Assurance Agreement (HUD 92450–CA).
11. Owner-Architect Agreement (AIA Document B181) (see attached to Capital Advance Agreement; HUD 90167–CA) and HUD Amendment (HUD 90169–CA).
12. Real Estate Tax Exemption (if applicable).
13. Lease (if mortgage is on leasehold) (Lease Addendum at Appendix 14 of HUD Handbook 4571.5).
14. Land-Disposition Contract and Deed (required only for projects in urban renewal areas).
15. Insurance and fidelity bonds:
a. All applicable insurance policies per Property Insurance Requirements (HUD–90164–CA), including Property Insurance Schedule (HUD–92329); and
b. Blanket Fidelity Bond.
16. Assurance of Completion of Off-site Facilities, if applicable:
a. Off-site Bond (HUD 90177–CA); OR
b. Escrow Agreement for Off-site Facilities (HUD) 90170–CA).
17. Fair Housing
a. FHEO Certification in Connection with the development and operation of the project (assurance of compliance with HUD regulations (HUD Form 915); and
b. Affirmative Fair Housing Marketing Plan (HUD will determine if administratively satisfied; Exhibit 3 to PRAC).
18. Assurance of Utility services (water, electricity, sewer, gas, heat etc.).
19. Additional Closing Requirements (State or local requirements).

In basing the opinions set forth in this opinion on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Owner, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Owner in any capacity including, but not limited to, in connection with the Capital Advance. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Capital Advance to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with this respective terms.

(b) Each person executing any of the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Owner (and any person executing any of the Documents on behalf of Owner) are genuine.

(e) All Documents which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records, and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and assigns will: (i) Act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Owner has title or other interest in each item of (i) real and (ii) tangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Capital Advance as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph not justified.

In rendering this, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the

Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Owner's [Chief Executive Office] [only place of business] [residence] is located in _____. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion we [I] have, with your approval, relied as to certain matters of fact set forth in the Owner's Opinion Certificate, the Certificate of Good Standing [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Owner as to the accuracy and completeness of the Owner's Opinion Certificate, the Certificate of Good Standing, [and such other Documents], and we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

[To be used in cases where organizational documents were prepared by owner's attorney]

1. The Owner is a _____ [Insert Type of Entity] [for 202, Private Non-Profit Corporation and For 811, Institution or Foundation], duly organized and validly existing under the laws of the Organizational Jurisdiction. The Owner is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit _____, is in good standing under the laws of the Organizational Jurisdiction and is qualified to do business as a foreign entity in the Property Jurisdiction.

2. The Owner has the power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications, tax exempt status and approvals to own (including the authority to borrow the proceeds of the Capital Advance, to encumber the Property with the Security Instrument, to execute the Capital Advance Documents) and operate the Property and such other assets as is necessary to carry on its business and to carry out all of the transactions contemplated by the Capital Advance Documents and Collateral Documents as of the date of this opinion and to comply with all applicable statutes and regulations of the Federal Housing Commissioner in effect on the date of the Firm Commitment.

3. The execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) by or on behalf of the Owner, and the consummation by the Owner of the transactions contemplated thereby, and the performance by the Owner of its obligations thereunder, have been duly and validly authorized by all necessary action by, or on behalf of, the Owner.

4. No authorization, consent, approval, or other action by, or filing with, any Organizational and Property Jurisdictions or federal court or governmental authority other than those that have been obtained, as disclosed on Exhibit _____, attached hereto, and those listed at Paragraphs _____ of this opinion [i.e., good standing certificate] are required in connection with the execution and delivery by the Owner of the Capital Advance Documents or Collateral Documents (where applicable) or the ownership [and operation] of the Property.

5. Each of the Capital Advance Documents and Collateral Documents (where applicable) has been duly executed and delivered by the Owner and constitutes the valid and legally binding promises or obligations of the Owner, enforceable against the Owner in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and

(ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity).

6. The execution and delivery of, and the performance of the obligations under, the Capital Advance Documents and Collateral Documents (where applicable), will not violate the Organizational Documents of the Owner or the applicable statutes and regulations of HUD in effect on the date of the Firm Commitment.

[7. [Insert for Loans Involving Construction or Rehabilitation] To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, and executed by, and referred to in the Construction Contract (the "Plans and Specifications").]

[8. [Insert if There is no Zoning Endorsement Incorporated into the Title Policy] The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

or

Based solely on the zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. [Use for New Construction or Substantial Rehabilitation in Cases Where HUD Does Not Receive a Certificate Directly from the Professional] Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.]

10. Based solely upon (a) our [my] knowledge and (b) the Owner's Opinion Certification, the execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) will not: (i) cause the Owner to be in violation of, or constitute a default under the provisions of, any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents or Collateral Documents.

11. Based solely upon (a) our [my] knowledge, (b) the Owner's Opinion Certification and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Owner, or the Property, [except as identified on Exhibit _____].

12. The Mortgage is in appropriate form for recordation in _____ [Insert Proper Name of Local Land Records Office] of _____ [Insert County or City] of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Owner located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code as in effect in the Project Jurisdiction, a

security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the security interest in the Personalty.

14. The Capital Advance does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

15. The laws of Property Jurisdiction govern the interpretation and the enforcement of the Capital Advance Documents and Collateral Documents (where applicable) notwithstanding that the Owner may be formed in a jurisdiction other than Property Jurisdiction. The Owner can sue and be sued in Property Jurisdiction, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Security Instrument. Venue for any foreclosure proceeding under the Security Instrument may be had in Property Jurisdiction.

[16. [Applies to Cases Where the Land is Being Purchased From a Public Body] There is no default under the Public Entity Purchase Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Purchase Agreement. [Reliance is Permitted on the Basis of Knowledge and Owner's Certificate]

[17. [Applies to Cases Where the Project is in an Urban Renewal Area] There is no default under the Land Disposition Contract between _____ and _____, dated _____ and the time within which construction must be completed under the Capital Advance Agreement is within the time specified for completion in said Land Disposition Contract.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing Statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction and [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Owner in each of the Capital Advance Documents and Collateral Documents (where applicable) and the Title Policy and Firm Commitment is the correct legal name of the Owner;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit _____ hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Capital Advance, other than fees for legal services performed by us, payment for which has been provided; and we [I] agree not to assert a claim or lien against the Project, the Owner, the Capital Advance proceeds or income of the Project;

(d) other than as counsel for the Owner, we have no interest in the Owner or any other party involved in the Capital Advance transaction and do not serve as [a director, officer or] [an] employee of the Owner. We have no undisclosed interest in the subject matters of this opinion;

(e) based solely upon the Surveyor's Certificate and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 12 U.S.C. 4012a(a). [Insert if flood insurance is required: based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 12 U.S.C. 4012a(a).]

(f) we [I]] do not represent any development team member (as defined in 24 CFR part 889 (section 202) or 24 CFR part 890 (811 program) or any other party or interest in connection with the above referenced housing project other than the Owner except for representation as the personal attorney for an individual associated with a development team member in matters not involving the housing project. If a dispute arises between the Owner and a development team member, my efforts will be directed exclusively towards serving the Owner. We [I] have submitted to HUD an Identity of Interest and Disclosure Certification;

(g) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy;

(h) we [I] hereby agree that we [I] will represent the Owner, if it so desires, in connection with the final capital advance disbursement by HUD, in which event I will be entitled to the 25% payment now being withheld; and

(i) Except for the 25% being withheld (amounting to $_____) we [I] have been paid in full for my services and to the best of my knowledge, information and belief the Owner is obligated to no other party on account of legal services, except that $_____ is payable upon disbursement of the capital advance.

The foregoing opinions are for the exclusive reliance of HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of the Owner, or prospective purchasers of the Project. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

_____

[Authorized Signature]

For use in the Section 202, Supportive Housing for the Elderly Program and Section 811, Supportive Housing for Persons with Disabilities Program

February 18, 1994.

Department of Housing and Urban Development, Federal Housing Administration

Instructions to Guide for Opinion of Owner's Counsel

Explanatory Comments

The guide for this opinion has been prepared in view of the ABA Accord and various state law bar reports on opinion letters.

The Department regards the counsel to the Owner as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing in connection with a first Mortgage (Deed of Trust) and Mortgage Note ("Capital Advance") from HUD to the Owner. Pursuant to 24 CFR part 24, 24.105(p), attorneys or others in a business relationship with the Owner are defined as "principals." Even though the Guide is quite different than its predecessor (HUD 90166–CA), such revision does not in any fashion relieve the counsel to the Owner of its obligations to its client and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Owner and any other attorneys involved in the transaction, should be thoroughly familiar with the regulations,

procedures and directives of the Department pertaining to each transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the Capital Advance Program (most of which are HUD Form documents) and cannot overemphasize the importance of the following:

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

With limited state law related exceptions, we expect that Owner's counsel will be able to follow the guide opinion and HUD field counsel should not accept opinions that otherwise substantially or materially deviate from the guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do not have time to negotiate each and every opinion and it is essential that the guide be followed in both style and substance in order to ensure a timely closing.

The counsel to the Owner is expected to complete a draft opinion for submission to HUD field counsel ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (blacklined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law must be brought to the attention of HUD's Office of General Counsel by field counsel along with an explanation as to the necessity for the deviation.

Brackets are used in the opinion letter to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The guide opinion contains some instructions and definitions and is largely self-explanatory; however, the following instructions and clarifications may be helpful. The numbers and letters used below relate to the paragraph numbers and letters in the guide opinion unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

• Letterhead and date: The opinion must be typed on the firm or single practitioner's letterhead and dated the date of the Capital Advance by HUD.

• Reference: Data regarding the project (name, HUD project number, and location must be accurate and inserted in the appropriate blanks.

• Addressees: The opinion must be delivered to HUD to establish the explicit right to rely on the opinion.

• Description of the Capital Advance: The Capital Advance amounts is the original principal amount of the Capital Advance unless a modification is necessitated in connection with the closing.

List of Documents

• In General: Each document executed in connection with the Capital Advance must be listed by its correct title. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction prior to submission to HUD of the initial draft. After HUD review of the initial draft, the opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the Capital Advance must be listed regardless of whether the document is required by HUD. The appropriate HUD or FHA form number, if applicable, must be indicated in parens after each document.

All of the Documents must be reviewed. The following HUD guidelines should be followed in preparing or reviewing the Documents.

1. HUD Handbook 4571.5, Supportive Housing for the Elderly—Conditional Commitment—Final Closing, dated July 1992, should be followed. This Handbook provides copies of most of the Documents required by HUD to be used in the 202 Program Closings. Until HUD publishes a similar Handbook for the Supportive Housing for Persons with Disabilities Program, section 811 Capital Advance closings shall follow the 4571.5 Handbook.

2. All 202 and 811 Owners must adopt the model Certificate of Incorporation (HUD-91732-A-CA) except for Field Counsel modifications related to State law or modifications required by the Internal Revenue Service. All other modifications must be approved by HUD.

3. The HUD field counsel have not been consistent in requiring HUD to be named in the Financing Statements as a secured party or as its interests may appear; consequently, the requirement that HUD be so named is now being standardized. This should be clarified through appropriate language in the Security Agreement. The purpose is to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. This is desirable in the event HUD exercises some of its remedies under the Regulatory Agreement in cases where the mortgage has not been assigned to HUD. It will not be necessary for HUD to consent to every UCC termination, renewal, assignment, etc. until HUD's rights as a secured party are established. HUD is being named "as its interests appear" so that, for example, where HUD obtains a court order, HUD will be able to establish a paramount interest in the Project income stream, and other personality pursuant to the Regulatory Agreement.

4. UCC searches: The UCC Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction. One or more UCC searches performed not more than 30 days prior to the date of the opinion of Owner's counsel must be made and retained by the field counsel in the Capital Advance file.

5. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

6. Survey: the survey must be signed, sealed and dated within 90 days of the closing.

7. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction.

8. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Capital Advance, they must be identified to the HUD field counsel as

well as details with respect to how such Financing Statements will be terminated at the time of closings.

9. If the Owner or any principal of the Owner is involved in any litigation, *all* such litigation matter(s) must be disclosed in writing to HUD field counsel. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel. As an example, it is not uncommon for neighbors of a proposed site for a group home for persons with disabilities to harbor discriminatory attitudes toward persons with disabilities and to sue to attempt to block the establishment or operation of a group home.

Acceptability of Counsel

• Owner's counsel must opine as to the law of the Property jurisdiction and the state of Owner's organization, if different from the Property jurisdiction. HUD requires that Owner's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the Owner and another with respect to the real property and Capital Advance issues. A combination of the Owner's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in the Capital Advance Closing File. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

• The opinion may be signed by an authorized person of the law firm, in that person's name.

Owner's Certification

• A form of Owner's Certification is attached. The form represents the minimum amount of information that should be obtained from the Owner (but additions, revisions and rephrasing are acceptable so long as the Owner is certifying as to factual matters and not legal conclusions). The Owner's Certification must be dated the same date as the Capital Advance Documents.

For use in the Section 202, Supportive Housing for the Elderly Program and Section 811, Supportive Housing for Persons with Disabilities Program

February 18, 1994.

Exhibit A To Opinion of Owner's Counsel

Certification of Owner

This Certification of Owner is made the _____ day of _____, 19_____, by _____, (the "Owner") for reliance upon by _____ (the "Owner's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by ("Owner's Counsel") as a condition for the making of a capital advance by the Department of Housing and Urban Development ("HUD") in the amount of $_____ (the "Capital Advance") to the Owner. In connection with the Opinion Letter, the Owner hereby certifies to Owner's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Owner or authorizing the Capital Advance, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Capital Advance as reflected in the Capital Advance Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Capital Advance Documents.

3. All tangible personal property of the Owner in which a security interest is granted under the Capital Advance Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personalty] is located at the Property (as defined in the Opinion Letter) and the Owner's [Chief Executive Office] [only place of business] [residence] is located in _____

4. The execution and delivery of the Capital Advance Documents will not (i) cause the Owner to be in violation of, or constitute a default under the provisions of any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Owner, the Property, or any other properties of the Owner [except as identified on Exhibit ____, List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

In witness whereof, the Owner has executed this Certification of Owner effective as of the date set forth above.

Owner:

_____

_____

_____

_____

_____

For use in FHA Insured Transactions

February 18, 1994.

Department of Housing and Urban Development, Federal Housing Administration

Instructions to Guide for Opinion of Mortgagor's Counsel

Explanatory Comments

The guide for this opinion has been prepared in view of changes in opinion practice as reflected by the ABA Accord and various state law bar reports on opinion letters.

The Department regards the counsel to the Mortgagor as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing where the mortgage note is endorsed for mortgage insurance by the Department. Pursuant to 24 CFR part 24, 24.105(p), attorneys or others in a business relationship with the Mortgagor are defined as "principals." Even though the Guide is quite different in form from its predecessor (FHA Form No. 1725), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Mortgagor of its obligations to its client, the Mortgagee and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Mortgagor and any other attorneys involved in the transaction, should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each mortgage insurance transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the mortgage insurance process (most of which are HUD form documents) and cannot overemphasize the importance of the following:

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

With limited state law related exceptions, we expect that Mortgagor's counsel will be able to follow the guide in rendering an opinion and HUD field counsel should not accept opinions that otherwise substantially or materially deviate from the guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do not have time to negotiate each and every opinion for stylistic changes and it is essential that the guide be followed in both style and substance in order to ensure a timely closing.

The counsel to the Mortgagor is expected to complete a draft opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (blacklined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law must be brought to the attention of the Assistant General Counsel, Multifamily Mortgage Division, by field counsel along with an explanation as to the necessity for the deviation.

It is anticipated that the guide can be utilized in connection with all types of closings: Insured advances or insurance upon completion (for new construction or substantial rehabilitation); final closings (for refinancings, etc.). Therefore, it is crucial that the correct options be selected in instances where choices are provided.

Brackets are used in the opinion letter to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The guide opinion contains some instructions and definitions and is largely self-explanatory; however, the following instructions and clarifications may be helpful. The numbers and letters used below relate to the paragraph numbers and letters in the guide opinion unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

• Letterhead and date: The opinion must be typed on the firm letterhead and dated the date of endorsement of the mortgage note by HUD.

• Reference: Data regarding the project (name, HUD project number, and location and the name or title of the Mortgagor must be accurate and inserted in the appropriate blanks.

• Addressees: The opinion must be delivered to HUD as well as the Mortgagee making the loan to establish the explicit right of each to rely on the opinion. The Mortgagee's counsel may be relying on the opinion for certain aspects of its opinion. If so, the opinion must also be addressed to counsel to the Mortgagee.

• Description of the Loan: The loan amount is the original principal amount of the loan being insured unless a modification is necessitated in connection with the closing.

• Source of funds for the Loan: In the second full sentence on page 2 the source of funds must be accurately identified.

List of Documents

• In General: If there are no brackets around a particular document, the document is one which is commonly used for initial endorsements for insured advances completion cases; however, it should be emphasized that it is impossible to list every document for every insured loan. Further, no attempt has been made to list all documents utilized in all types of refinancings and certain specialized programs, e.g. certificates of need and licenses for health care programs. Conversely, some documents may not be utilized in a particular transaction and should be deleted from the list in the actual opinion. Brackets around the name of the document indicate that the document may or may not be used for every loan. If bracketed documents are not used in a particular loan transaction, then delete such documents from the list in the actual opinion. Each document executed in connection with the loan must be listed by its correct title, showing each party executing it and its date. If documents are dated "as of" a particular date, then such phrase should be included in the description in the text. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction in the submission to HUD of the initial draft. After HUD review of the initial draft, the opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the loan transaction must be listed regardless of whether the document is required by HUD. The appropriate HUD or FHA form number, if applicable, must be indicated in parenthesis after each document. Please note that the Guide lists a four digit number after virtually all of the standard HUD documents. In many instances as these forms have been updated, the four digit number has been changed so that they are now preceded by a "9." However, HUD is in the process of changing to a standardized four digit number which should become effective in 1994.

A. Organizational Documents: All of the Organizational Documents must be reviewed.

1. In addition to reviewing the Organizational Documents listed in the opinion, the following HUD guidelines should be followed in preparing or reviewing the following organizational documents.

a. Corporate mortgagor—any form of corporate charter or articles of incorporation may be used which:

(1) Contains nothing inconsistent with the Regulatory Agreement,

(2) Gives the Mortgagor the powers necessary to operate the project and execute the note and mortgage, and

(3) Specifically authorizes the execution of the Regulatory Agreement.

Suggested charter provisions to accomplish the above are:

Purposes

(a) To create a private corporation to construct or to acquire a [rental housing project or health care facility] and to operate the same; (b) to enable the financing of the construction of such [rental housing project or health care facility] with the assistance of mortgage insurance under the National Housing Act; (c) to enter into, perform, and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to rents, sales, charges, capital structure, rate of return and methods of operation; (d) to acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary for the construction and operation of [the rental housing project or health care facility]; and (e) to borrow money, and issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien in furtherance of any or all of the objects of its business in connection with the [rental housing project or health care facility].

Powers

The corporation shall have the power to do and perform all things whatsoever set out in the PURPOSES section, and necessary or incidental to the accomplishment of said purposes.

The corporation, specifically and particularly, shall have the power and authority to enter into a Regulatory Agreement with the Secretary of Housing and Urban Development setting out the requirements of the Department.

b. Partnership Mortgagor—A copy of the partnership agreement should be

furnished and should be examined to determine that it contains nothing inconsistent with the Regulatory Agreement and that the term of the partnership equals or exceeds the term of the Mortgage Loan. It should further contain a provision substantially as follows:

The partnership is authorized to execute a note and mortgage in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loan. Any incoming general partner shall as a condition of receiving an interest in the partnership agree to be bound by the note, mortgage, and Regulatory Agreement and other documents required in connection with the FHA insured loan to the same extent and on the same terms as the other general partners. Upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

c. Trust—any Trust Agreement before it is finally accepted generally should:

(1) Give the trustee the powers necessary to execute the note and mortgage;

(2) Specifically authorize the execution of the Regulatory Agreement;

(3) Contain nothing inconsistent with the Regulatory Agreement;

(4) Prohibit the transfer of beneficial interest prior to completion of the project without the prior written consent of the Secretary and prohibit the transfer of such interest subsequent to completion of the project unless the new beneficiary assumes and agrees to be bound by the Regulatory Agreement; and

(5) Require that the Secretary be advised ten (10) days prior to any proposed transfers of beneficial interests.

G. The HUD field counsel have not been consistent in requiring HUD to be named in the Financing Statements as a secured party or as its interests may appear; consequently, the requirement that HUD be so named is now being standardized. This should be clarified through appropriate language in the Security Agreement. The purpose is to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. This is desirable in the event HUD exercises some of its remedies under the Regulatory Agreement in cases where the mortgage has not been assigned to HUD. It will not be necessary for HUD to consent to every UCC termination, renewal, assignment, etc. until HUD's rights as a secured party are established. HUD is being named "as its interests appear" so that, for example, where HUD obtains a court order, HUD will be able to establish a paramount interest in the Project income stream, and other personalty pursuant to the Regulatory Agreement.

Q. UCC searches: The UCC search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction.

T. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. In refinancing cases where no construction is involved, the evidence may be in the form of a letter certifying that the existing building(s) is (are) in compliance with outstanding zoning requirements or, if not, the nonconforming variance, etc., is acceptable. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

W. Survey: The survey must be signed, sealed and dated within 90 days of the closing.

LL. Bond documents: This does not include all documents involved in the typical bond financing. It does include those principal documents such as the Prospectus, the Indenture, a sample Bond, etc. Moreover, all documents executed by the Mortgagor or which establish or describe any obligations of the Mortgagor must be included.

OO. Docket search: The Docket search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction.

Opinions

1. This paragraph contains several options depending upon whether the Mortgagor's organizational documents were prepared by counsel rendering the opinion and the type of mortgagor entity. Care should be taken to ensure that the correct option is selected and that the requisite information is inserted correctly. It is intended that, where the mortgagor entity or general partner of the mortgagor entity is established by counsel to the Mortgagor, no reliance on other sources is permitted and counsel must opine as to the due organization of the Mortgagor. If a Certificate of Good Standing is not available in the State, but an equivalent document is (i.e., Certificate of Existence), then the bracketed language must be revised to reflect the name/title of the equivalent document so obtained. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the opinion of Mortgagor's counsel. If a Certificate of Good Standing or equivalent document cannot be obtained from the applicable governmental authority (e.g., for general partnerships, then the Mortgagor's attorney will be required to do the due diligence necessary to give the opinion or may engage other counsel to render such opinion). If the Property jurisdiction is not the State of formation for the mortgagor entity, counsel must also opine that the Mortgagor is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the opinion as an exhibit. If the Mortgagor is an individual, paragraph one should be deleted from the opinion.

7. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Loan, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings.

11. If the Mortgagor or any principal of the Mortgagor is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel in order that the Department can determine whether the endorsement of the loan is possible. If

the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel. As an example, it is not uncommon for neighbors of a proposed site for a group home for persons with disabilities to harbor discriminatory attitudes toward persons with disabilities and to sue to attempt to block the establishment or operation of a group home.

13. If the property is an elderly housing project or a health care facility or if the loan otherwise is to be secured by significant amounts of personal property, the matter should be discussed with field counsel. In the event further discussion is necessary, field counsel should contact the Assistant General Counsel, Multifamily Mortgage Division. For projects in which the personalty is mostly household appliances (e.g., refrigerators) or a limited quantity of smaller equipment, the opinion will be limited as shown.

One or more UCC searches performed not more than 30 days prior to the date of the opinion of Mortgagor's counsel must be made and retained by the field counsel in the loan file.

15. If the Mortgagor is a trust (other than a land trust), then Paragraph 15 must be included in the opinion letter. The second sentence need only be included if the trust was formed in a jurisdiction other than the Property jurisdiction.

Acceptability of Counsel

• Mortgagor's counsel must opine as to the law of the Property jurisdiction and the state of Mortgagor's organization, if different from the Property jurisdiction. HUD requires that Mortgagor's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the Mortgagor and another with respect to the real property and loan issues. A combination of the Mortgagor's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

• The opinion may be signed by an authorized person of the law firm, in that person's name.

Mortgagor's Certification

• A form of Mortgagor's Certification is attached. The form represents the minimum amount of information that should be obtained from the Mortgagor (but additions, revisions and rephrasings are acceptable so long as the Mortgagor is certifying as to factual matters and not legal conclusions). The Mortgagor's Certification must be dated the same date as the Loan Documents.

For use in FHA Insured Transactions

February 18, 1994.

Department of Housing and Urban Development, Federal Housing Administration

Guide for Opinion of Mortgagor's Counsel

[To be typed on firm letterhead]

[Insert date of endorsement]

Re: Project Name _____

FHA Project No. _____

Location _____

Mortgagor _____

[Mortgagee]
[Address]

[Mortgagee's Attorney]
[Address]

Federal Housing Commissioner
[Insert Appropriate Field Office Address]

Ladies and Gentlemen:

We are [I am] [general/special] counsel to _____ [Insert Name of Mortgagor] (the "Mortgagor"), a _____, [Insert Type of Entity] organized under the laws of the State of _____ [Insert State] (the "Organizational Jurisdiction"), in connection with a mortgage loan (the "Loan") in the [original/increased] principal amount of _____ Dollars ($_____) from _____ [Insert Name and Type of Mortgagee] (the "Mortgagee") to the Mortgagor. The proceeds of the Loan will be used to [construct/rehabilitate/purchase/refinance] a loan secured by that certain [multifamily housing/hospital/extended care facility/nursing home/board and care] _____ located in _____ [Insert County and State] (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described on Exhibit _____ [Attach Legal Description] (together with all improvements and fixtures thereon) (the "Property"). The Loan is being insured by the Federal Housing Administration (FHA), an organizational unit of the United States Department of Housing and Urban Development ("HUD"), pursuant to a commitment for insurance [of advances or upon completion or for refinancing] issued to Mortgagee by _____, Agent of the Federal Housing Commissioner, dated _____ [as amended by that certain letter from _____ to _____, dated _____] ("FHA Commitment"). The Loan is being funded from _____ [Describe Financing Source, e.g., tax-exempt bonds/mortgage backed securities guaranteed by GNMA/participation certificates, etc.] The Mortgagor has requested that we [I] deliver this opinion and has consented to reliance by Mortgagee's counsel in rendering its opinion to Mortgagee and to reliance by Mortgagee and HUD in making and insuring, respectively, the Loan and has waived any privity between Mortgagor and us [me] in order to permit said reliance by Mortgagee, counsel to Mortgagee and HUD. We [I] consent to reliance on this opinion by Mortgagee, counsel to Mortgagee, and HUD.

In our [my] capacity as [general/special] counsel to the Mortgagor, we [I] have prepared or reviewed the following:

A. The [Describe Organizational Documents, e.g. for corporations: certified copies of the articles of incorporation, the by-laws, the borrowing resolution, the incumbency certificate and the good standing certificate(s); for partnerships: certified copies of the partnership agreement and any amendments thereto, the certificate of limited partnership, and any amendments thereto, the good standing certificate (or its equivalent) if provided in the Organizational Jurisdiction, etc.] of the Mortgagor (collectively, the "Organizational Documents");

B. The FHA Commitment [and assignment(s) thereof, if any];

C. The Commitment executed by the Mortgagee and accepted by the Mortgagor, dated _____, (the "Loan Commitment");

D. The Regulatory Agreement (_____) [Insert Appropriate Form No.] by and between HUD and the Mortgagor, dated _____, (the "Regulatory Agreement");

E. The Note (_____) [Insert Appropriate Form No.] in the original principal amount of _____ Dollars ($_____) or in the increased principal amount of _____ Dollars ($_____) by Mortgagor in

favor of Mortgagee, dated _____, (the "Note");

F. [The Mortgage or Deed of Trust] (_____ [Insert Appropriate Form No.]), executed by Mortgagor for the benefit of Mortgagee, granting a security interest in the Property, dated _____, (the "Mortgage");

G. [Insert the Number of UCC's to be Filed] Uniform Commercial Code Financing Statements executed by the Mortgagor as debtor and naming the Mortgagee and HUD as secured parties or as their interests may appear, to be filed in _____, [Insert Location(s)] (the Filing Offices), upon the [Describe Events] (the "Financing Statements");

H. The Security Agreement by and between Mortgagor and the Mortgagee, granting a security interest under the Uniform Commercial Code, in those items of personality described therein, dated _____, (the "Security Agreement");

[I. [To be Inserted If the Mortgage is on a Leasehold Estate] The Ground Lease executed by _____, [Insert Lessor] as lessor and Mortgagor as lessee recorded in the land records of _____, dated _____, (the "Ground Lease").]

[J. [To be Inserted for Construction/Rehabilitation Loans] The Building Loan Agreement (2441) executed by Mortgagee and Mortgagor, dated _____, (the "Building Loan Agreement").]

[K. [To be Inserted for Construction/Rehabilitation Loans] The Construction Contract [Lump Sum (2442) or Cost Plus (2442–A)] executed by _____ (the "General Contractor") and Mortgagor, dated _____ (the "Construction Contract").]

L. The Mortgagee's Certificate (2434), executed by the Mortgagee, dated _____.

M. The Mortgagor's Certificate (2433), executed by the Mortgagor, dated _____.

N. The Agreement and Certification (3305 or 3305A or 3306 or 3306A), executed by the Mortgagor, dated _____.

O. The Mortgagor's Oath (2478), executed by the Mortgagor, dated _____.

P. The Mortgagor's Opinion Certification, pertaining to factual matters relied on by us [me] in rendering this opinion, executed by the Mortgagor, dated _____, a copy of which is attached hereto as Exhibit _____ (the "Mortgagor's Opinion Certification").

Q. A search conducted by _____ dated _____ [no earlier than 30 days before this opinion] of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the "UCC Search").

[R. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____, (the "Flood Insurance Receipt").]

S. The Title Insurance Policy issued by _____ [acceptable company under HUD's regulations], together with all endorsements, and naming HUD and the Mortgagee as insureds as their interests may appear, dated _____, (the "Title Policy").

T. The following documents evidencing zoning compliance, _____, [Describe all Documents Fully] (the "Zoning Certificate").

U. The building permit(s) issued on _____ by _____ (the "Building Permit").

V. The following permits, _____, [Describe Permits] which are required for the operation of the project, issued by _____ on _____ ("Other Permits").

W. [The Surveyor's Plat or Survey showing completed project], prepared by _____, dated _____, (the "Survey").

X. The Surveyor's Certificate (2457), executed by _____, dated _____, (the "Surveyor's Certificate").

[Y. The deferred note (1710, 1712 or 2223) executed by Mortgagor in favor of _____, dated _____, (the "Deferred Note").]

Z. [The Performance Bond (2452) and/or the Payment Bond (2452–A)] issued by the General Contractor to secure the payment by/performance of _____ and running to _____ or the Completion Assurance Agreement (2450) executed by the General Contractor, dated _____, (the "Assurance of Completion").

AA. The Owner-Architect Agreement (AIA B181 with HUD Supplement) executed by _____ [Insert Design and/or Construction Architect] and Mortgagor, dated _____, (the "Owner-Architect Agreement").

[BB. The Off-Site Bond (2479) issued by _____ to secure the completion of off-site work by _____ and running to the Mortgagee and HUD or Escrow Agreement for Off-Site Facilities (2446) with Schedule "A" executed by _____ dated _____ (the "Assurance of Completion of Off-Site Facilities").]

CC. The documents _____ [Describe Fully] assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services").

DD. The Contractor's and/or Mortgagor's Cost Breakdown (2328) executed by the General Contractor, dated _____, (the "Cost Breakdown").

[EE. The Latent Defects Bond (3259) issued by _____ and securing the performance of the General Contractor and running to the Mortgagee and HUD or Escrow executed by _____, dated _____ (the "Guarantee against Latent Defects").]

[FF. The Escrow Deposit Agreement for Incomplete On-Site Improvements (2456) with Schedule A executed by the General Contractor, dated _____, (the "On-Site Deposit Escrow").]

GG. The Contractor's Prevailing Wage Certificate (2403–A) executed by _____, dated _____, (the "Contractor's Prevailing Wage Certificate").

HH. The Request for Endorsement of Credit Instrument (2023) and/or Certificate of Mortgagor and Mortgagee (2455) executed by the Mortgagor and the Mortgagee, dated _____, (the "Request for Endorsement"). [Modify as Appropriate for Insurance Upon Completion, Refinancings, Etc.]

[II. The Operating Deficit Escrow executed by _____, dated _____, (the "Operating Deposit Escrow").]

[JJ. The Repair Escrow executed by _____, dated _____, (the "Repair Escrow").]

[KK. All documents executed by Mortgagor and any State or local government entity pertaining to development of the Property (the "Public Entity Agreement").]

[LL. The following documents executed or delivered in connection with the financing of the loan with the proceeds of bonds exempt from federal taxation: _____ [List Documents in Accordance With Instructions] (the "Bond Documents").]

MM. The Good Standing Certificate(s) issued by [Organizational Jurisdiction OR Property Jurisdiction, if different], dated _____ [Date Inserted Must be Within 30 Days of the Date of Endorsement], (the "Good Standing Certificate").

NN. The certificate executed by _____ [Insert Architect or Other Professional], dated _____, (the "Certificate").

OO. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Property is located; (ii) the jurisdiction(s) where the Mortgagor is

located and does business; and (iii) the jurisdiction where the general partner of the Mortgagor is organized (the "Docket Search").

Note: Numerical references in parentheses above are to FHA and HUD form numbers.

The documents listed in B through I above are referred to collectively as the "Loan Documents." The documents listed in J through OO are referred to collectively as the "Supporting Documents." The documents listed in A through OO are referred to collectively as the "Documents."

In basing the opinions set forth in this opinion on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Mortgagor, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Mortgagor in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Document, other than the Mortgagor (and any person executing any of the Documents on behalf of the mortgagor), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Mortgagor (and any person executing any of the Documents on behalf of Mortgagor) are genuine.

(e) All Documents, which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and/or assigns will: (i) act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Mortgagor has title or other interest in each item of (i) real and (ii) tangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Loan Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Loan as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Mortgagor's Opinion Certification, the Good Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Mortgagor as to the accuracy and completeness of the Mortgagor's Opinion Certification, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

[To be used in cases where organizational documents were prepared by mortgagor's attorney]

1. The Mortgagor is a _____ [Insert Type of Entity] duly organized and validly existing under the laws of the Organizational Jurisdiction. The Mortgagor is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [ ], is in good standing under the laws of the Organizational Jurisdiction, [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction.]

[Or, if the mortgagor is a trust]

The Mortgagor is _____ [Insert Name of the Type of Trust] duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

[And, if the general partner of a partnership mortgagor is an entity]

The general partner of the Mortgagor is a _____ [Insert Type of Entity], duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [ ], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____

[Insert Type of Entity] in the Property Jurisdiction].

[To be used in cases, principally refinancing, where organizational documents were not prepared by mortgagor's attorney]

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [ ], the Mortgagor is a _____ [Insert Type of Entity] validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction.

[Or, if the mortgagor is a trust]

The Mortgagor is _____ [Insert Name of the Type of Trust] validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign _____ entity in the Property Jurisdiction].

[And, if the general partner of a partnership mortgagor is an entity]

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [ ], the general partner of the Mortgagor is a _____ [Insert Type of Entity], validly existing and in good standing under the laws of _____ [Insert State] [and is qualified to do business as a foreign _____ [Insert Type of Entity] in the Property Jurisdiction].

2. The Mortgagor has the [corporate/partnership/trust] power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA Commitment.

3. The execution and delivery of the Loan Documents by or on behalf of the Mortgagor, and the consummation by the Mortgagor of the transactions contemplated thereby, and the performance by the Mortgagor of its obligations thereunder, have been duly and validly authorized by all necessary [corporate/partnership/trust] action by, or on behalf of, the Mortgagor.

4. No authorization, consent, approval, permit, or other action by, or filing with, any Organizational and Property Jurisdictions or federal court or governmental authority, other than those that have been obtained, as disclosed on Exhibit _____, attached hereto, and those listed at Paragraphs _____ of this opinion [i.e. good standing certificate] are required in connection with the execution and delivery by the Mortgagor of the Loan Documents or the ownership [and operation] of the Property.

5. Each of the Loan Documents has been duly executed and delivered by the Mortgagor and constitutes the valid and legally binding promises or obligations of the Mortgagor, enforceable against the Mortgagor in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and

(ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and

(iii) certain remedies, waivers, and other provisions of the Loan Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Mortgagor to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. To be inserted when any or all of the loan documents are not HUD approved forms or when HUD approved forms have been revised or modified in connection with the loan] The execution and delivery and receipt of, and the performance of the obligations under, the Loan Documents will not violate the Organizational Documents of the Mortgagor or the applicable statutes and regulations of HUD in effect on the date of the FHA Commitment.

[7. Insert for loans involving construction or rehabilitation] To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, executed by, and referred to in the Construction Contract (the "Plans and Specifications").]

8. [Insert if there is no zoning endorsement incorporated into the title policy] The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

or

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. Use for new construction or substantial rehabilitation in cases where the department does not receive a certificate directly from the professional] Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.

[Use for refinancings] Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements.]

10. Based solely on (a) our [my] knowledge and (b) the Mortgagor's Opinion Certification, the execution and delivery of the Loan Documents will not: (i) Cause the Mortgagor to be in violation of, or constitute a default under the provisions of, any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever on any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

11. Based solely on (a) our [my] knowledge, (b) the Mortgagor's Opinion Certification and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Mortgagor, or the Property, [to be inserted when mortgagor is not a sole-asset mortgagor] or any other properties of the Mortgagor] [, except as identified on Exhibit _____].

12. The Mortgage is in appropriate form for recordation in _____ [insert proper name of local land records office] of _____ [Insert County or City] of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Mortgagor located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code in effect in the Project Jurisdiction, a security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are

required to be filed in order to perfect the Mortgagee's security interest in the Personalty.

14. The Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

[15. [[For use only if mortgagor is a trust] The Mortgagor is an irrevocable trust that has a term consistent with HUD's requirements and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that the Mortgagor may be formed in a jurisdiction other than the Property Jurisdiction. The Mortgagor can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of the Mortgagor, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in [Property Jurisdiction].

[16. [Use in Cases Involving Bond Financing] Based solely on the opinion of _____ [Insert Bond Counsel], dated as of the date hereof and attached hereto as Exhibit _____, to the extent that any of the provisions of the Bond Documents are inconsistent with any of the provisions of the Loan Documents or Supporting Documents, the provisions of the Loan Documents or Supporting Documents shall govern.]

[17. [Use in cases where the development of the property is governed by an agreement with a public entity] Based upon our knowledge and the Mortgagor's Opinion Certification, there is no default under the Public Entity Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing Statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Mortgagor in each of the Documents and the Title Policy and FHA Commitment is the correct legal name of the Mortgagor;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Appendix _____ hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which has been made; and we [I] agree not to assert a claim or lien against the Project, the Property, the Mortgagor, the Loan proceeds or income of the Project;

(d) other than as counsel for the Mortgagor, we have no interest in the Mortgagor (or any principal thereof) or the Mortgagee or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of the Mortgagor or the Mortgagee. We have no undisclosed interest in the subject matters of this opinion;

(e) based solely on the Surveyor's Certificate and the Surveyor's Plat, flood insurance [is or is not] required pursuant to 12 U.S.C. 4012a(a); [insert if flood insurance is required. Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 12 U.S.C. 4012a(a);] and

(f) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of Mortgagee, its counsel and HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of Mortgagee, or prospective purchasers of the Loan. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

[Authorized Signature]

[FR Doc. 94–4823 Filed 3–2–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–786696

Applicant: International Crane Foundation, Baraboo, WI

The applicant requests a permit to export 6 Japanese (*Grus japonensis*) and 6 white-naped (*Grus vipio*) crane eggs to Khinganski Nature Reserve, Russia, for the purposes of enhancement of propagation and survival of the species.

PRT–785943

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import blood and tissue samples obtained opportunistically from animals that have been immobilized by the Malaysian Wildlife Department for various management studies. The samples will be imported for scientific analyses to enhance the propagation and survival of the species and will be obtained from the following species: flat-headed cat (*Felis planiceps*), Temminck's cat (*Felis temmincki*), clouded leopard (*Neofelis nebulosa*), marbled cat (*Felis marmorata*), orangutan (*Pongo pygmaeus*), proboscis monkey (*Nasalis larvatus*), gibbons (*Hylobates muelleri*), Sumatran rhino (*Dicerorhinus sumatrensis*), helmeted hornbill (*Rhinoplax vigil*), saltwater crocodile (*Crocodylus porosus*), tomistoma (*Tomistoma schlegelii*), and Asian elephant (*Elephas maximus*).

PRT–785556

Applicant: Matson's Laboratory, Milltown, MT

The applicant requests a permit to import up to 47 teeth from woods bison (*Bison bison athabascae*) that were obtained opportunistically from legally hunted animals and/or animals found dead for age determination to enhance the survival of the species through population studies.

PRT–676811

Applicant: U.S Fish and Wildlife Service, Regional Director—Region 2

The applicant requests an amendment to their current permit to include take activities for Barton Springs salamander (*Eurycea sosorum*) for the purpose of scientific research and the enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–702631

Applicant: U.S. Fish and Wildlife Service, Regional Director—Region 1

The applicant requests an amendment to their current permit to include take activities for Pacific Pocket Mouse (*Perognathus longimembris pacificus*) for the purpose of scientific research and the enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–786662

Applicant: Dallas Zoo, Dallas, TX

The applicant requests a permit to import two captive-born male gorillas (*Gorilla gorilla gorilla*) from the Metropolitan Toronto Zoo, Ontario, Canada, for the purpose of enhancement of propagation and survival of the species.

PRT–785956

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import blood samples obtained opportunistically from the black caiman (*Melanosuchus niger*), Apaporis river caiman (*Caiman crocodilus apaporiensis*), Yacare caiman (*Caiman crocodilus yacare*), and broad-snouted caiman (*Caiman latirostris*) while they have been immobilized by Peruvian scientists for various management studies. The samples will be imported for scientific analyses to enhance the propagation and survival of the species

PRT–785185

Applicant: Columbus Zoo, Powell, OH

The applicant requests a permit to export a pair of orangutans (*Pongo pygmaeus*) to the Parque Zoological Nacional, Santo Domingo, Dominican Republic for educational display to enhance the survival of the species.

PRT–787373

Applicant: George A. Robinson, Houston, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by E.L. Pringle, "Huntly Glen", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–785649

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import blood samples from chimpanzee (*Pan troglodytes*) and Pygmy chimpanzee (*Pan paniscus*), gorilla (*Gorilla gorilla*), Northern white rhinoceros (*Ceratotherium simum cottoni*), and African elephant (*Loxodonta africana*) for the purpose of scientific research and enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 25, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–4825 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

File No. PRT–786616.

Applicant: Marine World Africa USA, Vallejo, CA.

Type of Permit: Take for public display.

Name and Number of Animals: Up to 6—Walrus (*Odobenus rosmarus*).

Summary of Activity to be Authorized: The applicant requests a permit to take (permanently remove) from the wild up to 6 young walrus (2 males and 4 females less than 2 years of age) that are orphaned during Native Alaskan subsistence hunting in Alaska. Animals will be flown to Marine World Africa USA for public display purposes.

Source of Marine Mammals for Research/Public Display: Wild walruses located in Alaskan waters near St. Lawrence Island, Little Diomede Island, King Island and the Barrow/Wainwright region.

Period of Activity: From 1994 through 1999.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 432, Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–4826 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Olympic Experimental State Forest Management and Research Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) and Washington State Department of Natural Resources (WDNR) intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS). This notice is being furnished pursuant to the Council on Environmental Quality's regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) regulations (40 CFR 1508.22). The Service will consider a proposal to recommend that the Secretary of Interior (Secretary) approve a management and research plan for the Olympic Experimental State Forest upon its submission by the WDNR. The Secretary will determine whether the plan provides for the conservation of listed species within the plan area, under the general provisions of Public Law 102–436 title II and the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

To satisfy both Federal and State environmental policy act requirements, the Service and WDNR are conducting joint scoping processes for the preparation of an EIS. Interested agencies, organizations, and individuals are encouraged to provide written comments on the issues which should be addressed in the EIS, to the Service or WDNR.

DATES: Written comments regarding the scope of the EIS should be received on or before April 4, 1994.

ADDRESSES: Comments regarding the scope of the EIS should be addressed to Mr. Curt Smitch, U.S. Fish and Wildlife Service, 3773 Martin Way East, Building C, Suite 101, Olympia, WA 98501. Please refer to File No. 94–021101 on all comments.

FOR FURTHER INFORMATION CONTACT: Informational materials and comments received to date will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the Washington Department of Natural Resources, 1111 Washington St. SE, Olympia, WA 98504–7001; for appointment call Mary Ellen Birli at 206–902–1353.

Scoping workshops may be scheduled as a further opportunity for interested persons to comment on the scope of the EIS. Interested persons may contact Mary Ellen Birli at 206–902–1353 to receive information about additional opportunities for participation.

SUPPLEMENTARY INFORMATION: An experimental forest for state-managed lands on the Western Olympic Peninsula was recommended in 1989 by the Commission on Old Growth Alternatives—a citizens' advisory group with broad representation. The stated purpose was twofold: To test innovative methods of forest management designed to produce a sustained level of timber harvest while simultaneously protecting and restoring the forest ecosystem. The Olympic Experimental State Forest includes all state-owned lands on the western Olympic Peninsula, north of the Queets River. It is located in Clallam and Jefferson counties and totals 264,000 acres of forest lands.

The listing of the northern spotted owl (*Strix occidentalis caurina*) as "threatened" under the Act in 1990, required that activities in the area proposed for the Olympic Experimental State Forest comply with section 9 of the Act which prohibits the "take" of listed species. Such prohibition limits the range of options for experimentation and research available on the experimental forest. See also 50 CFR 17.31(a).

In October 1992, Congress passed legislation (Pub. L. 102–436, title II) specifically addressing the Olympic Experimental State Forest. The purpose of the legislation is:

> "To assist the experimental management and research program being conducted by the State of Washington on State-owned trust lands on the western Olympic Peninsula in order to contribute to the conservation of the northern spotted owl, old growth ecosystems and fishery resources and to provide for a sustainable supply of timber and trust income in a manner that is consistent with these conservation objectives."

The WDNR is proposing to develop a plan for the operation of an experimental forest on state managed lands on the Olympic Peninsula. This planning effort is encouraged by federal legislation (Pub. L. 102–436 Title II) that allows the WDNR to develop an integrated plan for species conservation, research, and commodity production across the 264,000 acres of state managed forested lands on the Olympic Peninsula. The plan is intended to enable the WDNR to implement an experimental management and research program while continuing some timber harvest in a way that is consistent with the Act. The plan is to provide necessary guidance in the implementation of cooperative research projects, monitoring programs, and forest land management. The plan will be developed in consultation with the Washington State Department of Wildlife and the University of Washington's Olympic Natural Resources Center.

The WDNR will seek federal approval of its plan as called for in Public Law 102–436 Title II and as necessary to meet the applicable requirements of the Act, as necessary. Upon submission of the plan and public review and comment, the Secretary shall determine whether the plan provides for the conservation of the northern spotted owl in the experimental forest and whether it is consistent with northern spotted owl recovery goals. If the WDNR's plan for the experimental forest is approved by the Secretary, actions to implement it will not be considered a prohibited "taking" of the northern spotted owl pursuant to Public Law 102–436, title II, section 204(d).

One issue to be examined during the scoping is the effect of the plan on other listed species, such as the marbled murrelet (*Brachyramphus marmoratus marmoratus*) and bald eagle (*Haliacetus leucorephalus*), and possible methods of addressing these effects under the Act. Another issue to be examined is the effect of the plan on anadromous fish stocks found in this part of the Olympic Peninsula.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, 42 U.S.C., and implementing regulations.

(Notice: Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Olympic Experimental State Forest Management and Research Plan.)

Dated: February 24, 1994.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 94–4836 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AZ–046–4210–03–04; AZA 7878]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On March 11, 1992, the following public lands in Pima County, Arizona, were included in a Notice of Realty Action (NORA) published in the **Federal Register** at 57 FR 48 (pp. 8672) as possible selected lands in an exchange. That Notice of Realty Action is hereby canceled for the lands listed below. Instead, the lands have been examined and found suitable for classification for lease or conveyance to the Tucson Unified School District as an

addition to Hohokam Middle School site under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq*).

Gila and Salt River Meridian, Arizona

T. 15 S., R. 13 E.,
Sec. 19, E½NW¼NE¼NW¼, NE¼SW¼NE¼NW¼.
Containing 7.50 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning, and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the materials.

4. All valid existing rights documented on the official public land records at the time of patent issuance.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tucson Resource Area, 12661 East Broadway Boulevard, Tucson, Arizona 85748.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed lease or conveyance or classification of the lands to the District Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a school site addition. Comments on the classification are restricted to whether the lands are physically suited for the proposal, whether the use will maximize the future use or uses of the lands, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school site addition.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

Dated: February 18, 1994.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 94–4783 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–32–M

[ID–942–04–406A–02]

Idaho: Filing of Plats of Survey; Idaho

The plats of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., February 23, 1994.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, subdivisions of sections 25 and 26, and the boundaries of certain mineral surveys, and the survey of certain lots in sections 25 and 26, Township 4 North, Range 18 East, Boise Meridian, Idaho, Group No. 874, was accepted February 18, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 30, Township 4 North, Range 19 East, Boise Meridian, Idaho, Group No. 874, was accepted February 18, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: February 23, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–4884 Filed 3–2–94; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–360]

Decision Not To Review an Initial Determination Granting a Motion To Amend the Notice of Investigation To Add Two Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of certain devices for connecting computers via telephone lines.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting complainant Farallon Computing, Inc.'s ("Farallon") motion to amend the notice of investigation to add two respondents to the investigation.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the Federal Register on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of U.S. Letters Patent 5,003,579.

On January 18, 1994, complainant filed a motion to amend the notice of investigation to add the following respondents to the investigation: Ji-Haw Industrial Co. Ltd., of Taiwan ("Ji-Haw"), and Tri-Tech Instruments Co. Ltd., of Taiwan ("Tri-Tech"). In requesting this action, Farallon stated that the identities of the two additional proposed respondents were not revealed until after the institution of this investigation. The Commission investigative attorney supported the motion. On February 2, 1994, the ALJ issued an ID (Order No. 2) granting complainant's motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in

connection with this investigation are or will be available for inspection during the 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 at 202–205–1810.

Issued: February 25, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4859 Filed 3–2–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–641 (Final)]

Ferrosilicon From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil of ferrosilicon,[2] provided for in subheading 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also unanimously determines, pursuant to § 735(b)(4)(A) of the Act, that critical circumstances do not exist with respect to ferrosilicon imports from Brazil; thus, the retroactive imposition of antidumping duties is not necessary.

Background

The Commission instituted this investigation effective August 12, 1993, following a preliminary determination by the Department of Commerce that imports of ferrosilicon from Brazil were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing 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 August 26, 1993 (58 FR 45120). The hearing was held in Washington, DC, on September 14, 1993, 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 18, 1994. The views of the Commission are contained in USITC Publication 2722 (February 1994), entitled "Ferrosilicon from Brazil: Investigation No. 731–TA–641 (Final)."

Issued: February 28, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4879 Filed 3–2–94; 8:45 am]

BILLING CODE 7020–02–P

[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, the subject product is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than 8 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 phosphorus, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

[Investigation 337–TA–356]

Initial Determination Terminating Respondents 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 respondents on the basis of a settlement agreement: Mitsubishi Electric Corporation (Japan) and Mitsubishi Electronics America, Inc.

In the Matter of certain integrated circuit devices processes for making same, components thereof, and products containing same.

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 25, 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.

Issued: February 25, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4878 Filed 3–2–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–358]

Commission Determination To Adopt the Administrative Law Judge's Initial Determination Denying the Motion of Complainant for Temporary Relief

In the Matter of certain recombinantly produced human growth hormones.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (Commission) has determined to adopt the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation denying complainant Genentech, Inc.'s motion for temporary relief.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 29, 1993, based on a complaint filed by Genentech, Inc. of South San Francisco, California. 58 FR 50954. The following firms were named as respondents: Novo Nordisk A/S of Denmark; Novo Nordisk of North America, Inc. of New York; ZymoGenetics, Inc. of Seattle, Washington (collectively, the Novo respondents); Bio-Technology General Corp. of New York; and Bio-Technology General Corp. (Israel) Ltd. (collectively, the BTG respondents). The Commission also provisionally accepted Genentech's motion for temporary relief. *Id.* The Commission terminated the temporary relief proceedings as to the Novo respondents on the basis of a consent order. 58 FR 60672 (November 17, 1993).

The presiding ALJ held an evidentiary hearing on temporary relief from December 13–18, 1993. On January 26, 1994, the ALJ issued an ID denying Genentech's motion for temporary relief. On February 7, 1994, the parties filed written comments concerning the ID. Parties filed reply comments on February 11, 1994. No government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.24(e).

Copies of the ID 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 persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 25, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4877 Filed 3–2–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–198 (Sub-No. 1)]

Policy Statement on Motor Contract Requirements Under the Negotiated Rates Act of 1993

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Policy statement.

SUMMARY: The ICC is issuing a policy statement (set forth below) explaining and interpreting new statutory requirements governing the form and minimum contents for transportation agreements executed by motor contract carriers. These new requirements are in section 6 of the Negotiated Rates Act of 1993 (Pub. L. 103–180) and apply to contracts entered into after March 3, 1994. The Commission does not plan to issue a further decision unless the comments expose issues that require additional clarification.

DATES: This policy statement is effective on February 28, 1994. Comments are due on April 4, 1994.

ADDRESSES: Send comments (an original and 10 copies), referring to Ex Parte No. MC–198 (Sub-No. 1), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–6373. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Section 6 of the Negotiated Rates Act of 1993 (NRA), added new statutory requirements governing the form, minimum contents, and retention period for transportation agreements executed by motor contract carriers, as well as regulatory auditing and enforcement by the Commission of contract carriage requirements. By this policy statement, we discuss these new requirements and explain how we interpret certain of the new provisions.

Background

The new requirements are similar to our prior regulations at 49 CFR 1053.1 (1991 ed.). They required contract carriers to enter into bilateral written contracts that (*inter alia*): (a) Named the particular shipper or shippers involved, and (b) covered a series of shipments during a stated period of time in contrast to separate contracts of carriage governing individual shipments. A number of defunct carriers have sought to disavow their own contract carriage agreements by alleging technical noncompliance with those regulations.[1] In an effort to prevent such a misuse of its regulations, the Commission repealed those regulations, in Contracts for Transportation of Property, 8 I.C.C.2d 520 (1992) (*Contracts*), *app. pending sub nom. Central States Motor Freight Bureau, Inc.* v. *ICC*, Nos. 92–1258 *et al.* (D.C. Cir. argued June 12, 1992; petitioners' motions to dismiss as moot pending). In section 6 of the NRA, Congress adopted the essential requirements of the repealed regulations. Congress' stated objective was "to limit the potential for unwarranted future undercharge claims." H. Rep. 103–359, 103d Cong., 1st Sess. 10 (1993).

Requirements of Section 6 of the NRA

Section 6(a) of the NRA contains the new regulatory requirements to be codified at 49 U.S.C. 10702(c).[2] New section 10702(c)(1) of the Interstate Commerce Act requires that, for motor transportation contracts entered into after March 3, 1994 (i.e., 90 days after enactment of the NRA), there must be "a written agreement, separate from the bill of lading or receipt." This requirement is identical to the writing requirement in former 49 CFR 1053.1. It is important to remember that the signed agreement must be in place before the transportation begins.

New section 10702(c)(2) specifies the minimum contents of the agreements. Section 10702(c)(2)(A) requires that the agreement "identify the parties thereto." This requirement follows our requirement in former 49 CFR 1053.1 that the contract provide for transportation for a particular shipper or shippers. Signatories to the agreement must be persons authorized to bind the parties to the mutual undertakings described in the contract.

Section 10702(c)(2)(B) requires that the agreement "commit the shipper to tender and the carrier to transport a series of shipments." This reflects the longstanding definition at 49 U.S.C. 10102(15)(B), which limits contract carriage of freight to "transportation of property for compensation under *continuing agreements* with one or more persons" (emphasis added). A long line of Commission decisions addresses the meaning of "a series of shipments" in the context of a continuing agreement. See, e.g., Interstate Van Lines, Inc.—Extension—Household Goods, 5 I.C.C.2d 168, 185–86 (1988) (Interstate Van Lines). On the one hand, isolated shipments or so-called spot market transportation are not sufficient to satisfy the series of shipments standard. See, e.g., *Global Van Lines, Inc.* v. *ICC*,

[1] *See, e.g., General Mills, Inc.—Petition for Declaratory Order*, 8 I.C.C.2d 313 (1992), *aff'd sub nom. United Shipping Co.* v. *General Mills, Inc.*, Adv. No. 4–89–345 (Bankr. D. Minn. Aug. 27, 1992) (*In re United Shipping Co.*, No. BKY 4–88–533(D)), *aff'd*, No. 3–92–0668 (D. Minn. Dec. 24, 1992), *app. pending sub nom. The Bankruptcy Estate of United Shipping Company, Inc.* v. *General Mills, Inc.*, No. 93–1232MNST (8th Cir. argued Oct. 11, 1993).

[2] In sections 6(b) and 6(c) of the NRA, Congress amended 49 U.S.C. 11901(g) and 11909(b), respectively, to provide for civil and criminal penalties for violations of these new requirements.

804 F.2d 1293, 1300 (D.C. Cir. 1986). On the other hand, the standard can be met by a short-term agreement [3] or a so-called requirements contract that contemplates shipper tender and carrier transportation obligations for specified traffic regardless of its frequency or amount. In the first rulemaking to address the subject, the Commission made clear that "the contracts need not cover long periods of time or fixed amounts of traffic." Contracts of Contract Carriers, 1 M.C.C. 628 (1937). In determining whether an agreement meets the series of shipments standard, we will continue to be guided by the essential commitment between the parties that transportation be offered and accepted on a continuing basis. *See Zoneskip, Inc.* v. *UPS, Inc. and UPS of America, Inc.*, 8 I.C.C.2d 645 (1992) (*Zoneskip*), *aff'd sub nom. Zoneskip, Inc.* v. *United States*, 998 F.2d 1007 (table) (3d Cir. 1993).

Section 10702(c)(2)(C) requires that the written agreement "contain the contract rate or rates for the transportation service to be provided or being provided." Neither Congress nor the Commission has previously required that the particular rate be specified. In interpreting this new requirement, we must accommodate both the purpose of the NRA, in reforming contract carrier requirements, and the policy of the Motor Carrier Act of 1980 (1980 Act) of "remov[ing] many of the obstacles that (previously) kept motor contract carriers from realizing their full potential." H. Rep. 96–1069, 96th Cong., 2d Sess. 22 (1980), reprinted in 1980 U.S. Code Cong. & Ad. News 2283 ("House Report"). Our goal is to protect the integrity of contract carriage without harming contracting parties or competition.

Accordingly, we interpret this new requirement to mean that either a fixed rate or a methodology for determining the rate must be in or appended to the contract. This comports with the rate requirements for common carrier tariffs, as articulated in *Regular Common Conference* v. *United States*, 793 F.2d 376, 379 (1986) (RCCC), which require that a common carrier tariff show on the face of the tariff either the per-unit rate or how the per-unit rate is determined. For example, contracts for annual volume or incentive rates are permissible as long as an objective methodology for computing the rate is provided in the agreement itself. References may be made in the agreement to tariffs or other readily available publications or materials.

We believe the *RCCC* standard is appropriate for contract rates. Under this standard, the parties to the agreement can maintain pricing flexibility while achieving the Congressional goal of guarding against a future challenge to the existence or level of the contract rate. The price will be determinable without unduly interfering with the pricing of contract carriage services.

Finally, section 10702(c)(2)(D) requires that the agreement "(i) state that it provides for the assignment of motor vehicles for a continuing period of time for the exclusive use of the shipper; or (ii) state that the service is designed to meet the distinct needs of the shipper." This reflects the longstanding alternative statutory criteria for contract carriage at 49 U.S.C. 10102(15)(B) (i) and (ii). As we read this language, the agreement need not detail how it meets these statutory criteria, but rather simply must specify which of the two alternative statutory tests is met. We do not believe that Congress meant to make contract drafting an unduly burdensome task or to require a contract to contain legal argument. The requirement, however, does serve to remind parties of the statutory criteria that must be met to qualify as contract carriage.

Those criteria (dedication of equipment or distinct needs) are flexible, and how they are satisfied can be tailored to the particulars of each contracting situation. As interpreted by the Commission, "* * * assignment of equipment to the exclusive use of the shipper does not necessarily require that specific vehicles be used for one shipper to the exclusion of all others * * * [but] the contracting shippers must have primary access to the equipment, may view it as their own, and need not compete for its use among themselves or with others", *Continental Contr. Car. Corp. Ext.—Modif. of Permit*, 121 M.C.C. 882, 900 (1975).

The distinct needs alternative has been the subject of numerous Commission and court decisions. Distinct needs can be price and/or service features tailored to the customer's requirements. For example, the distinct needs of a shipper may be met if: "the new service is better tailored to fit the special requirements of a shipper's business, the length of its purse, or the select nature of the delivery service that is desired." *ICC* v. *J–T Transport Co.*, 368 U.S. 81, 93 (1961). Other services that have been found to meet distinct needs are: Special pickup and delivery requirements; special documentation requirements; shipper-carrier liaisons; specialized liability, claims, or credit terms; incidental transportation services; and special rate considerations. See, e.g., Interstate Van Lines, 5 I.C.C.2d at 187–89.

Transportation services that meet a contract customer's distinct needs need not be unique. They may be services that common carriers offer to their customers as well.[4] The issue is whether the services provided are tailored to meet the customer's distinct needs in the context of an on-going contractual relationship. See Zoneskip, 8 I.C.C.2d at 653–55.

Section 10702(c)(3) introduces a new requirement that written agreements for contract carriage must be retained by the carrier for the life of the agreement and for 3 years thereafter, and that a copy be made available to the Commission upon request. The latter requirement relates to the new statutory directive in section 10702(c)(4) that we "conduct periodic random audits to ensure that motor contract carriers are complying with [the requirements of section 10702(c)] and are adhering to the rates set forth in their agreements." We will be conducting these audits, on a random basis, beginning in May 1994.

To purchase a copy of the decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.] Environmental and Energy Considerations.

This action does not require environmental review because it does not have the potential for significant environmental impacts. 49 CFR 1105.6(c)(7).

Regulatory Flexibility Analysis

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), we need not make the small business impact examination required by the RFA. Nevertheless, we welcome any comments regarding the small entities considerations embodied in the RFA.

Decided: February 15, 1994.

[3] As far back as 1937, the Commission found "an agreement to transport property extending for a week, with a further provision that it will continue from week to week until terminated, is an agreement for continuous transportation." Edward Webb, Jr. Contract Carrier Application, 1 Fed. Carr. Cas. (CCH) 7037 (1937).

[4] *Central & So. Motor Frt. Tariff Ass'n* v. *United States*, 757 F.2d 301, 311 & n.55 (D.C. Cir.), *cert. denied*, 474 U.S. 1019, 106 S. Ct. 568 (1985) (decision that exempted motor contract carriers from our tariff filing requirements).

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4908 Filed 3–2–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in Clean Water Act Case: United States, et al. v. Wayne County, Michigan, et al.

In accordance with Department policy and 28 CFR 50.7, notice is hereby given that on February 11, 1994, a proposed Consent Decree in *United States, et al.* v. *Wayne County, Michigan, et al.* (Civ. No. 87–70992) was lodged in the United States District Court for the Eastern District of Michigan.

The United States filed the complaint commencing this enforcement action in 1987, under the Clean Water Act ("Act"), 33 U.S.C. Section 1251 *et seq.*, alleging violations of Act and the National Pollution Discharge Elimination System ("NPDES") Permit that applies to the waste water treatment plant ("Plant") owned and operated by Wayne County, Michigan, and located at 797 Central Ave, Wyandotte, Michigan. The State of Michigan is a co-Plaintiff, and fourteen units of local government served by the Plant are named as Defendants along with Wayne County.

The United States, State, and all Defendants are signatories to the proposed Consent Decree, under which the Defendants shall design, construct, operate, and maintain significant, additional facilities—construction of which is presently estimated to cost about $230 million. These facilities will improve both the quality and capacity of treatment provided by the Plant and also give the Plant significant transport and storage capacity—in the form of underground tunnels and above-ground equalization basins—for waste water that Plaintiffs believe is bypassed without treatment into the waters of the United States. The Decree also requires that Wayne County pay a civil penalty of $413,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* v. *Wayne County, Michigan, et al.*, DOJ Ref. #90–5–1–1–2766.

The proposed Consent Decree may be examined at the offices of the United States Attorney, Eastern District of Michigan, 817 Federal Building, 231 West Lafayette Boulevard, Detroit, Michigan, and at the offices of the U.S. Environmental Protection Agency, Region 5, Office of Regional Counsel, 111 West Jackson Blvd., Chicago, Illinois. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, (202) 624–0892. In requesting a copy, please enclose a check in the amount of $20.25 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–4785 Filed 3–2–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 92–54]

Stanley Alan Azen, M.D., Revocation of Registration

On May 19, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stanley Alan Azen, M.D. (Respondent), of Los Angeles, California. The Order to Show Cause proposed to revoke Dr. Azen's DEA Certificate of Registration, AA8786329, under 21 U.S.C. 824(a)(2) and (a)(4), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) for reason that his continued registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on Los Angeles, California, beginning on January 6, 1993. On October 18, 1993, in her opinion and recommended ruling, findings of fact, conclusions of law, and decision, the administrative law judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration.

On November 2, 1993, the Respondent filed exceptions to Judge Bittner's opinion pursuant to 21 CFR 1316.66, and on November 18, 1993, the administrative law judge transmitted the record to the Acting Administrator. The Acting Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent is an emergency room physician who received his medical degree in 1978 from Loma Linda University of Medicine in Loma Linda, California. Following an internship at the University of Southern California, and his service of two residencies in emergency medicine and internal medicine, Respondent worked at the Medical Center of North Hollywood from 1982 until 1991, and as of the date of the administrative hearing was employed at Pacifica Hospital in Los Angeles.

The administrative law judge found that on September 20, 1990, Los Angeles Police Department officers received a report that a woman had died at Respondent's home, apparently from a drug overdose. The administrative law judge found that when the officers arrived at the Respondent's residence, they were advised by the Respondent that the deceased was his girl friend, and that earlier in the evening Respondent and the deceased had consumed alcohol, smoked marijuana, and snorted cocaine.

One of the officers present at Respondent's house on that evening testified at the administrative hearing that the police officers found inside Respondent's home two 5- by 7-inch cards with white powder on them and four small straws in a trash can, powder on the bedboard, and glasses containing what appeared to be alcohol residue. The officer further testified that although the items were seized, to his knowledge, no tests were conducted on them.

The administrative law judge found that as a result of reports regarding the death of Respondent's girl friend, the Medical Board of California (Board) initiated an investigation of the Respondent. One of the Board investigators that participated in the investigation also testified at the administrative hearing. Interviews were conducted of various law enforcement officials, including the pathologist who examined the Respondent's deceased girl friend. The pathologist estimated that, at the time of the girl friend's death, there was approximately 20 times a fatal quantity of cocaine in her system, and, in addition, a large quantity of cocaine metabolites. The Board investigator also interviewed the Los Angeles County coroner, who found a large amount of cocaine in the deceased's personal property. The

coroner further stated that Respondent told the coroner that Respondent and the deceased commonly used cocaine and alcohol on their days off.

The Board investigator interviewed the sister of the deceased, who revealed to the investigator that she used cocaine with Respondent and the deceased on numerous occasions. The deceased's sister informed the Board investigator of her knowledge that Respondent sold cocaine and that she had purchased it from him in the past.

The Board investigator also interviewed two acquaintances of the Respondent, both of whom admitted purchasing cocaine from the Respondent on various occasions. One of the individuals stated that for a two to three year period, Respondent was his sole source of cocaine, that he purchased cocaine in half gram quantities from the Respondent, and that the Respondent made no profit from his sales. The individual went on to state that Respondent had a very high tolerance for cocaine, and carried a small vial of it with him, however he never saw Respondent use cocaine while working.

The Government also presented the testimony of a detective of the Narcotics Division of the Los Angeles Police Department regarding his conversations with the sister of the deceased. The sister told the detective that she purchased cocaine from the Respondent on several occasions; that Respondent sold cocaine to employees of the hospital where he was employed; and that her sister (the decreased) had access to the safe where Respondent kept his cocaine.

The administrative law judge found that in March 1991, the deceased's sister, acting as a confidential informant, attempted a controlled purchase of cocaine from the Respondent. Prior to going to Respondent's home on March 29, 1991, the detective searched the sister's clothing and car, and provided her with $100.00, however, the sister was not searched because there were no female officers on duty. The detective also conceded at the hearing that the informant's shoes were not searched, nor was there a search of the trunk or the engine compartment of her car.

The sister was observed going into Respondent's home where she remained for 20 to 30 minutes. After leaving Respondent's home, she met the detective at a pre-arranged location and turned over two containers of white powder, which later tested positive for cocaine. She told the detective that she paid the Respondent $60.00 for the cocaine.

On April 5, 1991, the Respondent was searched pursuant to a search warrant. The search revealed an amber glass vial that contained a white powder resembling cocaine. Respondent was then arrested, and allegedly stated to the arresting officer, that, "I'm just a recreational user. People don't go to jail for using cocaine." Respondent later stated, "its not my cocaine. I just store it for someone. He gives me cocaine for allowing him to store it in my house."

A search was then conducted of Respondent's house which revealed a safe which contained, among other things, two one-gram scales commonly used to weigh and package cocaine, a clear plastic bag containing a substance which was later confirmed to be two ounces of cocaine, as well as cocaine residue on various other items. A quantity of cocaine was also obtained after scraping screens, grinders, and scales found in the safe. In addition, 19 grams of marijuana were seized from the bedroom. Respondent was arrested and charged with the transportation and possession of cocaine.

On April 16, 1991, in the Municipal Court of Los Angeles Judicial District, a four-count felony complaint was filed against the Respondent charging him with the sale and possession of a controlled substance. Respondent pled *nolo contendere* to one felony count of simple possession of a controlled substance on November 15, 1991. The Superior Court of California, County of Los Angeles convicted Respondent and sentenced him to 180 days in county jail, and three years probation. A conviction following a plea of *nono contendere* is a "conviction" within the meaning of 21 U.S.C. 824(a)(2). *Sokoloff* v. *Saxbe*, 501 F.2d 571 (2nd Cir. 1974).

The Respondent testified at the administrative hearing that he first experimented with marijuana and cocaine in the 1970's and became a regular cocaine user during the 1980's. Respondent further testified that during the years of his cocaine use, his house served as a gathering place for himself, his live-in girlfriend, her sister, as well as several of their friends.

Respondent testified that he never sold cocaine to anyone, and that those individuals that stated that Respondent sold them cocaine, all had a motivation to lie, and make Respondent appear responsible for his girlfriend's death.

Respondent testified that he briefly participated in the California Medical Board's diversion program for impaired physicians, however he stated that he was rejected from the program because of pending criminal charges against him. Respondent also testified to his participation in a drug rehabilitation program at the Betty Ford Clinic starting in April 1991, and that during his six months in the program he never tested positive for drugs.

After his conviction and as part of his probation, Respondent was enrolled in a drug rehabilitation program and was subjected to random urinalysis from November 1991 until December 1992. None of these random tests revealed drug use. Respondent's probation officer testified that she would recommend discontinuing drug testing for Respondent because he had met the criterion of six months of negative drug tests.

In December 1991, the Board investigator received a letter from a medical consultant for the Medical Board, advising that Respondent's case should be referred to the Office of the Attorney General for administrative action against Respondent's medical license. The consultant further stated that he considered Respondent's rehabilitative attempts insufficient to overcome his more than 20 year addiction to drugs. On April 1, 1992, the Medical Board filed an accusation against Respondent, and a supplement thereto was filed on May 26, 1992. The accusation alleged that Respondent was subject to disciplinary action for using, possessing and distributing cocaine. At present, no further action has been taken by the Board.

At the hearing in this matter, physicians who have supervised Respondent testified on Respondent's behalf. They testified to Respondent's professionalism and exemplary abilities.

Pursuant to 21 U.S.C. 824(a)(2), the Administrator may revoke a DEA Certificate of Registration if the registrant has been convicted of a felony relating to controlled substances. Pursuant to 21 U.S.C. 823(f) and 824(a)(4) the Administrator may revoke a registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

"(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found that the Respondent had been convicted of a felony offense relating to controlled substances, and therefore grounds exist to revoke his DEA Certificate of Registration pursuant to 824(a)(2). In considering whether grounds exist to revoke Respondent's registration pursuant to 21 U.S.C. 824(a)(4), the administrative law judge found factors one, three, four and five listed in 823(f) relevant. Factor one is applicable by virtue of the California Medical Board's filing of an Accusation and Supplemental Accusation against the Respondent. Factor three is applicable to Respondent's felony conviction, and factors four and five were found relevant based upon Respondent's abuse and alleged unlawful sale of controlled substances, as well as the subsequent related criminal charges.

The administrative law judge concluded that the Government did not prove by a preponderance of the evidence that the Respondent sold cocaine to his girlfriend's sister on March 29, 1991. The administrative law judge made this determination based upon the fact that neither the deceased's sister nor her car was thoroughly searched prior to her entering Respondent's house; that the alleged purchase was neither seen nor heard by law enforcement personnel; and that the sister of the deceased had a reason to lie.

The administrative law judge found that the record clearly established that Respondent has abused controlled substances for many years. The administrative law judge also found that there was insufficient evidence to conclude that Respondent has recognized and dealt with the severity of his problem, or that he has progressed in his recovery to the extent that he should be permitted to continue to hold a DEA registration. Based upon evidence of Respondent's felony conviction and past drug abuse, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and any pending applications be denied.

The Respondent filed exceptions to the administrative law judge's recommendation. The Respondent argued in part: That the administrative law judge's recommendations were inconsistent with the testimony given by Respondent, particularly as it related to the duration of Respondent's use of cocaine and marijuana, and the extent of the use of cocaine by Respondent's friends and acquaintances while at his home; that although the administrative law judge concluded that the Government failed to establish that a controlled buy took place, the administrative law judge nevertheless made unnecessary references to events surrounding its occurrence; that the Respondent has demonstrated a lifelong commitment to drug rehabilitation based in part on his nearly three year successful participation in a strict and monitored regimen of random drug testing administered through the Probation Office of Los Angeles County; that based upon the legislative intent of the public interest amendment to the Controlled Substances Act, felony convictions are not per se violations since Respondent's crime did not involve abuse of prescription drugs; statements relied upon by the administrative law judge regarding Respondent's insufficient attempts at drug rehabilitation in light of his 20 year drug addiction, were based on faulty and incomplete evidence.

The Acting Administrator having considered the entire record adopts the administrative law judge's findings of fact, conclusions of law, and recommended ruling, in part. The Acting Administrator concurs with the Respondent's exception to the administrative law judge's finding of fact regarding testimony attributed to the Respondent of his friend's and acquaintances' daily partaking of food, drink, and cocaine while at Respondent's home. While the record is not clear as to the exact time Respondent starting using cocaine, it is clear that he abused drugs for a significant period of time. Additionally, the record does not support Respondent's allegations regarding the administrative law judge's reliance on factors involving the alleged controlled buy. Finally, the record does not show that the Respondent has demonstrated a life long commitment to drug rehabilitation, nor that the administrative law judge, in making her recommendation, unduly relied upon the conclusions of the California Medical Board consultant that the Respondent's rehabilitative attempts were insufficient to overcome his 20 year addiction to drugs.

Respondent further argued that his felony convictions are not per se violations since his crime did not involve improper prescribing of controlled substances. DEA Administrators have consistently held that controlled substance-related felony convictions need not involve the misuse of a DEA registration to justify revocation of the registration or denial of an application for registration. See *William H. Carranza, M.D.*, Docket No. 84–23, 51 FR 2771 (1986), *Paul Stepak, M.D.*, 51 FR 17556 (1986).

Respondent's history of non-compliance with the laws relating to controlled substances speaks for itself. The Respondent not only admitted to a long history of drug abuse, but he also admitted to using cocaine and marijuana with friends, including his use of these controlled substances on an occasion when his girlfriend died as a result of cocaine use. The totality of the facts leads to the conclusion that the continued registration of Dr. Azen would be inconsistent with the public interest.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AA8786329, issued to Stanley Alan Azen, M.D., be and it hereby is, revoked, and any pending applications be, and they hereby are, denied. This order is effective March 3, 1994.

Dated: February 25, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–4886 Filed 3–2–94; 8:45 am]

BILLING CODE 4410–09–M

Frank N. Beckles, M.D.; Revocation of Registration

On October 29, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Frank N. Beckles, M.D., of 923 E Street, SE., Washington, DC 20003. The Order to Show Cause proposed to revoke Dr. Beckles' DEA Certificate of Registration, BB0922674, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) for reason that his continued registration would be inconsistent with the public interest.

The Order to Show Cause was served on Dr. Beckles on November 2, 1993. More than thirty days have passed since the Order to Show Cause was received by Dr. Beckles. The Drug Enforcement Administration has received no response from Dr. Beckles or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Acting Administrator finds that Dr. Beckles has waived his opportunity for

a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e) and 1301.57, the Acting Administrator enters his final order in this matter without a hearing and based on the investigative file.

The Acting Administrator finds that on January 9, 1991, the District of Columbia Department of Consumer and Regulatory Affairs, Board of Medicine (Board) issued to Dr. Beckles, a "Notice of Intent to Revoke License", and an amendment thereto, was issued on April 16, 1991. The notices alleged charges of professional incompetence, willful and careless disregard of the health, welfare, and safety of a patient, and failure to conform to the prevailing standards of acceptable medical practice.

Following a settlement conference on May 1, 1991, Dr. Beckles informed the Board of his intent to surrender his license to practice medicine, and on June 18, 1991, Dr. Beckles consented to surrender his license to practice medicine in the District of Columbia, effective June 30, 1991. As a result of Dr. Beckles' surrender of his medical license, on July 10, 1991, the Board ordered the revocation of Dr. Beckles' license to practice medicine, and ordered Dr. Beckles not to seek reinstatement of his license.

The Acting Administrator finds that as of July 10, 1991, Dr. Beckles' license to practice medicine in the District of Columbia has been revoked, and as a result, he is unable to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Beckles' DEA Certificate of Registration must be revoked. Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BB0922674, previously issued to Frank N. Beckles, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 3, 1994.

Dated: February 25, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–4887 Filed 3–2–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Canterbury Coal Co.

[Docket No. M–94–18–C]

Canterbury Coal Company, R.D. 1, Box 119, Avonmore, Pennsylvania 15618 has filed a petition to modify the application of 30 CFR 75.380(d)(5) (escapeways; bituminous and lignite mines) to its DiAnne Mine (I.D. No. 36–05708) located in Armstrong County, Pennsylvania. The petitioner proposes to bypass a return airshaft and direct its alternate or secondary escapeway past the return airshaft to the mine slope; and to instruct all personnel instructed on escapeway and escape procedures upon entering the mine. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Utah Fuel Co.

[Docket No. M–94–19–C]

Utah Fuel Company, P.O. Box 719, Helper, Utah 84526–0719 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its Skyline Mine No. 1 (I.D. No. 42–01435); and its Skyline Mine No. 3 (I.D. No. 42–01566) both located in Carbon County, Utah. The petitioner proposes to continue utilizing the five-foot wide stairways at overcasts in the secondary escapeway which was installed prior to November 16, 1992. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Consolidation Coal Co.

[Docket No. M–94–20–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania has filed a petition to modify the application of 30 CFR 75.364(a)(2)(iii) (weekly examination) to its Buchanan No. 1 Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. Due to deteriorating roof conditions in the Northeast bleeder system, traveling this area in its entirety would be unsafe. The petitioner proposes to establish bleeder evaluation points #1, #2, #3, #4, and #5 to monitor the air as it enters and exits the affected area; to relocate bleeder evaluation points #1 and #2 with each new longwall panel; to have a certified person examine for the quantity, quality and direction of the air on a weekly basis at each bleeder evaluation point and record the results of examinations in a book kept on the surface for inspection by all interested persons; and to maintain and monitor the evaluation points until the affected area is sealed. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Murphy's Branch, Inc.

[Docket No. M–94–21–C]

Murphy's Branch, Inc., P.O. Box 185, Thorpe, West Virginia 24888 has filed a petition to modify the application of 30 CFR 75.364(b) (1) and (5) (weekly examination) to its No. 2 Mine (I.D. No. 46–07452) located in McDowell County, West Virginia. Due to deteriorating roof conditions in the No. 2 intake entry from the mine portal inby 1 break, the area cannot be traveled safely. The petitioner proposes to travel the airway up to the first crosscut which is 100 feet from the mine portal; to install man doors at the No. 1 crosscut between the No. 2 entry and both the No. 1 return entry and the No. 3 belt entry (secondary escapeway); to install a box check between the No. 1 and No. 2 crosscut in the No. 3 belt entry and then vent the belt air to the return in the No. 2 crosscut; to prohibit travel in the affected area; to examine the air quality inby the No. 1 crosscut in the No. 2 entry on a weekly basis and record the results in an appropriate book; and to provide training and self-contained self-rescuers to all employees. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Murphy's Branch, Inc.

[Docket No. M–94–22–C]

Murphy's Branch, Inc., P.O. Box 185, Thorpe, West Virginia 24888 has filed a petition to modify the application of 30 CFR 75.380(b)(1) and (f)(1) (escapeways; bituminous and lignite mines) to its No. 2 Mine (I.D. No. 46–07452) located in McDowell County, West Virginia. Due to deteriorating roof conditions in the No. 2 intake entry from the mine portal

inby 1 break, the area cannot be traveled safely. The petitioner proposes to travel the airway except for the 100 feet from the mine portal to the first crosscut; to install man doors at the No. 1 crosscut between the No. 2 entry and both the No. 1 return entry and the No. 3 belt entry (secondary escapeway); to install a box check between the No. 1 and No. 2 crosscut in the No. 3 belt entry and then vent the belt air to the return in the No. 2 crosscut; to prohibit travel in the affected area; to examine the air quality inby the No. 1 crosscut in the No. 2 entry on a weekly basis and record the results in an appropriate book; and to provide training and self-contained self-rescuers to all employees. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Mountain Coal Co.

[Docket No. M–94–23–C]

Mountain Coal Company, 555 Seventeenth Street, Denver, Colorado 80202 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests a modification to allow the width of the alternate escapeway in the belt entry for each longwall panel to be maintained at a width of a minimum of 48 inches for a maximum distance of 1,050 feet immediately outby the stageloader; to designate the intake entry as the primary escapeway and the belt entry as the alternate escapeway with both escapeways on intake air and maintained to a minimum of 6 feet in width for their entire distance, except for a distance of maximum of 1,050 feet in the alternate escapeway beginning at the stageloader. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. AKZO Salt, Inc.

[Docket No. M–94–06–M]

AKZO Salt, Inc., 3846 Retsof Road, P.O. Box 91, Retsof, New York 14539 has filed a petition to modify the application of 30 CFR 57.19073 (hoisting during shift changes) to its Retsof Mine (I.D. No. 30–00662) located in Livingston County, New York. The petitioner proposes to continue to conduct hoisting operations during shift changes in strict compliance with the conditions of a previous variance that required the man cage to be completely enclosed, i.e., the gaps above and below the upper materials handling doors on both sides of the cage would be closed with metal plate at least 3/16-inch thick; to make future repairs to or replacements of the man cage and other components of the hoisting system in such a manner and to such specifications so as to ensure performance characteristics equivalent to or greater than those of the man cage in use at the time the variance was originally granted. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 4, 1994. Copies of these petitions are available for inspection at that address.

Dated: February 23, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–4909 Filed 3–2–94; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

[Docket No. NRTL–2–89]

American Gas Association Laboratories

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Expansion of Current Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the American Gas Association Laboratories' application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The American Gas Association Laboratories (AGA) previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 54 FR 48166, 11/21/89), and was so recognized (see 55 FR 23312, 6/7/90).

Notice is hereby given that AGA's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the thirty-eight test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL–2–89), are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

The addresses of the laboratories covered by this expansion of recognition are:

American Gas Association Laboratories, Cleveland Laboratory, 8501 East Pleasant Valley Road, Independence (Cleveland), Ohio 44131; and,

American Gas Association Laboratories, Los Angeles Branch Laboratory, 1425 Grande Vista Avenue, Los Angeles, California 90023.

Final Decision and Order

Because the test standards AGA requested in its application for expansion of its accreditation were in a category different from those for which it was originally accredited, an on-site evaluation of the Cleveland Laboratory [Ex. 6A(1)] and a follow-up survey of the Los Angeles Branch Laboratory [Ex. 6A(2)] were conducted. The results were discussed with the applicant who responded with appropriate corrective action and clarification to the comments and recommendations made as a result of the survey of the Cleveland Laboratory [Ex. 6B]. The final on-site review report [Ex. 6] and the OSHA staff recommendation were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of AGA's application together with a positive preliminary finding was published in the Federal Register on September 3, 1993 (58 FR 47000–47001). Interested parties were invited to submit comments.

There were no responses to the Federal Register notice of the AGA

application and preliminary finding (Docket No. NRTL–2–89).

Based upon the facts found as part of the American Gas Association Laboratories original recognition, including details of necessary test equipment, procedures, and special apparatus of facilities needed, adequacy of staff, the application(s) and documentation submitted by the applicant (see Exhibit 5), the OSHA staff finding including the original on-site review report, as well as the evaluation of the current request (see Exhibit 6), OSHA finds that the American Gas Association Laboratories has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the American Gas Association Laboratories recognition is hereby expanded to include the 38 additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 38 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

AGA has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

UL 125—Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
UL 132—Safety Relief Valves for Anhydrous Ammonia and LP-Gas
ANSI/UL 144—Pressure Regulating Valves for LP-Gas
ANSI/UL 147—LP- and MPS-Gas Torches
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 296—Oil Burners
ANSI/UL 353—Limit Controls
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378—Draft Equipment
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 484—Room Air Conditioners
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Household Electric Ranges
ANSI/UL 873—Temperature-Indicating and -Regulating Equipment
UL 991—Tests of Safety-Related Controls Employing Solid-State Devices
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1042—Electric Baseboard Heating Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1096—Electric Central Air-Heating Equipment
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
ANSI/UL 1484—Residential Gas Detectors
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment

Note—Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

The American Gas Association Laboratories must also abide by the following conditions of this expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which: (1) Is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program; or (2) makes use of reciprocal testing from another non-NRTL.

The Occupational Safety and Health Administration shall be allowed access to AGA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If AGA has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

AGA shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, AGA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

AGA shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

AGA will continue to meet the requirements for recognition in all areas where it has been recognized; and

AGA will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on March 3, 1994, and will be valid until June 7, 1995, (a period of five years from the date of the original recognition, June 7, 1990), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 25th day of February, 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–4896 Filed 3–2–94; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of application for recognition as a Nationally Recognized Testing Laboratory, and preliminary finding.

SUMMARY: This notice announces the application of the Canadian Standards Association for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is May 2, 1994.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that the Canadian Standards Association (CSA) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition of the following facilities as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

Canadian Standards Association, Pointe-Claire (Montreal) Facility, 865 Ellingham Street, Pointe-Claire (Montreal), Quebec H9R 5E8, Canada.
Canadian Standards Association, Richmond (Vancouver) Facility, 13799 Commerce Parkway, Richmond (Vancouver), British Columbia V6V 2N9, Canada.
Canadian Standards Association, Edmonton Facility, 1707–94th Street, Edmonton, Alberta T6N 1E6, Canada.
Canadian Standards Association, Moncton Facility, 40 Rooney Cresent, Moncton, New Brunswick E1E 4M3, Canada.
Canadian Standards Association, Winnipeg Facility, 50 Paramount Road, Winnipeg, Manitoba R2X 2W3, Canada.

CSA originally applied for recognition as an NRTL in 1989. In order to expedite the recognition procedure, CSA subsequently amended its application to allow the Agency to follow a multi-phase approach. Thus CSA requested initial recognition for its Rexdale (Toronto) facility only and requested that the scope of the application be limited to in-house testing only. CSA's Rexdale (Toronto) facility was accredited by OSHA as an NRTL on December 24, 1992 (57 FR 61452). The second phase of the CSA recognition involves the CSA facilities listed above and this recognition would also be limited to in-house testing only. It is contemplated that recognition of CSA's overseas facilities will be handled separately in a third phase in the future.

Regarding the merits of this application, the Canadian Standards Association contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The applicant states that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards.

CSA's application contains sections dealing with background and history; the Certification and Testing (C&T) Division structure; affiliation including a statement of independence; personnel, including experience and expertise, training, a list of key personnel, position descriptions and resumes; the certification process, including testing and evaluation, certification, reports and records and the service agreement; the field services program, including follow-up inspections, re-examination testing and field monitoring; certification services, including prototype (model) certification; testing experience, including recognition by other bodies; control programs, including the quality assurance program, control of technical and quality records, handling and storage/packaging and shipping, and test procedures; laboratory test equipment and calibration of this equipment; facilities; and, finally, CSA's appeal process, the comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter.

Montreal (Pointe Claire) Facility

The Montreal (Pointe Claire) facility houses the Standards Sales, Finance and Administration, Quality Assurance, and the Certification and Testing Division of the Eastern Operations. Approximately 75 employees are located at this facility, which is owned by CSA and consists of a two-story building covering 23,000 square feet. About 5,500 square feet of floor space is allocated to product testing. The applicant has been at this location since 1982.

All necessary utilities are available at this site. There is a written procedure for the receipt, retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. There are continuous 24-hour alarm systems for fire and security, and entry is controlled for staff members entering the facility after hours.

Most testing equipment is available in the laboratory to perform testing in accordance with the standards. When such equipment is not available, the testing is either subcontracted to the Rexdale facility or the equipment is purchased as necessary. The calibration laboratory maintains inventory lists that identify over 4,000 pieces of equipment.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Montreal (Pointe Claire) facility, Ex. 10.A.(1).

Vancouver (Richmond) Facility

The Vancouver (Richmond) facility consists of some 56,600 square feet of owned office space of which 6,195 square feet is utilized for product testing. CSA has been at this new location since May 1992. There are some 110 employees located at this facility.

All necessary utilities are available at this site. There is a written procedure for the receipt retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. Fire protection is provided by a sprinkler system, over 60 fire extinguishers, pull stations, and a fire detection system that is monitored 24 hours a day. Entry is controlled for staff members entering the facility after hours by an ADT card reader and alarm.

Most testing equipment is available in the laboratory to perform testing in accordance with the standards. When such equipment is not available, the equipment is purchased as necessary. The laboratory maintains inventory lists that identify over 500 pieces of equipment.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Vancouver (Richmond) facility, Ex. 10.A.(1).

Edmonton Facility

The Edmonton facility is under the direction of the Pacific Operations, which is headquartered in Vancouver.

CSA owns some 13,067 square feet of office space at the Edmonton Facility, of which 1,819 square feet are allocated for product testing. This location has been operational since 1985.

All necessary utilities are available at this site. There is a written procedure for the receipt, retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. Fire protection is provided by a monitoring system that alerts the local fire department in the event of a fire, and entry is controlled for staff members entering the facility after hours, by means of an entry alarm system.

Most testing equipment is available in the laboratory to perform testing in accordance with the standards. When such equipment is not available, the equipment is purchased as necessary.

Annual operating budgets are designed to provide for funding of necessary testing equipment. The laboratory maintains inventory lists that identify over 300 pieces of equipment.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Edmonton facility, Ex. 10.A.(2).

Moncton Facility

The Moncton facility is under the direction of the Montreal facility as part of the Eastern Operations.

The facilities are leased and consist of approximately 6,750 square feet of office and laboratory space plus an annex of some 1,600 square feet of additional office space.

All necessary utilities are available at this site. There is a written procedure for the receipt, retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. Fire protection of the facility is provided by an automatic fire sprinkler system located throughout the building, and entry is controlled for staff members entering the facility after hours. There is also a 24-hour alarm system.

Most testing equipment is available in the laboratory to perform testing in accordance with the standards. When such equipment is not available, the testing is subcontracted to the Rexdale facility or the equipment is purchased as necessary. Annual operating budgets are designed to provide for funding of necessary testing equipment. The laboratory maintains inventory lists that identify over 300 pieces of equipment.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Moncton facility, Ex. 10.A.(2).

Winnipeg Facility

The Winnipeg facility is under the direction of the Rexdale facility as part of the Central Operations.

The facility is leased and consists of some 10,000 square feet of space, of which approximately 4,000 square feet is allocated as a test laboratory. CSA has made use of this facility for about 35 years providing certification services in the electrical and mechanical fields.

All necessary utilities are available at this site. There is a written procedure for the receipt, retention, and disposal of samples for testing. Visitors to the facility are closely supervised and must be escorted throughout the premises. Fire and burglar alarm systems are on line. Entry is controlled for staff members entering the facility after hours.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey) of the Winnipeg facility, Ex. 10.A.(2).

The applicant states that CSA is an independent, not-for-profit membership association, without share capital, incorporated under the laws of Canada in 1919, engaged in developing national standards and providing a certification service for manufacturers wishing to have their products certified as complying with national standards or standards of foreign countries. The applicant states further that the organization has no affiliation with manufacturers or suppliers of the products submitted for testing and certification. Several documents are submitted as a part of the CSA up-to-date application to address the issue of independence. (See Ex. 2.K.).

The Canadian Standards Association claims that it maintains effective procedures for producing creditable findings or reports that are objective and without bias. The C&T Division maintains a quality assurance (QA) system for CSA's world-wide network. The QA Program of the Testing Laboratory is registered by Quality Management Institute (QMI) to ISO 9003 and Z299.3. The Corporate Engineering and Quality Assurance (EQA) Group has the responsibility and authority for overseeing all activities related to the Quality Program. The object of the QA system is to ensure technical excellence, consistency of interpretation and application of standards, consistency of implementation of certification programs and procedures, the integrity of the CSA Mark, and continuous improvement. In addition, the QA System is designed to meet National and International Accreditation Criteria. The QA System is documented as follows:

—"Quality Assurance Policy Manual" (QAPM). It contains the quality policies for the Certification and Testing Division and establishes the responsibility for implementation of these policies.
—"Quality Assurance Manual" (QAM). These manuals describe in detail the system and procedures outlined in the QAPM. They are issued by each Operation Unit after approval by EQA.
—"Divisional Quality Documents" (DQDs). They are issued and controlled by Engineering and Quality Assurance (EQA) and consist of additional operating procedures and guidelines to be used by operations staff.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for controlling all technical and quality records is described in the Quality Assurance Manuals for each CSA Office.

CSA claims that it has a comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter. All complaints and disputes shall be resolved, whenever possible, by those directly involved with the work contested or at the level of authority appropriate for the nature of the complaint/dispute. If the issue cannot be resolved, there are specific steps, including appeals, which may be followed.

The applicant states that it provides for the implementation of control procedures for identifying the listed and labeled equipment or materials, inspection of the production run of such items at factories for product evaluation purposes to assure conformance with applicable test standards, and the conducting of field inspections to monitor and to assure the proper use of its identifying mark or labels on products. A submitter must enter into a written contract (service agreement) with CSA to permit the use of the CSA Mark on the product. This agreement clearly specifies the submitter's responsibilities and the terms and conditions for maintaining certification, such as the right of access by CSA inspection staff to listed factories, or notifying CSA when changes are made to certified products. These terms and conditions are designed to protect the integrity of the CSA Marks. CSA establishes a comprehensive field services program to ensure that manufactured products bearing any of the CSA Marks continue to meet the applicable requirements. The program consists of three elements:

Follow-up Inspections;
Re-examination Testing; and
Field Monitoring.

Follow-up inspections are conducted at the point of manufacturing and labeling to ensure, among other things, that:

—The CSA Mark is applied only to certified products;
—That the terms of the Agreement are met when the CSA Mark is used;
—Defects noted during previous inspections have been corrected;
—The manufacturer is aware of any new services, requirements, and effective dates;

The inspections are unaccounted and are based on performing a minimum of four inspections per factory per year. The frequency varies with production volumes, the types of products and the manufacturer's track record.

When products fail to meet the requirements, Field Service Representatives take action to have the manufacturer correct the defect immediately, quarantine the stock until the products can be reworked or re-evaluated by certification staff, and remove the CSA Mark from the product.

In cases where it is difficult to determine if a product or component complies with the requirements strictly by visual examination, such products are re-examined and tested on a yearly basis.

CSA has an independent, special investigation unit, the Audits and Investigations Group, to monitor products in the field, investigate field complaints, and produce feedback to the standards writing and certification process.

Background

According to the applicant, the Canadian Standards Association is an independent, not-for-profit organization governed by a Board of Directors selected by the membership, providing integrated services in the fields of standards development and conformity assessment. The Standards Division of CSA is responsible for the administration of the development of voluntary consensus standards. The Certification and Testing Division provides conformity assessment programs including laboratory testing, certification, inspection and quality management services. The organization started out in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the present name.

The applicant states that during the last 70 years, CSA has developed more than 1,400 standards and codes which cover industrial and consumer products and services in a wide range of product areas. In 1940, CSA began to test and certify products and today is an international organization with more than 9,000 volunteer members from 20 countries representing, among others, consumers, and regulators. They are supported by a staff of approximately 1,000 employees.

Again according to the applicant, over 14,000 manufacturers worldwide use CSA's testing and certification services, and the CSA Certification Mark appears on over one billion products a year. CSA processes some 36,000 engineering projects, and the inspection staff makes follow-up visits to some 19,000 factories in almost 60 different countries, each year.

The Rexdale Facility contains the corporate headquarters, the Standards Division, the Finance and Administration Division, and the Certification and Testing Division. The Rexdale facility houses the Central Region Office and the headquarters of the Central Operations. Central Operations includes the Prairie Region (Winnipeg) and the Central Region (Rexdale). The explosion testing laboratory in Ottawa (under the control of the Canadian Department of Energy, Mines and Resources), where CSA performs explosion testing, is monitored out of the Central Region.

The Montreal (Pointe Claire) facility houses the Eastern Region Office and the headquarters of the Eastern Operations. Eastern Operations includes the Eastern Region (Pointe Claire) and the Atlantic Region (Moncton). The Eastern Region and Atlantic Region maintain testing and inspection facilities for Eastern North America.

The Vancouver (Richmond) facility houses the Pacific Region Office and the headquarters of the Pacific Operations. Pacific Operations include the Pacific Region (Richmond), and the Western Region (Edmonton). The Pacific Region and Western Region maintain testing and inspection facilities for Western North America.

Quality Assurance

The Certification and Testing Division's Engineering and Quality Assurance (EQA) Office reports to the Vice President in charge of the Certification and Testing Division. The Eastern, Central, and Pacific Operations as well as each of the Regional Offices has a Quality Assurance Office. The Regional Quality Assurance Offices have a reporting relationship with the respective Operations Quality Assurance Office, and with the EQA from the corporate headquarters.

The Regional Quality Assurance Offices are responsible for quality assurance at their respective facilities. The Operations Quality Assurance Offices are responsible for quality assurance not only of their respective operations but also of all of the regions within their operations. The Engineering and Quality Assurance Office is responsible for the Certification and Testing Division's quality assurance, including all Operations and Regions.

Document Structure

The Certification and Testing Division's (C&T) Divisional Director of Engineering and Quality Assurance (EQA) establishes the quality assurance philosophy for the three operations, the Eastern, Central, and Pacific. The EQA uses Divisional Quality Documents (DQD) to establish Quality Assurance Procedures, Certification and Testing Division Operating Procedures (CDOP) and so-called Test Packs to provide evaluation procedures for products submitted for testing, Technical Information Letters (TIL) to document technical interpretations of standards, and Engineering Policy Supplements (EPS) to provide policies.

Audit Structure

The CSA audit structure is multilevel. EQA audits the regions, the Operations Quality Assurance Office audits the regions, and the Regional Quality Assurance Offices perform self-audits. In addition, outside agencies such as the Standards Council of Canada (SCC) perform yearly audits which involve EQA representation during the audit. For example, Edmonton and Moncton were subjected to at least five audits, and Winnipeg at least four audits, since July of 1991. In addition, specific technical audits of each Region are performed by the Senior Technical Engineer from the concerned Operation's Quality Assurance Office.

The applicant desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI Z21.1—Household Cooking Gas Appliances
ANSI Z21.5—Gas Clothes Dryers
ANSI Z21.10—Gas Water Heaters
ANSI Z21.11—Gas-Fired Room Heaters
ANSI Z21.12—Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.47—Gas-Fired Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.64—Direct Vent Central Furnaces

ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.10—Separated Combustion System Central Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas Fired Unvented Commercial and Industrial Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 20—General-Use Snap Switches
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Electrical Cabinets and Boxes
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices
ANSI/UL 114—Electric Office Appliances and Business Equipment
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating Pads
ANSI/UL 133—Wires and Cables With Varnished Cloth Insulation
UL 141—Garment Finishing Appliances
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 231—Electrical Power Outlets
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL 399—Drinking-Water Coolers
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations

ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Groups C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
UL 1059—Terminal Blocks
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
UL 1092—Process Control Equipment
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Display

ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Mental-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1676—Discharge Path Resistors
UL 1681—Wiring Device Configurations
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
ANSI/UL 1773—Termination Boxes
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Insolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

Preliminary Finding

The Canadian Standards Association addressed all of the criteria which had to be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Assurance Manual including a description of its documentation, calibration system, appeals procedure, recordkeeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory surveys: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel. The discrepancies noted by the survey teams in the on-site evaluations [Ex. 10.A.(1)] and in the extensive evaluations [Ex. 10.A.(2)] were adequately responded to by the applicant prior to the preparation of the survey report and are included as an integral part of the report.

With the preparation of the final survey reports of the Canadian Standards Association, the survey team was satisfied that the testing facilities appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 10.A.).

Following a review of the application file and the on-site survey reports of the CSA Montreal and Vancouver facilities, and the evaluation of the Edmonton, Moncton, and Winnipeg facilities (based upon questionnaire responses, supportive documentation, and video tapes of each site depicting the facility, test equipment, typical procedures, files, and staff), the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory for the five above noted facilities and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Canadian Standards Association facilities for which accreditation was requested (Montreal, Vancouver, Edmonton, Moncton, and Winnipeg) can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than May 2, 1994, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Copies of the CSA application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–92), are available for inspection and duplication at the Docket Office, room N 2634,

Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of section 1910.7.

Signed at Washington, DC this 25th day of February, 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–4897 Filed 3–2–94; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–2–93]

Entela, Inc.; Application for Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

SUMMARY: This notice announces the application of Entela, Inc. for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is May 2, 1994.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Entela, Inc. (ENT) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Entela, Inc., 3033 Madison, SE., Grand Rapids, Michigan 49548.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition to certify products in the areas of testing which it has specified.

Entela, Inc. states that its application documents demonstrate that for each specified item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards. (See Ex. 2.A.).

The applicant states also that it shall provide, to the extent needed for the particular equipment or materials listed, labeled, or accepted, the following controls or services: (i) Implementation of control procedures for identifying the listed and labeled equipment or materials (see exhibit 2.A., appendix VII, and exhibit 2.H.).

(ii) Inspection of the run of such item at factories for product evaluation purposes to assure conformance with the test standards (see exhibit 2.A., appendix VIII, and exhibit 2.H.).

(iii) Conduction of field inspections to monitor and to insure the proper use of its identifying mark or labels on products (see exhibit 2.H.).

Entela claims that it is completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes (see exhibit 2.B. and 2.J.).

The applicant also claims that it maintains effective procedures for producing creditable findings or reports that are objective and without bias, and for handling complaints and disputes under a fair and reasonable system (see exhibit 2.H. and 2.J.).

In summary, Entela, Inc. claims that it maintains the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA Nationally Recognized Testing Laboratory.

Entela's Grand Rapids facility consists of two adjacent structures that each contain two buildings covering a total of 40,000 square feet. Approximately 20,000 square feet of floor space is allocated to product testing. The main reception area is housed in the main building, along with the conference room, main records storage area, the wet chemistry labs, small scale flammability test room, tensile test area, with the metallurgical laboratories located on the upper floor. The weathering and environmental aging chambers, administrative offices, and nuclear records storage area are located in a leased building attached to this main building. The third building contains the appliance test area, vibration and electronics laboratory. The fourth building contains the Quality Assurance Department, certain records storage, California flammability test chamber, fabrication shop, and a metrology laboratory.

Natural gas and city water and electricity are supplied to all of the buildings. Special utilities include liquid nitrogen which is stored outside the second building, and a de-ionized water system.

Environmental conditions are controlled in specific laboratory areas. The temperature and humidity variations in these laboratories are continuously monitored and recorded, as required by specific test requirements. There are temperature and humidity chambers to control and monitor environmental conditions for specific product testing.

The laboratory has a shipping and receiving department for receipt, retention, and disposal of samples for testing. Incoming samples are inspected and identified with numbered tags. All samples for one test have tags with the same number. Each unique tag number, the samples, and the purchase order, are reviewed, and the shipping/receiving clerk prepares a work order request, after which the samples are distributed to the test areas and copies of the work order distributed to the appropriate departments. A copy of each unique tag and work order is retained by the shipping and receiving department. Another copy of the work order is sent to the test department with the samples. The test department completes the work order when all product evaluations are accomplished, and returns it to the shipping and receiving department for sample disposition. The sample inventory and traceability information is kept in the shipping and receiving log, and work order information is maintained on a computer data-base. All storage locations for incoming samples are in the shipping and receiving areas, which are located indoors. The laboratory is automating the shipping and receiving numbering system so that the work order numbers are identical with the sample tags.

Each staff member wears an Entela photo I.D. Visitors can only enter via the

front lobby and are required to sign in on the visitor log. They are issued safety glasses and name tags by the receptionist and are escorted while on the premises. Other entrances are kept locked with limited access. Separate test and conference areas are available for those clients requiring confidentiality. The use of screens and partitions are also utilized in the laboratory.

Entela Inc. has recently upgraded their fire protection and security systems to include smoke detectors and proximity sensors. These are connected to the security system which dispatches local fire and police departments.

Test equipment is available to perform most measurement and testing in accordance with the identified test standards. Unavailable unique test equipment is purchased or leased through an Entela-approved source.

An inventory list identifies all pieces of equipment by the department number or location in the laboratory, gage number, instrument name, manufacturer, model and serial number, range of operation, calibration frequency, and the date the instrument was placed in service. Operational and calibration information is located in files in the Quality Assurance Office.

Test equipment is calibrated periodically depending upon the application, ranging from daily to once every three years. Electrical equipment is typically calibrated once per year, at a minimum. Adjustments are made to the calibration frequency via a corrective action report to address complaints or to ensure credible results. A written general procedure identifying the calibration history, records, and frequency of usage is utilized to determine any deviation from the equipment manufacturer's recommended or Entela's usual calibration intervals.

The Quality Assurance (QA) Department is responsible for maintaining the calibration database, the department monthly recall reports, and the procurement of calibration services. Each department is responsible for timely calibration and preventive maintenance of its equipment. The QA Department retrieves or locks out any equipment that is not turned in for calibration. New and repaired test equipment is calibrated prior to use. When a piece of equipment is received for repair or routine calibration, its "as received" calibration status is noted. This status is evaluated for its effect on testing that has been performed with that equipment to determine whether retesting is necessary.

Each item of test and measuring equipment is required to have a label that depicts its calibration status. For example, it may have a calibration label or may be labeled, "Before Each Use", "Out of Calibration", "Out of Service", or "For Reference Only". Calibration labels identify the date when last calibrated as well as the date for the next calibration.

Repair and Calibration records are maintained for the life of the equipment in the master calibration files and on the database computer (calibration). Calibration standards are traceable to NIST or to international standards bodies. Primary standards include: Gage and hardness blocks, laser interferometers, and chemical references.

The QA Department issues monthly calibration recall notices and preventive maintenance reports to each department based upon the master calibration database. The department managers are responsible for complying with any of the requirements noted in the report. The Quality Assurance manager will remove any non-calibrated equipment and place it in a locked storage area unless the equipment meets the criteria for extension of calibration.

A number of test and evaluation procedures were reviewed in various ongoing program areas. The specific ongoing programs the laboratory is involved with that identify the records required to be maintained for an investigation are followed. These programs use ANSI/UL Standards, ASTM test procedures, the Quality Control Manual, Third Party Certification Program (TPCP) Manual, Client Test Procedures, and Departmental Operational Procedures. These procedures contain construction or testing parameters to be met by the product being evaluated and, as required, the chronological order of evaluation. The staff responsible for safety testing generally consists of degreed engineers and chemists. In most instances, the test standard provided sufficient detail for laboratory personnel to conduct a step-by-step approach to develop repeatable and accurate test and evaluation data. Where appropriate, the test engineer provides a narrative report along with the test data to document compliance of a product with the standard. Standardized tests that are frequently run have a standard test data sheet available that contains the necessary information for the laboratory technician.

Sample test and evaluation procedures and reports for the NRTL Program activities were reviewed. These sample reports include narrative descriptions. The test procedure format and scope are identified in the Third Party Certification Program Manual, and describe the content and scope for the Standard Operational Procedure. The laboratory has developed a generalized processing procedure for the product classes of electrical appliances and lighting products in final form, and in draft form for flammability testing.

Several Standard Test Procedures (STPs) were reviewed in various program areas. Entela will develop and submit additional STPs, where necessary, prior to listing products related to these procedures. Specific program procedures and policies are developed by the individual departments and are audited twice per year by the President or Vice President of the laboratory. Management and the project manager are responsible for assuring that procedures are followed. These operating and testing procedures are determined by the work order which specifies which standard(s) and provisions are to be utilized. Operational procedures and policies are implemented through the training program at Entela, Inc. The master copy is located in the Standards Library, with controlled copies located in each department.

Present policy utilizes a technical committee and standards experts to determine the appropriate standard in evaluating a product. Standard interpretations are developed by consensus of the technical committee. The Project Manager distributes technical advisory letters describing standards policy on interpretation or deviation decisions to all parties affected. The laboratory personnel are members of various organizations which develop standards applicable to their on-going programs in the automotive, flammability, metallurgical, quality, electrical and chemical testing areas.

A technical committee and standards experts determine the appropriate standard or standards to be utilized in evaluating the product. Disagreements between the applicant and the laboratory regarding standards applicability are resolved using the Entela Inc. Third Party Certification Committee, technical experts, and input from the standards-writing organization. The decision of the laboratory regarding which standard is applicable is final.

The TPCP Manual addresses the interpretation of these standards and the appeals procedure available to a client, when there is a disagreement with that interpretation. The TPCP Committee interprets the section of the standards, which are also available for distribution to interested parties. Consumer inquiries and complaints are also addressed in the TPCP Manual.

Entela personnel serve on technical committees to enable them to be cognizant of changes to the standards with which they are involved. The laboratory is continuing to develop committee membership in various new product areas of interest.

Test procedures contain the following: Instructions on equipment; preparation of test samples; standard testing techniques; references to specific standards, including titles and dates; testing equipment and accuracies; precautionary statements for operator safety; test data obtained, measurement resolution and data recording time; ambient conditions and/or adverse environmental conditions; and acceptance criteria tests. These test procedures are reviewed annually and are approved by the technical department manager and the QA manager.

Sample test data sheets and attached work orders contain the following: Standard and clause numbers; product model number; measuring and test equipment I.D.; test date and report number, signature of tester/reviewer; and Q.A; ambient conditions; test observations and deviations; test data in the form of compliance, non-compliance, or the need for further review.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for controlling all technical and quality records is described in the Quality Assurance Manual.

The certification reports contain the following: Name and location of submitter and factory; title, number, and date of standard use for evaluation; file number, report date, edition number and revision date; description of product including drawings, specifications, and photographs; conditions of product use; construction and testing narratives which describe how the product(s) comply with the standard; tests and results of tests; deviations and technical rationale for acceptance. The Quality Assurance Manual and the Third Party Certification Program Manual identify the minimum information and reporting format required for an investigation. Most reports followed the required format. Entela has documented specific procedures for the recording of any deviations and the associated technical rationale, or for the modification of testing protocol.

The project manager, department manager, and test engineer, are responsible for the preparation and review of the final report. The test report is written by the test engineer or senior technician. The senior technician is also responsible for reviewing and signing the test data before it is reviewed by the project manager. A modified review process of data sheets and reports has been instituted to ensure that all signatures are in place and that any abnormalities or unusual test results are identified.

Listings are revised with replacement pages. A new report is prepared if extensive changes are required. Copies of the listing report are given to the customer and to jurisdictional authorities, where required, and placed in follow-up inspection files.

Standards updates are secured by maintaining update services for a variety of standards. For example, UL standards quarterly index update service is subscribed to and used to verify the latest edition of their standards.

The project manager is responsible for providing the test engineer with the latest revision of the appropriate standards. Superseded standards are archived in the library and labeled as such, superseded standards beyond 5 years are placed in filing boxes, labeled, and stored in records storage.

The NRTL Program checklist has been developed so that the file of a product listing is evaluated to assure its completeness through the project manager's review of the file and use of the file checklist.

Safety testing records (OSHA/NRTL) are to be stored with the nuclear files which are in a locked fireproof storage room in a fireproof filing cabinet in the third building. No flammability testing is conducted in this building. A procedure for control of files is in place to protect them from damage, theft, or records loss. Duplicate records are not stored off site.

The records are alphabetized by client. The verification and identification of test reports of listed products is accomplished through the use of the director of certified products. A label numbering system is to be utilized for the NRTL program that will take into account the various products, manufacturing sites, and variations of a model line.

The office manager is responsible for filing and maintaining these records. Procedures are in effect to distribute, recall, and revise test records.

The Quality Assurance System consists of separate but interrelated functional areas that report directly to the President or the Vice President of operations. The Quality Assurance Manager is responsible for the internal quality of the laboratory and its operations, and reports directly to the President of the laboratory. The director of Quality Assurance Services reports to the Vice President of Operations and is responsible for the various programs that address the client's preproduction qualifications, suppliers of laboratory services, follow-up program, manufacturing monitoring and quality assurance assessment. The individuals in the two positions assist each other in accomplishing the workload without interfering with their job requirements or the lines of authority. The Quality Manager is independent of operations and has the responsibility and authority for overseeing all activities related to the internal laboratory quality program.

An internal audit program performed every six months is in place on behalf of management to determine if all operations are complying with the requirements of the current quality systems, procedures, policy decisions, calibration programs, test procedures, and safety programs. This audit evaluates both the operational function and the quality assurance program at the same time, and is performed by the president or vice president of the laboratory. Personnel interviewed in the electrical and calibration areas were actively aware of the program. The corrective action reports and the corrective action logs showed no discrepancies.

Variations and discrepancies are addressed via a Corrective Action Report (CAR). CARs not finalized in an appropriate time frame are discussed at the directors' and managers' meetings and monitored by the laboratory President.

Entela, Inc. is devoting additional resources in the quality assurance area and will review weekly all open corrective action reports of problems and root cause analysis. A corrective action system is in place to document audit findings and to implement corrective actions with specified time limits.

Entela performs follow-up inspections at various facilities for other ongoing programs. Written procedures are in place for the various programs. For example, the TPCP Manual, which is presently used in the Government Services Administration (GSA) Furniture Certification Program, identifies the various steps, policies and procedures that will be used in the NRTL Program. A separate manual is presently used in Entela's Certified Automotive Parts Association (CAPA) Program. The Nuclear Program is covered under the Quality Manual.

The Entela, Inc. follow-up inspection procedure for the NRTL program

requires quarterly inspections on an unannounced basis at the manufacturing facility. This program is designed to assure that:

1. The Entela, Inc. mark is applied only to certified products;
2. That the terms of agreement are adhered to when the Entela Inc. mark is used;
3. Defects noted during previous inspections have been corrected;
4. Document control procedures and support staff training should provide the assurance that all facility assessment records are on file.

NRTL factory inspections will be performed at the rate of at least four inspections per factory per year. The frequency varies with product volumes, types of products, and the manufacturer's prior record.

When products fail to meet the requirements, the Quality Services Division takes action to either have the manufacturers correct the defect immediately, quarantine stock until the product can be reworked or reevaluated by the Entela testing engineer, or remove the Entela, Inc. mark from the product.

Entela, Inc. has a standard follow-up inspection form that will be used to document the findings at the manufacturing site. The inspector or inspecting engineer will use this form along with the follow-up inspection file for that manufacturing site and product to evaluate the product.

Entela, Inc. has a pre-qualification checklist for the evaluation of a manufacturing facility that will be used prior to the factory labeling of any products in the NRTL Program, as well as a Follow-Up Service Inspection Report. The TPCP Manual identifies the procedures required for the selection of product samples to test.

Entela, Inc.'s Quality Services Division will monitor products in the field, when prompted by either factory anomalies of complaints, and investigate field complaints. Entela, Inc. reserves the right to utilize safety related public notification and mandatory recall procedures. All consumer complaints are forwarded to the Quality Services Director, Vice President, or President, as appropriate.

Distribution of labels placed on products is controlled, requiring the manufacturer to obtain labels only from Entela. These labels are then cached in a locked storage room.

An organizational chart identifies key laboratory personnel and shows the relationship between administration, operation, and quality control. There are approximately 65 personnel in the Entela organization.

A written position description for each job title of personnel involved with product testing and evaluation includes the necessary education, training, technical knowledge, and the experience required for the position. The position description specified the extent and limitation of responsibility for the position. New position descriptions and training programs are in place for the follow-up inspection areas.

Written job descriptions are referenced in the Quality Control Manual for staff involved with product testing and evaluation. These job descriptions contain minimum requirements, education, technical knowledge and experience requirement for their respective position.

The President and Vice President of Operation, who have overall responsibility for the technical operations of the laboratory, have technical degrees. Personnel assigned to the TPCP have the necessary education, training, technical knowledge, and experience specified by their position description. Training logs reviewed in the electrical and in the calibration areas were current. Calibration training records showed that the calibration supervisor qualified his staff on each piece of equipment prior to any technician being allowed to perform independent calibrations. The training records identify each staff member and the test methods, procedures, and evaluations he or she is qualified to perform. Continuing education and training programs are held to instruct personnel on the proper methods of testing and evaluation. This documented training program incorporates appropriate test methods, equipment and operational procedures, product evaluations, inspections, and technical/engineering course work, and is updated annually.

The laboratory has a progressive performance appraisal system that provides for self-evaluation, peer-evaluation and supervisory-evaluation. The evaluation factors are both quantitative and qualitative. The laboratory also includes a company evaluation as a part of the employee program.

The laboratory has developed procedures that will enable it to accept components and materials tested and evaluated by another NRTL laboratory. These procedures include evaluating the listing report, and reserving the right to retest and audit the components as it deems necessary. Components tested and evaluated by Entela will fall under their follow-up service agreement. An approved source list has been revised to include company name, address, and area of expertise.

The TPCP identifies the circumstances when testing and evaluation of a product may be accomplished at the client's facility, such as when the equipment is large and not easily shipped or when specialized test facilities are required. The TPCP also identifies the general criteria for qualifying the manufacturer's facility to include the witnessing of the tests.

A procedure exists for the qualification of subcontractors for the supply of services in support of the laboratory functions. The laboratory maintains a listing of approved external testing sources for general laboratory support and a separate list for those suppliers that qualify under 10 CFR part 50 for the nuclear industry. This listing and any associated files has been reviewed for its completeness.

Background

The applicant states that Entela, Inc., was originally founded in 1974 as a Michigan Corporation called Entel Engineering Services (no longer in existence) specializing in structural steel inspection, with departments in structural engineering, field service inspection, asbestos inspection, and geotechnical engineering. In 1981, equipment and personnel were added to initiate an in-house materials laboratory. Through a continued growth commitment and dedication to meet its client's needs, the applicant states that it experienced dramatic growth, necessitating the formation of certification programs within Entela, Inc.

The services offered at Entela, Inc. (also doing business as Entela Laboratories, Inc., but one in the same company according to the applicant), include metals chemistry, simulated environmental testing, plastics/non-metals testing, product testing, electrical/electronics testing, metallurgy, mechanical engineering, third party certification programs, metrology, and calibration. As of this time, Entela, Inc. employs over 75 individuals and has two facilities, located in Grand Rapids, Michigan and Taipei, Taiwan. Presently, all testing is performed at the Grand Rapids facility, and only follow-up inspections are carried out in Taiwan.

Entela, Inc. desires recognition for testing and certification of products when tested for compliance with the following test standards:

ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs

ANSI/UL 50—Electric Cabinets and Boxes
ANSI/UL 67—Electric Panelboards
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 94 [1]—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 141—Garment Finishing Appliances
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 197—Commercial Electric Cooking Appliances
UL 213—Rubber Gasketed Fittings for Fire Protection Service
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 325—Door, Drapery, Louver, and Window Operators and Systems
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508 [2]—Electric Industrial Control Equipment
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 544—Electric Medical and Dental Equipment
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 817—Cord Sets & Power-Supply Cords
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 998—Humidifiers
ANSI/UL 1004 [3]—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1012—Power Supplies
ANSI/UL 1026—Electric Household Cooking and Food-Serving Equipment
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1042—Electric Baseboard Heating Equipment
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1230—Amateur Movie Lights
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1286—Office Furnishings
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1459—Telephone Equipment
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
ANSI/UL 1950—Information Technology Equipment Including Electrical Business Equipment

[1] Exclusive of radiant panel testing.

[2] Limited to equipment of no greater than 500 amperes.

[3] Limited to motors rated no greater than one-half horsepower.

Preliminary Finding

Entela, Inc. addressed all of the criteria which must be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report; a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; appeals procedure; typical calibration forms; and a copy of its Third Party Certification Manual and its Quality Assurance Manual. This QA Manual includes a description of its document control; identification and control of materials, parts, and components; inspection; test control; control of measuring and test equipment; inspection, test, and operating status; quality assurance records; and audits.

Nine major areas were examined in depth during the on-site laboratory evaluation: Facility; test equipment, calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted during the on-site evaluation were adequately responded to (Ex. 3.A.(2)) prior to the preparation of the final on-site evaluation (Ex. 3.A(1)). With the preparation of the final report, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

Following a review of the application file and the on-site survey report of the Entela facility, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application the preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Entela, Inc. can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for recognition as a Nationality Recognized Testing Laboratory, as well as appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than (May 2, 1994), and must be addressed to the NRTL

Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Copies of the Entela, Inc. application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–93), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with appendix A of § 1910.7.

Signed at Washington, DC, this 25th day of February 1994.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–4898 Filed 3–2–94; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on April 20–22, 1994 from 9 a.m. to 5 p.m. This meeting will be held in room M07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis for a discussion of guidelines and field issues.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 23, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–4828 Filed 3–2–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended notice is hereby given that a meeting of the Media-Arts Advisory Panel (Radio/Audio Production Section) to the National Council on the Arts will be held on March 22–23, 1994. The panel will meet from 9 a.m. to 6:30 p.m. on March 22, 1994; and 9 a.m. to 5:30 p.m. on March 23, 1994. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

Portions of this meeting will be open to the public on March 22, 1994 from 9 a.m. to 9:30 a.m. for Introductory Remarks; and March 23, 1994 from 5 p.m. to 5:30 p.m. for a guideline discussion.

The remaining portions of this meeting from 9:30 a.m. to 6:30 p.m. on March 22, 1994; and 9 a.m. to 5 p.m. on March 23, 1994 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: February 23, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–4827 Filed 3–2–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INDIAN GAMING COMMISSION

Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice of approval of class III gaming ordinances.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003 ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710 (d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in an unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III

ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Chemehuevi Indian Tribe
Cheyenne-Arapaho Indian Tribes of Oklahoma
Crow Indian Tribe
Fort Mojave Indian Tribe
Keweenaw Bay Indian Community
Menominee Indian Tribe of Wisconsin
Oglala Sioux Tribe
Prairie Island Minnesota Mdewakanton Sioux Tribe
Red Cliff Band of Lake Superior Chippewas
Red Lake Band of Chippewa Indians
St. Regis Mohawk Tribe

Anthony J. Hope,

Chairman.

[FR Doc. 94–4816 Filed 3–2–94; 8:45 am]

BILLING CODE 7565–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33672; File No. SR–DTC–93–14]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change Relating to a Clarification of Rule 5

February 23, 1994.

On December 20, 1993, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–93–14) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to a clarification of DTC Rule 5. On December 29, 1993, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The purpose of the proposed rule change is to clarify the meaning of DTC Rule 5. On December 13, 1993, the Commission issued an order approving a proposed rule change by DTC relating to the eligibility of Rule 144A securities at DTC.[3] In the Rule 144A Order, among other things, was the statement that Rule 5, Section 1 of DTC's Rule requires DTC to determine whether "in light of the Federal securities laws, particularly the provisions of Rules 144, 144A, and 145, the securities, when deposited with DTC, may be lawfully transferred by book-entry."[4] DTC filed this proposed rule change in order to clarify that DTC Rule 5 does not require DTC to determine whether securities deposited at DTC may be transferred lawfully pursuant to Federal securities laws.[5]

II. Discussion

The Commission believes that DTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b) (3) (A) and (F).[6] Those sections require that the rules of a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.

Notwithstanding the language in footnote 22 of the Rule 144A Order, the Commission believes that DTC's interpretation of Rule 5 (*i.e.*, that Rule 5 does not require DTC to determine whether securities, when deposited at DTC, may be transferred lawfully by book-entry in light of Federal securities laws) is a plausible interpretation. Prior to making specific issues of Rule 144A securities eligible for DTC's book-entry delivery and other depository services, DTC, as part of its procedures, requires issuers and transfer agents to make certain representations.

These representations, together with DTC's periodic review to evaluate their effectiveness, serve to indicate that specific issues of Rule 144A securities are eligible for DTC services pursuant to the Rule 144A Order. The Commission is satisfied that DTC's interpretation of Rule 5, along with its procedures for the acceptance of Rule 144A securities, is consistent with DTC's obligations to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.

III. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–93–14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4864 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33671; File No. SR–DTC–93–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to An Increase in the Fixed Net Debit Cap Employed in the Depository Trust Company's Same-Day Funds Settlement System

February 23, 1994.

On December 1, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–93–13) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to increase the fixed net debit cap employed in DTC's same-day funds settlement ("SDFS") system. Notice of the proposal was published in the **Federal Register** on January 19, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

For each participant, DTC establishes a net debit cap in its SDFS system[3] in order to assure that DTC's liquidity resources are sufficient to complete settlement if an SDFS participant fails to settle its net debit obligation. Each participant's net debit in the SDFS system is limited throughout the processing day by a net debit cap that is the lesser of: (1) The adjustable net debit cap, which is a multiple of the participant's deposits to the SDFS participants fund, or (2) the fixed net debit cap.[4] The fixed net debit cap is set at 75% of: (1) the aggregate cash deposits to the SDFS participants fund and (2) DTC's internal and external lines

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33365 (December 21, 1993), 58 FR 68971.

[3] Securities Exchange Act Release No. 33327 (December 13, 1993), 58 FR 67878 (hereinafter Rule 144A Order).

[4] *Id.* n. 22 and accompanying text.

[5] In the near future, DTC plans to adopt and file with the Commission as a proposed rule change revisions to Rule 5 that will clarify further the meaning of the Rule.

[6] 15 U.S.C. 78q–1(b) (3) (A) & (F).

[7] 17 CFR 200.30–3(a)(12) (1990).

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 33457 (January 11, 1994), 59 FR 2887.

[3] For a detailed description of DTC's SDFS system, refer to Securities Exchange Act Release No. 26051 (August 31, 1988), 53 FR 34852 (File No. SR–DTC–88–06) (order granting permanent approval of the SDFS system).

[4] As of February 15, 1994, there were 238 participants in the SDFS program. The fixed net debit cap is the operative cap for twenty-two of these SDFS participants. Telephone conversation between Carl H. Urist, Deputy General Counsel, DTC, and Peter R. Geraghty, Attorney, Division of Market Regulation ("Division"), Commission (February 15, 1994).

of credit. The fixed net debit cap is currently set at $387 million.

DTC has on deposit approximately 72% of the commercial paper ("CP") outstanding in the U.S. and expects that virtually all CP outstanding in the U.S., except CP that is in direct issuers' proprietary book-entry systems, will be included in DTC's CP program sometime in 1994.

With the anticipated increase in volume of commercial paper settlements in its SDFS system, DTC is concerned that the fixed net debit cap at its current level could have the undesirable effect of temporarily blocking substantial numbers of book-entry deliveries. To prevent such occurrences, DTC has decided to increase its external committed lines of credit by $250 million in order to raise the fixed net debit cap of SDFS participants that elect to share DTC's cost of obtaining the increase in the external lines of credit. The $250 million increase in external lines of credit should raise the fixed net debit to approximately $574 million. DTC believes that the securities resources available to it to collateralize any borrowing it should have to make under the increased external lines of credit are more than adequate.[5]

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[6] The Commission previously acknowledged the risk reduction benefits of the net debit cap in the order granting permanent approval of DTC's CP program.[7] The Commission continues to believe that the net debit cap is a integral part of the risk reduction measures taken by DTC to protect the securities and funds in its SDFS system.

Section 17A(b)(3)(F) also requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that increasing the fixed net debit cap should help promote the prompt and accurate clearance and settlement of transactions in the SDFS system by decreasing the possibility that book-entry deliveries could be temporarily blocked from processing due to a participant exceeding its fixed net debit cap.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, of section 17A of the Act in particular, and of the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–DTC–93–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4863 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[5] DTC's line of credit agreements provide that any borrowing may be collateralized by securities in the account of a failing participant as well as by securities that have been deposited by DTC participants to the SDFS participants fund. On February 1, 1994, deposits to the SDFS participants fund included securities having a market value of approximately $627 million. Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Jonathan Kallman, Associate Director, Division, Commission (February 1, 1994).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] For a detailed description and discussion of the SDFS system and the CP program's risk controls, refer to Securities Exchange Act Release No. 30986 (July 31, 1992), 57 FR 35856 (File No. SR–DTC–92–01) (order approving implementation of CP program).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33667; File Nos. SR–MCC–93–7 and SR–MSTC–92–14]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securities Trust Company; Notice of Filing of Proposed Rule Changes Relating To Establishment of a Risk Assessment Committee and Various Other Changes to MCC's and MSTC's Rules and By-Laws

February 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 17, 1993, and on December 23, 1993, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC") respectively filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by MCC and MSTC. MCC amended its proposal on December 23, 1993, thereby making it virtually identical to that of MSTC. MCC made a clarifying amendment on January 3, 1994.[2] The Commission is publishing this notice to solicit comments from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Richard Strasser, (Attorney), Division of Market Regulation, Commission (December 30, 1993).

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

MCC and MSTC propose to change their Rules and By-Laws to: (1) Allow for the establishment of additional communities; (2) require MCC and MSTC to consult with at least one member of the Risk Assessment Committee before ceasing to act for a participant; (3) establish a Risk Assessment Committee; (4) modify their procedures relating to appeals; (5) add provisions relating to suits against MCC and MSTC and their employees; and (6) add a provision that requires MCC or MSTC participants, in certain circumstances, to pay MCC or MSTC all reasonable expenses they incur in defending a legal proceeding instigated by the participants.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MCC and MSTC included statements concerning the purpose of and statutory basis for the proposed rule changes and discussed any comments received on the proposals. The test of these statements may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to amend various by-laws and rules of MCC and MSTC to define participants' rights and obligations more precisely and to give MCC and MSTC more flexibility and protection in dealing with violations of their respective rules. By-laws will be added to allow MCC and MSTC to establish committees either through their respective by-laws or rules or by the board of directors. Rules will be added to: (1) Establish a Risk Assessment Committee for MCC and MSTC; (2) require MCC and MSTC to consult with at least one member of the Risk Assessment Committee prior to ceasing to act for a participant; and (3) expand the types of events that permit MCC and MSTC to cease to act for a participant to any instance where a participant poses a financial risk to MCC or MSTC. These changes will provide

independent input to management in its decision-making process while still providing MCC and MSTC the flexibility to act quickly if necessary.

To clarify that MCC and MSTC have the authority to establish the new Risk Assessment Committee, the proposed rules will amend their by-laws to add a provision that expressly permits MCC and MSTC to establish committees by their rules or by-laws or through their boards of directors. The Risk Assessment Committee will hear all appeals under the applicable rules. The proposed rules specifically provide that prior participation by a member of the Risk Assessment Committee in any inquiry, consultation, examination, or investigation of the matter under appeal will not disqualify the Committee member from hearing the appeal. The proposed rules replace current rules which require the board of directors to appoint a panel to hear an appeal.

MCC and MSTC also will add provisions to their rules that will give them greater flexibility in the decision to cease to act for a participant. Specifically, these provisions will allow MCC and MSTC to cease to act for a participant if there are reasonable grounds to believe that the participant poses a financial risk to MCC or to MSTC even if the firm itself is not in financial difficulty. These provisions will provide MCC and MSTC more flexibility in reducing risk to themselves and to other participants.

The proposed rules also will mandate a formal standard of review to be applied in appeals beyond the Risk Assessment Committee review. Currently, either MCC's or MSTC's board may in its discretion reverse, modify, or remand for further consideration any decision adverse to an appellant. Under the proposed standard, neither board shall reverse, modify, or remand for further consideration any decision adverse to an appellant if the factual conclusions in the Risk Assessment Committee's decision are supported by substantial evidence and if the decision itself is not arbitrary, capricious, or an abuse of discretion.

Finally, the proposed rules add provisions relating to MCC's and MSTC's liability and suits filed against MCC and MSTC and their employees. The possibility of suit against individual staff members of MCC or MSTC acting on company business makes it impossible for such persons to perform properly their duties. The proposed rules will prohibit an MCC or MSTC participant from suing any officer, director, employee, or agent of MCC or MSTC, of the Chicago Stock Exchange, or of any of their affiliates, if such person is acting on the business of MCC, MSTC, the Exchange, or of any of their affiliates. These proposed rules will not prohibit a participant from suing MCC or MSTC as a result of the actions of these individuals; they merely will prohibit suits against individuals acting in their official capacities. The proposed rules also will limit MCC's and MSTC's liability to participants to situations where MCC or MSTC acted willfully or with gross negligence. Finally, the proposals will add new provisions that require an MCC or MSTC participant that fails to prevail in a legal proceeding instigated by that participant against MCC, MSTC, or any of its officers, directors, committee members, employees, or agents to pay MCC or MSTC all reasonable expenses, including attorneys' fees, incurred by MCC or MSTC in defending the proceeding if those expenses exceed $20,000.

The proposed rule changes are consistent with Section 17A of the Act in that they will facilitate the safeguarding of securities and funds which are in MCC's and MSTC's custody or control or for which they are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

MCC and MSTC believe that no burden will be placed on competition as a result of the proposed rule changes.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve the proposed rule changes; or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal offices of MCC and MSTC. All submissions should refer to File Nos. SR–MCC–93–7 and SR–MSTC–93–14 and should be submitted by March 24, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4865 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33668; File No. SR–MSTC–89–02]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving Proposed Rule Change Relating To the Processing of Interchangeable Municipal Bonds Deposited In Registered Form

February 23, 1994.

On April 11, 1989, Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–89–02) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On May 2, 1989, MSTC filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on July 5, 1989, to solicit comments from interested persons.[3] No comments have been received by the Commission. This order approves the proposal.

[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] As originally filed, MSTC requested that its proposal be declared immediately effective pursuant to section 19(b)(3)(A) of the Act. In the amendment, MSTC requested that its proposal be filed pursuant to Section 19(b)(2) of the Act. Letter from Jeffrey E. Lewis, Associate Counsel, MSTC, to Richard Konrath, Attorney, Division of Market Regulation, Commission (May 2, 1989).

[3] Securities Exchange Act Release No. 26970 (June 23, 1989), 54 FR 28136.

I. Description of the Proposal

The proposal establishes procedures for the deposit, processing, and withdrawal of the registered form of interchangeable municipal bonds at MSTC.[4] (Prior to this proposal, MSTC accepted the bearer form of interchangeable municipal bonds.) Deposits of the registered form of interchangeable municipal bonds are maintained along with deposits of the bearer form in MSTC's Bearer System and lose their registered identities. Interchangeable municipal bonds are eligible for deposit at MSTC only in the MSTC Bearer System.

The proposal also establishes procedures for the withdrawal of interchangeable municipal bonds from MSTC's Bearer System. A participant effecting a withdrawal of interchangeable municipal bonds from MSTC may request certificates in either bearer or registered form, and MSTC, while offering no guarantee, will attempt to fill such requests.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[5] Sections 17A(b)(3) (A) and (F) of the Act[6] require that a clearing agency be organized and its rules designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds that are in its custody and control or for which it is responsible. The Commission believes that this proposal is consistent with those sections of the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions by providing an automated, centralized location where MSTC participants can maintain both the registered and bearer form of their interchangeable municipal bonds. Furthermore, MSTC's Bearer System, along with the modifications allowing for the processing of the registered form of interchangeable municipal bonds, has been designed to assure that MSTC fulfills its safeguarding obligations under the Act.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly with those of section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the above-mentioned proposed rule change (File No. SR–MSTC–89–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4866 Filed 3–2–94; 8:45 am]

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[4] Interchangeable municipal bonds are municipal security issues that may be held in registered form or bearer form and may be converted from one form to the other.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33669; File No. SR–MSTC–93–13]

Self-Regulatory Organization; Midwest Securities Trust Company; Notice of Filing of Proposed Rule Change To Rescind Signature Distribution and Signature Guarantee Programs

February 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 15, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared mainly by MSTC, a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change rescinds MSTC's Signature Distribution and Signature Guarantee Programs which have been rendered obsolete by Securities Exchange Act Rule 17Ad–15.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.17Ad–15 (1993).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

On January 6, 1992, the Commission promulgated rule 17Ad–15 which permits transfer agents to reject signature guarantees from eligible guarantor institutions that are not part of a signature guarantee program as defined in Rule 17Ad–15. This new rule render's MSTC's Signature Distribution Program and Signature Guarantee Program obsolete. Therefore, to avoid costs that produce not benefits, MSTC seeks to eliminate its Signature Distribution and Signature Guarantee Programs and to delete MSTC Rule 5, Sections 1 and 2 which govern these programs.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

MSTC believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

MSTC has not solicited or received any comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section and at the principal office of the MSTC. All submissions should refer to File No. SR–MSTC–93–13 and should be submitted by March 24, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4867 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33670; File No. SR–MSTC–93–10]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change Relating to the Limitation or Elimination of Directors' Liability

February 23, 1994.

On August 27, 1993, Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–93–10) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] MSTC amended the filing on October 6 1993.[2] The Commission published notice of this proposed rule change in the **Federal Register** on January 5, 1994.[3] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal will limit or eliminate the potential monetary liability of MSTC directors to the fullest extent permissible under Illinois law.[4] The proposed change is based on Section 2.10(b)(3) of the Illinois Business Corporation Act, under which MSTC is organized. That section allows corporations to adopt provisions in their articles of incorporation that limit or eliminate the potential monetary liability of directors under certain circumstances.

General corporate law imposes a fiduciary duty of care upon each corporate director. This duty of care requires a director to exercise informed business judgment in good faith and to act with an honest belief that the action taken is in the best interest of the corporation. The proposal does not eliminate an MSTC director's duty of care but rather limits the personal liability of an MSTC director to MSTC or its shareholders should the director fail through negligence or gross negligence to satisfy his or her duty of care.[5]

The proposal does not limit a director's liability in instances where liability arises directly or indirectly as a result of a violation of federal securities laws. The proposal also does not eliminate equitable remedies such as rescission or injunctive actions. Moreover, it does not eliminate the liability of an officer of MSTC for actions taken in that capacity even if the officer is also a director. Finally, the proposal does not affect the liability of a director for acts or omissions that occurred prior to approval of the proposal.

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and in particular with Section 17A(b)(3)(C)[6] of the Act in that it helps to ensure the fair representation of shareholders and participants in the administration of MSTC. By limiting or eliminating the potential monetary liability of MSTC directors for actions they take within the scope of their employment, the proposal should guarantee that qualified candidates are not discouraged from becoming MSTC directors. This should enable MSTC to maintain a variety of qualified candidates from which to choose directors and in particular should help MSTC retain directors who are fairly representative of MSTC's shareholders and participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–MSTC–93–10) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4868 Filed 3–2–94; 8:45 am]

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[Release No. 34–33673 ; File No. SR–NASD–93–42]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approved Proposed Rule Change Relating to Asset-Based Sales Charge Disclosures by Money Market Mutual Funds

February 24, 1994.

On December 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change[1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder.[3] The rule change amends Article III, Section 26 of the Rules of Fair Practice ("Rules") to exempt certain money market mutual

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[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Richard Strasser [Attorney], Division of Market Regulation, Commission (October 5, 1993).

[3] Securities Exchange Act Release No. 33379 (December 23, 1993), 59 FR 640.

[4] Specifically, the proposal adds the following language to Article X of MSTC's Articles of Incorporation and to Article IV, § 1 of MSTC's By-Laws:

To the fullest extent that the Illinois Business Corporation Act, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.

[5] MSTC's proposal limits a director's liability even if that director had been grossly negligent provided that the director exercised informed business judgment in good faith and acted with an honest belief that the action taken was in the best interest of the corporation. Because there has been no judicial interpretation on the scope of the applicable Illinois legislation, it is possible that an Illinois court may find as a matter of law that a director cannot act in a manner that is both grossly negligent and in good faith.

[6] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CRF 200.30–3(a)(12) (1993).

[1] The NASD originally filed the proposed rule change on August 3, 1993. On December 3, 1993, the NASD filed Amendment No. 1 in response to concerns raised by the Commission. Amendment No. 1 was reflected in the Commission's Notice of Filing. Securities Exchange Act Release No. 33352 (Dec. 16, 1993), 58 FR 67884 (Dec. 22, 1993). On February 9, 1994, the NASD submitted Amendment No. 2 which included a response to the comment letters received by the Commission and the results of the membership vote on the proposed rule change. The membership approved the rule change with 1,874 approving, 242 disapproving and 9 not voting, of all valid ballots received.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b-4 (1993).

funds from the disclosure required by Section 26(d)(4) of the Rules. In particular, the rule change exempts funds with annual asset-based sales charges equal to or less than .25 of 1% (25 basis points) of average net assets from the requirement to disclose in its prospectus that long-term shareholders may pay more than the economic equivalent of the permitted maximum frontend sales charges.

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release and by publication in the **Federal Register.**[4] Three comments were received in response to the Commission release. This order approves the proposed rule change.

I. Introduction

On July 7, 1992, the Commission approved an NASD rule change concerning investment company sales charges.[5] As currently drafted, section 26(d)(4) of these new rules require any investment company assessing asset-based sales charges to disclose in its prospectus that "long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section."[6]

As the July 7, 1993 effective date for the NASD's new rule approached, the NASD received several applications for exemption from section 26(d)(4)'s disclosure requirement. The applicants sought the exemption based on their assessment that section 26(d)(4) requires the disclosure even if the statement may not be true for a particular mutual fund. According to the NASD, the applicants pointed out that in the case of a money market mutual fund, a high probability exists that the statement will be inaccurate because such funds generally have very low asset-based sales charges, and an investor would have to be a shareholder for an extremely long time before the disclosure would be accurate.

II. Description of the Rule Change

The NASD agreed with the arguments of the applicants and concluded that requiring funds to include disclosure statements in the situations identified by the applicants does not serve any identifiable purpose and does not advance any recognizable regulatory interest. Accordingly, the NASD filed a proposed rule change to amend section 26(d)(4) to exempt certain money market mutual funds from the disclosure requirement.[7] The exemption is limited to money market mutual funds with asset-based sales charges equal to or less than .25 of 1% of average net assets per annum.

III. Comment Letters

As noted above, in response to the solicitation of comments, the Commission received three comment letters. The NASD responded to these comments in an amendment to the filing dated February 9, 1994[8] and a letter dated February 14, 1994.[9]

All three commenters supported the NASD's proposed exemption but suggested certain changes. Two commenters suggested that the exemption not be limited to money market mutual funds but also extend to any fund where the disclosure might be misleading or inaccurate.[10] One of these commenters suggested that the NASD establish a test to determine whether the disclosure would be required,[11] and the other recommended allowing the funds to assess the surrounding circumstances to determine whether disclosure would be necessary.[12] The third commenter argued that the disclosure should be expanded to include a statement that "short term shareholders will pay sales charges less than the maximum permitted by (the rules)."[13]

The NASD has determined not to incorporate the suggested changes and noted that it crafted the exemption for money market mutual funds because these funds typically charge low asset-based sales charges and have a relatively low return on investment. Thus, that an investor would pay the economic equivalent of the maximum permitted front-end sales charge is unlikely. In addition, in the NASD's assessment, the current tendency is for investors to use money market mutual funds for short-term purposes, for example, as checking accounts or temporary holding areas for investment funds and, therefore, these funds should be exempted from the section 26(d)(4) disclosure requirement.

IV. Discussion

The Commission believes that the NASD's rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the rule change. Specifically, the Commission believes that the rule change is consistent with Section 15A(b)(6) of the Act.[14] This section requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The NASD adopted section 26(d)(4) with the intent of providing adequate disclosure to readers of prospectuses of investment companies assessing asset-based sales charges. While the current rule only states that shareholders may pay more than the economic equivalent of the maximum front-end sales charges, by creating an exemption from this disclosure requirement for money market mutual funds, the rule provides more accurate disclosure to readers of these prospectuses. With respect to money market mutual funds, the disclosure is unnecessary, potentially misleading and serves no regulatory or investor protection interest.

V. Conclusion

In conclusion, for the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–93–42 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4869 Filed 3–2–94; 8:45 am]

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[4] Securities Exchange Act Release No. 33352 (Dec. 16, 1993), 58 FR 67884 (Dec. 22, 1993).

[5] See Securities Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985 (July 13, 1992) (approving SR–NASD–90–69); NASD Manual, Rules of Fair Practice, Art. III, Sec. 26(d), (CCH) ¶ 2176.

[6] NASD Manual, Rules of Fair Practice, Art. III, Sec. 26(d)(4), (CCH) ¶ 2176.

[7] Securities Exchange Act Release No. 33352 (Dec. 16, 1993), 58 FR 67884 (Dec. 22, 1993).

[8] File No. SR–NASD–93–42, Amendment No. 2 (Feb. 9, 1994).

[9] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Feb. 14, 1994).

[10] Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (Jan. 13, 1994) ("ICI Comment Letter") and letter from Robert L. Butler, President, Pioneer Funds Distributor, Inc. to Office of the Secretary, SEC (Jan. 10, 1994) ("Pioneer Comment Letter").

[11] Pioneer Comment Letter.

[12] ICI Comment Letter.

[13] Letter from Vern M. Clemenson, Saturna Capital, to Margaret H. McFarland, SEC (Jan. 10, 1994).

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 17 CFR 200.30-3(a)(12).

[Release No. 34–33678; File No. SR–NYSE–92–13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 of a Proposed Rule Change Regarding an Information Memo on Odd-Lot Trading Practices

February 24, 1994.

I. Introduction

On May 19, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 therunder,[2] a proposed rule change regarding the Exchange's odd-lot limit order handling procedures. The Exchange addresses several potential abuses of the procedures through the issuance of an Information Memo to all Members and Member Organizations. On November 20, 1992, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment, as amended, in Securities Exchange Act Release No. 31615 (December 17, 1992), 57 FR 61137 (December 23, 1992). No comments were received on the proposal. On January 21, 1994, the NYSE submitted to the Commission Amendment No. 2 to the proposed rule change.[4] For the reasons discussed below, this order approves the proposed rule change, as amended, including Amendment No. 2 on an accelerated basis.

II. Description of the Proposal

In February 1991, the Exchange implemented changes to its odd-lot[5] order handling procedures.[6] The changes were intended to afford pricing benefits to members and member organizations' customers and to provide an inexpensive and efficient order execution system compatible with traditional odd-lot investing practices of smaller investors.

One change established the use of "Best Pricing Quote" for pricing odd-lot market orders. This assures that an odd-lot market order sent to the Exchange for execution will be priced on the basis of the best prevailing national market system quotation for that security.[7] The second change eliminated all differentials on odd-lot limit orders entered by member organizations through the Exchange's system for odd-lots.[8]

According to the NYSE, however, the efficiencies sought to be obtained by eliminating the differential charge on odd-lot limit orders would only be achieved if the odd-lot system was used in a manner consistent with traditional odd-lot investing practices of smaller investors rather than as a professional trading vehicle.

The Exchange has identified and informed its members about several practices that it believes are not consistent with traditional odd-lot investing practices and whose use constitutes an abuse of the odd-lot system. These practices include unbundling of round-lots for the purpose of entering odd-lot limit orders; failure to aggregate odd-lot orders into round lots; entry of both buy and sell odd-lot limit orders for purposes of capturing the spread in the stock; and order entry practices intended to circumvent the round-lot auction market.[9]

The Exchange's proposal identifies additional types of odd-lot limit order trading which the Exchange believes are not consistent with traditional odd-lot investment activity and should not be permitted to use the odd-lot limit order service. Specifically, the proposal would preclude the use of the odd-lot limit order service,[10] for (1) index arbitrage, (2) other types of program trading,[11] or (3) any pattern of activity that would suggest day trading. Examples of this latter practice could include among other things, entering multiple off-lot limit orders to buy and sell the same security on the same day or odd-lot limit orders to buy and sell a group of stocks on the same day where it appears or is established that the intent is to capture the spread in these stocks by buying on the bid and selling on the offer.[12] Upon approval of this proposed rule change, the Exchange intends to advise its members and member organizations, through an Information Memo, that these types of trading practices may not be effectuated by means of the odd-lot limit order service.

In its filing the NYSE stated that the limitations on use of the odd-lot limit order system are intended to address specific types of trading activity, and are not intended to limit access to, or use of, the system by individual market participants or any class of market participants for any authorized use of the system.

Under the proposal member organizations will be expected to establish appropriate systems to monitor odd-lot activity to ensure that the practices noted in the Information Memo are not engaged in. The Information Memo makes clear that the Exchange intends to initiate appropriate regulatory action if it finds that member organizations have permitted such trading practices, either for proprietary accounts or for the accounts of customers.

III. Discussion

The NYSE's odd-lot order execution system is intended to provide efficient execution of odd-lot orders at the best prices available.[13] The Commission agrees with the NYSE that the odd-lot limit order trading practices identified in the proposed Information Memo are not consistent with traditional odd-lot limit order investing practices. Such practices could undermine the integrity

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated November 16, 1992. Amendment No. 1 clarified the Exchange's proposal by providing an example of a pattern of activity that could suggest day trading of odd-lot limit orders.

[4] Amendment No. 2, in addition to other clarifying amendments, defined the term "day trading" as used in the Information Memo to describe prohibited odd-lot limit order activity.

[5] An odd-lot market order is an order of less than a unit of trading to buy, sell, or sell short, which carries no further qualifying notations. The normal trading unit, or round lot, is 100 shares.

[6] See NYSE Rule 124 for a complete description of the NYSE's odd-lot order execution system.

[7] See Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 4660 (February 5, 1991).

[8] See Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 4660 (February 5, 1991).

[9] See NYSE Information memo No. 91–29, July 25, 1991. See also Securities Exchange Act Release No. 31048 (August 18, 1992), 57 FR 38706 (August 26, 1992), Odd-lot limit orders are executed upon the occurrence of the first round-lot transaction in the security, which is at or better than the specified limit, following receipt of the order by the odd-lot system. See NYSE Rule 124.

[10] Such trading would not be precluded from using the odd-lot system if odd-lot market orders were utilized. Also, such prohibitions do not extend to PRLs (part of round lots) because they are executed outside of the odd-lot system.

[11] The Exchange does permit odd-lot limit orders to be entered in conjunction with a program trade where such orders consist in the aggregate of a relatively small part of the overall program. The term program trading is defined in NYSE Rule 80A as either index arbitrage or any trading strategy involving the related purchase or sale of a group or basket of 15 or more publicly traded securities that have a total fair market value of $1,000,000 or more.

[12] The Exchange does recognize, however, that some types of buying and selling on the same day may be appropriate and cites as an example buying stock using an odd-lot limit order and subsequently entering a stop loss sell order against that position.

[13] See, Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 5660 (February 5, 1991).

of the system and contravene the odd-lot order system's purposes.

In this context, the Commission notes that the NYSE's odd-lot order trading system is predicated on the specialists' willingness to provide execution and price guarantees to odd-lot orders, the majority of which are entered for smaller retail accounts. These transactions are too small to be handled efficiently through the regular Exchange auction process. These orders generally are used by retail investors to buy or sell a small amount of stock and are not used in short term trading strategies. As a result, Exchange specialists are able to provide execution guarantees to odd-lot limit orders without charging an additional handling fee. The use of the system as a day trading vehicle or as part of program trades to capture the bid ask spread through odd-lot limit orders could reduce specialists' willingness to provide cost-efficient executions of odd-lot limit orders. Accordingly, it is reasonable for the NYSE to preclude use of its odd-lot limit order system for index arbitrage, program trading, and day trading. Ensuring the odd-lot limit order system is only utilized for the types of orders it was intended to accommodate will help to ensure the continued economic liability of the system which should ultimately benefit all investors consistent with section 6(b)(5) of the Act.

The NYSE has been careful in formulating the Information Memo to prohibit only those transactions that would abuse the odd-lot limit order execution guarantees. For example, the Information Memo does not preclude market participants from entering odd-lot market orders for index arbitrage, program trading, or day trading. Because the Commission believes the proposal clearly identifies and prohibits certain strategies that can result in abuse of the NYSE's odd-lot limit order system, yet still allows market participants to have such orders executed by entering odd-lot market orders rather than limit orders, the Commission believes that the proposal will not unfairly limit access to the NYSE's market.

The Commission finds good cause for accelerated approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 2 modifies the proposal to make certain technical and clarifying adjustments to the proposed rule change but leaves the overall structure and purpose of the proposal unchanged. We also note that no comments were received on the proposal as noticed.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 11A [14] and 6(b).[15] In particular, the Commission believes the proposal is consistent with the section 11A(a)(1)(C)(i) mandate that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions. The Commission further believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that the proposal will ensure the continued pricing and execution efficiencies provided by the NYSE's odd-lot order system by identifying and prohibiting certain odd-lot limit order trading strategies that are not consistent with traditional odd-lot transactions.

V. Solicitations of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–13 and should be submitted by March 24, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [16] that the proposed rule change, including Amendment No. 2 on an accelerated basis, (SR–NYSE–92–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4870 Filed 3–2–94; 8:45 am]

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[14] 15 U.S.C. 78k–1 (1988)

[15] 15 U.S.C. 78f(b) (1988).

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33666; File Nos. SR–OCC–94–01 and SR–ICC–94–01]

Self-Regulatory Organizations; The Options Clearing Corporation and The Intermarket Clearing Corporation; Notice of Filing of Proposed Rule Changes Relating to the Cross-Netting of Foreign Currency Options and Futures

February 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 18, 1994, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–OCC–94–01 and SR–ICC–94–01) as described in Items I, II, and III below, which Items have been prepared primarily by OCC and ICC, self-regulatory organizations ("SROs"). The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes will eliminate the ability of a clearing member of both OCC and ICC ("joint clearing member") that has elected to cross-net its obligations arising from foreign currency options and futures to select ICC as its designated clearing organization ("DCO") in settling such obligations. Under the proposed rule changes, only OCC will be able to act as the DCO in settling such obligations.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, OCC and ICC have included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text

[1] 15 U.S.C. 78s(b)(1) (1988).

of these statements may be examined at the places specified in Item IV below. OCC and ICC have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Cross-Netting Under Current Rules

Under OCC and ICC rules, a joint clearing member may elect to cross-net its OCC exercise and assignment settlement obligations in OCC-cleared foreign currency options ("OCC obligations") with its settlement obligations in ICC-cleared foreign currency futures ("ICC obligations") on the same foreign currency. Cross-netting occurs when OCC obligations settle on a date that also is a delivery date for ICC obligations. Because such dates coincide only one day each month, cross-netting is performed only one day each month.

Currently, a joint clearing member that has elected to settle by cross-netting may select either OCC or ICC as its DCO and will settle its cross-netted obligations with its DCO in accordance with the rules of the DCO. (OCC and ICC have virtually identical rules regarding the settlement of foreign currency obligations.) The DCO, in turn, performs its ordinary clearance and settlement activities and acts as agent for the opposite clearing organization in settling the cross-netted obligations.[2]

The agreement of one clearing organization to act as agent for the other is contained in the Mutual Agency Agreement for Foreign Currency Settlement ("Mutual Agency Agreement") between OCC and ICC. The Mutual Agency Agreement sets forth the rights and obligations of OCC and ICC in effecting cross-netted settlements and the effect of the default of a joint clearing member on such rights and obligations.

2. The Proposed Rule Changes

ICC no longer desires to be a cross-netting DCO, and therefore, OCC and ICC have proposed to eliminate the ability of a joint clearing member to select ICC as a DCO. These proposed rule changes will have no effect: (1) On the basic procedures under which cross-netted obligations are settled or (2) upon any joint clearing member because no joint clearing member has ever selected ICC as its cross-netting DCO.

To accomplish the proposed rule changes, OCC and ICC will amend OCC Rule 1605(c) and ICC Rule 1205(c). The two rules deal with the cross-netting of foreign currency obligations and will be modified to state that henceforth only OCC will be the DCO and effect the settlement of such obligations. OCC and ICC also will delete from OCC By-Laws Article XV, Section 1 and from ICC Rule 1202 the term and definition of "designated clearing organization."

OCC and ICC will replace the existing Mutual Agency Agreement between OCC and ICC with a proposed Agreement for Cross-Netting Foreign Currency Settlements ("Cross-Netting Agreement"). The proposed Cross-Netting Agreement, which is based on the Mutual Agency Agreement, has been drafted by OCC and ICC to implement the above-described rule changes. Specifically, the Cross-Netting Agreement provides: (1) That OCC and ICC will furnish a form notice by which a joint clearing member may elect to cross-net its OCC and ICC obligations and which will provide that only OCC will effect the cross-netted settlements; (2) that OCC agrees to act as agent for ICC in effecting cross-netted settlements with a joint clearing member; (3) that neither OCC nor ICC will change its rules relating to the margining and settling of foreign currency obligations without the consent of the other; and (4) the settlement, default, indemnity, and termination procedures.

Under the Cross-Netting Agreement, the settlement and default procedures will remain unchanged except that only OCC will be authorized to effect the cross-netting settlements. Likewise, the terms of indemnity between OCC and ICC will remain unchanged except for the fact that OCC will no longer indemnify ICC for actions taken by ICC as agent for OCC in effecting cross-netting settlements. Finally, the terms for terminating the Cross-Netting Agreement will remain unchanged except that the notice requirement between the two parties will be shortened from ninety days to thirty days.

OCC and ICC state the proposed rule changes are consistent with the Act and in particular with section 17A of the Act[3] in that the rule changes neither adversely affect the safeguarding of securities or funds in the custody or control of OCC or ICC or for which they are responsible nor significantly affect the rights or obligations of OCC, ICC, or those joint clearing members that have elected cross-netting.

B. Self-Regulatory Organizations' Statement on Burden on Competition

OCC and ICC believe that the proposed rule changes will not impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

OCC and ICC have not solicited or received any comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to such period that the SROs consent, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of OCC and ICC. All submissions should refer to File Nos. SR–OCC–94–01 and SR–ICC–94–01 and should be submitted by March 24, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

[2] For a more detailed description of cross-netting, refer to Securities Exchange Act Release No. 24781 (August 6, 1987), 53 FR 30268 [File No. SR–OCC–86–14].

[3] 15 U.S.C. 78q–1 (1988).

[4] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4871 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Hillhaven Corporation, Inc., Common Stock, $0.15 Par Value; Preferred Stock Purchase Rights; 7¾% Convertible Subordinated Debentures) File No. 1–10426

February 25, 1994.

Hillhaven Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock, preferred stock purchase rights and convertible subordinated debentures are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and preferred share purchase rights commenced trading on the NYSE at the opening of business on November 2, 1993 and concurrently therewith such securities were suspended from trading on the Amex.

In making the decision to withdraw its common stock and preferred share purchase rights from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and preferred share purchase rights and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before March 18, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4798 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

Valspar Corp.; Application To Withdraw From Listing and Registration

February 25, 1994.

In the matter of Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Valspar Corporation, Common Stock, $.50 Par Value) File No. 1–3011.

Valspar Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 8, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for the common stock.

Any interested person may, on or before March 18, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4797 Filed 3–2–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1957]

Extension of the Restriction on the Use of United States Passport for Travel To, In, or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports, with the exception of passports of immediate family members of hostages in Lebanon, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was taken because the situation in Lebanon was so chaotic that American citizens there could not be considered safe from terrorist acts.

Although there continues to be improvement in the security situation, review of the situation there has led me to conclude that Lebanon continues to be an area "* * * where there is imminent danger to the public health or the physical safety of United States travelers" within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of six months unless extended or sooner revoked by Public Notice.

Dated: February 24, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–4830 Filed 3–2–94; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Katmailand, Inc. d/b/a Katmai Air for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94–2–45) Docket 49328.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Katmailand, Inc. d/b/a Katmai Air fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than March 14, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49328 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: February 25, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–4895 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Approval of Noise Compatibility Program; Capital City Airport, Lansing, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Capital Region Airport Authority, Lansing, Michigan, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 29, 1993, the FAA determined that the noise exposure maps submitted by the Capital Region Airport Authority under part 150 were in compliance with applicable requirements. On January 21, 1994, the Assistant Administrator for Airports approved the Capital City Airport noise compatibility program.

All of the recommendations of the program were approved. A total of nine (9) measures were included in the Capital Region Airport Authority recommended program. Of the nine (9) measures, two (2) are listed as "Noise Abatement Plan Measures," two (2) are listed as "Program Management Measures," and five (5) are listed as "Land Use Management Plan." The FAA has approved all of the nine (9) measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Capital City Airport noise compatibility program is January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313–487–7280. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Capital City Airport, effective January 21, 1994.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The Capital Region Airport Authority submitted to the FAA in 1993 noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1990 and 1992. The Capital City Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on June 29, 1993. Notice of this determination was published in the Federal Register on July 26, 1993.

The Capital City Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1996. It was requested that the FAA evaluate and approve this material as a noise compatibility program as

described in section 104(b) of the Act. The FAA began its review of the program on July 27, 1993, and was required by a provision of the Act to approve or disapprove the program within 180 days (other then the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained nine (9) proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective January 21, 1994.

Outright approval was granted for all nine (9) of the specific program elements. The nine (9) measures include: Informal Preferential Runway Use Program, Voluntary Compliance of Phase-Out of Stage 2 Aircraft, Airport Zoning, Environmental Review, Revision of Building Code, Real Estate Disclosure, Local Government Comprehensive Plans, Noise Abatement Officer, and Provisions for Revisions.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on January 21, 1994. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591,

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111,

Capital Region Airport Authority, Capital City Airport, Lansing, Michigan 48906.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, February 7, 1994.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 94–4874 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Boise Air Terminal, Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Boise Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John W. Anderson, A.A.E. at the following address: 3201 Airport Way, Boise, ID 83705.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Boise Air Terminal under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra M. Simmons, (206) 227–2656; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Boise Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 18, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Boise was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 18, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1994.

Proposed charge expiration date: September 30, 1998.

Total estimated PFC revenue: $6,907,774.00.

Brief description of proposed project(s): Planning studies, taxiway safety improvements, Aircraft Rescue and Fire Fighting improvements, terminal safety improvements, air carrier capacity improvements, land acquisition and perimeter road, snow removal equipment safety improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators public or private charters in aircraft with a seating capacity of 10 or more. The application was prepared identifying Part 139; however, this was a typographical error. A letter notifying the carriers has been distributed and they may respond during the **Federal Register** comment period indicating their agreement/disagreement.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540 Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Boise Air Terminal.

Issued in Renton, Washington on February 18, 1994.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 94–4876 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: McDonough County, IL

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 project in McDonough County, Illinois. The proposed project will evaluate bypass alternates in the area of Macomb, Illinois. Bypass alternates will consider possible connections of existing U.S. Route 67, U.S. Route 136, and proposed Illinois Route 336. The study area will encompass an area three miles south, five miles north, eight miles west, and five miles east of Macomb.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Partlow, Design Operations Engineer, Federal Highway Administration, Illinois Division, 3250 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492–4622 Mr. Dale E. Risinger, District Engineer, Illinois Department of Transportation (IDOT), 401 Main Street, Peoria, Illinois 61602, Telephone: (309) 671–3333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an Environmental Impact Statement on a proposal to improve traffic circulation around Macomb in McDonough County, Illinois. The proposed action involves the construction of a four-lane, access-controlled, divided highway. The length will be dependent on the results of the study and a chosen bypass location. The area being studied will encompass Macomb, Illinois for three miles to the south, five miles to the north, eight miles to the west, and five miles to the east.

The proposed action will support economic development in west-central Illinois by providing improved traffic circulation, safer and more efficient access to the urban area, a divided highway design for high operating speeds and system continuity from Quincy to Macomb. Primary environmental resources that may be impacted are local property tax income, agricultural land, and wetlands.

Alternatives under consideration include no action and a new four-lane, fully access-controlled facility on new alignment. Interchanges will be provided at major high-volume roadways. Several alignment alternatives will be evaluated for the proposed project to best serve traffic circulation to and around Macomb.

The scoping process undertaken as part of this proposed project will include distribution of a scoping information packet, coordination with appropriate Federal, State, and local agencies, and review sessions as needed. A formal scoping meeting is not planned. Further details of the proposed project and a scoping information packet may be obtained from one of the contact persons listed above.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, a comprehensive public involvement program will be undertaken. A public meeting concerning the proposed action will be held in the study area prior to the public hearing. Public notice will be given of the time and place of the meeting and hearing. The Draft EIS will be available for public agency review and comment and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or IDOT contact persons.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 18, 1994.

James C. Partlow,

Design Operations Engineer, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 94–4792 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Prince of Wales Island, Alaska

February 22, 1994.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of Notice of Intent to prepare an environmental impact statement. Reference FHWA Notice 6640.19, April 27, 1993.

SUMMARY: The FHWA is issuing this notice to inform the public that an environmental impact statement (EIS) will not be prepared for a proposed road improvement project on Prince of Wales Island in Alaska. The scope of the proposed improvements to the North Prince of Wales Highway has been significantly reduced. An EIS will not be prepared because of the reduced potential for significant environmental impacts to result from this project.

FOR FURTHER INFORMATION CONTACT: Walter Langlitz, Project Manager, Federal Highway Administration/ Western Federal Lands Highway Division, 610 East Fifth Street, Vancouver, Washington 98661, Phone: 206/696–7528.

SUPPLEMENTARY INFORMATION: The new project scope involves reconstruction of the section of North Prince of Wales Road between Coffman Cove junction (M.P. 68.78) and the Naukati junction (M.P. 76.75). This project will correct substandard road features such as narrow width, poor alignment, poor road surface, and unsafe roadside conditions in the project area. The Federal Highway Administration (FHWA) is considering two alternatives in addition to a "no action" alternative. One alternative would widen and realign this section to an 60 km/h (40 MPH) standard. The other alternative would widen and realign the section to a 80 km/h (50 MPH) standards. Both alternatives include resurfacing the roadbeds with gravel. This revised proposal is based on written comments and the results of public meetings held in 1993 regarding improvement of roads on Prince of Wales Island. Members of the public and agency representatives discussed potential alternatives and identified relevant issues at these meetings. Input received indicates there is not strong support at this time for new road construction on the east side of the island to meet the stated need. A Scoping Report is available from FHWA which documents the meetings held by FHWA and input received.

Issued on: February 23, 1994.

Richard Wasill,

Planning and Coordination Engineer, Federal Highway Administration.

[FR Doc. 94–4885 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

The appended document, *Automotive Fuel Economy Program, Eighteenth Annual Report to the Congress*, was prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub.L. 92–513), as amended by the Energy Policy and Conservation Act (Pub.L. 94–163) which requires in pertinent part that each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part.

Issued: February 23, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

U.S. Department of Transportation

Automotive Fuel Economy Program

National Highway Traffic Safety Administration

Eighteenth Annual Report To The Congress

AUTOMOTIVE FUEL ECONOMY PROGRAM

EIGHTEENTH ANNUAL REPORT TO THE CONGRESS

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Section I: Introduction

This Eighteenth Annual Report to Congress summarizes the 1993 activities of the National Highway Traffic Safety Administration (NHTSA) regarding implementation of applicable Sections of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act of 1972 (15 U.S.C. 1901 *et seg.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report each year. Included in this report are sections summarizing rulemaking activities during 1993 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III, of the Department of Energy Act of 1978 (Pub. L. 95–238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States. The authority to administer the program was delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing annual reports to Congress on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers and other matters.

Passenger car fuel economy standards were established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 miles per gallon (mpg). NHTSA is authorized to amend the standard above or below that level. Standards for light trucks were established by NHTSA for MYs 1979 through 1995. NHTSA set a combined standard of 20.6 mpg for light truck fuel economy standard for MY 1995. All current standards are listed in Table I–1.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1995

[In MPG]

Model year	Passenger cars	Light Trucks[1]		
		Two-wheel drive	Four-wheel drive	Combined[2,3]
1978	[4] 18.0	.....	.....	.....
1979	[4] 19.0	17.2	15.8	.....
1980	[4] 20.0	16.0	14.0	(5)
1981	22.0	[6] 16.7	15.0	(5)
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[9] 26.0	21.0	19.5	20.5
1988	[9] 26.0	21.0	19.5	20.5
1989	[10] 26.5	21.5	19.0	20.5
1990	[4] 27.5	20.5	19.0	20.0
1991	[4] 27.5	20.7	19.1	20.2
1992	[4] 27.5	.....	.....	20.2
1993	[4] 27.5	.....	.....	20.4
1994	[4] 27.5	.....	.....	20.5
1995	[4] 27.5	.....	.....	20.6

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 pounds or less.

[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.

[4] Established by Congress in Title V of the Act.

[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.
[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.
[8] Revised in October 1985 from 27.5 mpg.
[9] Revised in October 1986 from 27.5 mpg.
[10] Revised in September 1988 from 27.5 mpg.

The Alternative Motor Fuels Act of 1988 (AMFA) (Pub. L. 100–494, October 14, 1988), amended the Motor Vehicle Information and Cost Savings Act under Section 513—Manufacturing Incentives for Automobiles. AMFA promotes the use of methanol, ethanol, and natural gas as transportation fuels, and it provides corporate average fuel economy (CAFE) incentives for the vehicles that can use alternative fuels. AMFA provides CAFE benefits for manufacturers who produce both dedicated and dual energy alternative fuel vehicles in MYs 1993 through 2004, and the benefits may be extended through MY 2008. Dual energy automobiles are capable of operating on alcohol and either gasoline or diesel fuel. Natural gas dual energy automobiles are capable of operating on natural gas and either gasoline or diesel fuel. A fleet including dual energy automobiles which meets the applicable range or dedicated alternative fuel automobiles qualify to have their CAFE calculated using a special procedure that considers the petroleum content of the alternative fuel. Under that procedure, a relatively high fuel economy figure is assigned the vehicles capable of operating on alternative fuels. Section 513 of the Motor Vehicle Information and Cost Savings Act of 1972, was revised by the Energy Policy Act of 1992, to expand the definition of manufacturing incentives for automobiles by including gaseous alternative fuels.

The Environmental Protection Agency (EPA) administers the fuel economy calculations for passenger vehicles, including alternative fuel vehicles. EPA will publish the final rules for alternative fuel vehicles which contain the special CAFE adjustments for these vehicles. The majority of the manufacturers of these alternative fuel vehicles described below are awaiting guidance from EPA to receive special CAFE credits.

In MY 1993, several manufacturers demonstrated the capability of producing alternative fuel vehicles. Although production of these passenger vehicles was not large, alternative fuels are advantageous in reducing hydrocarbon, carbon monoxide, and oxides of nitrogen emissions at a relatively low cost and providing higher octane ratings.

Ford is the only manufacturer that reported a special CAFE calculation for its flexible fuel passenger automobiles. A flexible fuel vehicle is capable of operating on alcohol, gasoline, or any combination of these fuels from the same tank and without the driver taking any additional actions. The following alternative fuel vehicles were produced in MY 1993:

- GM manufactured two alternative fuel vehicles: methanol (M85) and ethanol (E85) Luminas. GM projected producing a total of 500 of these flexible fuel vehicles. The M85 fuel has a content of 85 percent methanol fuel and 15 percent gasoline. The E85 fuel consists of 85 percent ethanol fuel and 15 percent gasoline. These vehicles have the flexibility to run either on the alternative fuels or gasoline.
- Ford included an alcohol flexible fuel passenger automobile in its MY 1993 fleet, which was reported in its midmodel year report. The Taurus, a midsize passenger car, achieved a fuel economy of 42.4 mpg when adjusted for the alternative fuel. Ford projected producing 2,000 of these flexible fuel passenger vehicles.
- Chrysler included two flexible fuel passenger vehicles, Spirit and Acclaim, in its MY 1993 fleet. Chrysler projected manufacturing a total of 5,427 of these vehicles. The fuel economy for both these flexible fuel passenger vehicles is 28.2 mpg, when operating on gasoline.

After Chrysler and GM receive special CAFE calculations for their alternative fuel vehicles, the current fuel economies of these companies will increase slightly. The relatively low volumes of these vehicles in the GM and Chrysler fleets will preclude any significant CAFE adjustment.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1992 were updated to include final EPA calculations, where available, since the publication of the *Seventeenth annual Report to the Congress*. These fuel economy achievements and current projected data for MY 1993 are listed in Tables II–1 and II–2.

Overall fleet fuel economy for passenger cars was 28.3 mpg in MY 1993. For MY 1993, CAFE values increased over MY 1992 levels for 15 of 21 passenger car manufacturers' fleets. (See Table II–1.) These 15 companies accounted for over 74 percent of the total MY 1993 production. Manufacturers continued to introduce new technologies, more fuel efficient models, and less fuel-efficient larger models. For MY 1993, the overall domestic manufacturers' fleet average fuel economy was the highest it has ever been with 27.7 mpg, exceeding the CAFE standard by 0.2 mpg. The overall domestic manufacturers' fleet average fuel economy is the closest it has been to that of the import manufacturers, differing by only 1.8 mpg. For MY 1993, Ford and GM raised their domestic passenger car CAFE 0.7 and 0.6 mpg, respectively, from their 1992 levels, while Chrysler fell 0.3 mpg below its MY 1992 level.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER*

[Model Years 1992 and 1993]

Manufacturer	Model year CAFE (MPG)	
	1992	1993
Domestic:		
Chrysler	27.8	27.5
Ford	27.4	28.1
GM	26.8	27.4
Mazda	.....	29.2
Sales Weighted Average (Domestic)	27.1	27.7
Imported:		
BMW	24.0	25.2
Chrysler Imports	28.9	30.8
Daihatsu	41.3	.....
Fiat	22.5	23.7
Ford Imports	25.4	27.0
GM Imports	31.1	29.7
Honda	31.3	32.0
Hyundai	31.3	31.0
Isuzu	32.5	33.0
Kia	.....	31.7
Mazda	30.7	30.8
Mercedes-Benz	21.8	22.9
Mitsubishi	28.2	29.1
Nissan	29.4	29.0
Peugeot	25.0	.....
Porsche	22.4	22.5
Subaru	27.8	29.3
Suzuki	44.7	46.4
Toyota	28.8	28.8
Volvo	25.6	25.9
VW	29.2	27.0
Sales Weighted Average (Imported)	29.0	29.5
Total Fleet Average	27.9	28.3
Fuel Economy Standards	27.5	27.5

*Manufacturers or importers of fewer than 1,000 passenger cars annually are not listed.

Note: Some MY 1992 CAFE values differ from those used in the *Seventeenth Annual Report to the Congress* due to the use of final EPA calculations.

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER

[Model years 1992 and 1993]

Manufacturer	Model year CAFE (MPG)	
	Combined	
	1992	1993
Captive Import:		
Chrysler Imports ...	21.0	24.4
Others:		
Chrysler	21.2	21.0
Daihatsu	26.7	.....
Ford	20.3	20.7
GM	20.2	19.8
Isuzu	20.8	21.8
Mazda	23.4	23.6
Mitsubishi	22.2	21.2
Nissan	23.9	23.8
PAS	18.6	18.5
Range Rover	16.3	15.4
Surbaru	28.6	29.1
Suzuki	30.1	28.9
Toyota	21.9	21.8
UMC	19.0	18.8

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER—Continued

[Model years 1992 and 1993]

Manufacturer	Model year CAFE (MPG)	
	Combined	
	1992	1993
VW	.....	21.0
Total Fleet Average	20.8	20.8
Fuel Economy Standard	20.2	20.4

Note: Some MY 1992 CAFE values differ from those used in the *Seventeenth Annual Report to the Congress* due to the use of final EPA calculations.

Mazda achieved 75 percent domestic content for its United States-built passenger cars to become the first foreign-based manufacturer with a domestic fleet. Overall, the domestic manufacturers increased their combined CAFE by 0.6 mpg over MY 1992 levels.

In MY 1993, the fleet average fuel economy for imported passenger cars increased by 0.5 mpg from the MY 1992 CAFE level. Import CAFE was 29.5 mpg in MY 1993. Thirteen of the 18 imported car manufacturers increased their CAFE values between MYs 1992 and 1993, including 6 of the 9 Asian importers. Figure II-1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1993.

The total light truck fleet CAFE remained constant at the MY 1992 CAFE level of 20.8 mpg. Figure II-2 illustrates the progress in total fleet CAFE from MY 1979 to MY 1993 for light trucks.

A number of passenger car and a few light truck manufacturers are projected not to achieve the levels of the MY 1993 CAFE standards. NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1993 CAFE values may change when final figures are provided to NHTSA by EPA, in mid-1994. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

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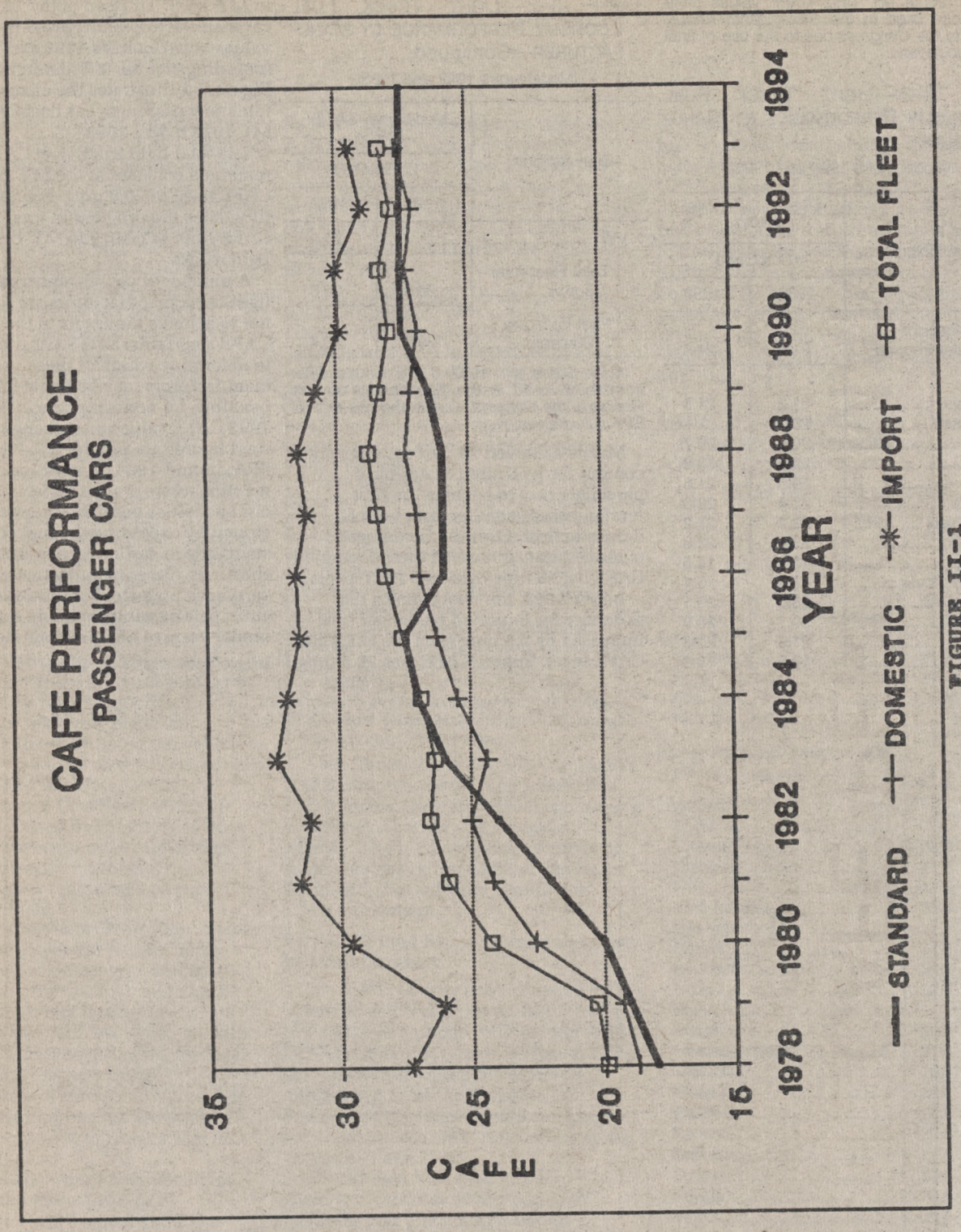
CAFE PERFORMANCE
PASSENGER CARS
CAFE
35
30
25
20
15
1978
1980
1982
1984
1986
1988
1990
1992
1994
YEAR
STANDARD
DOMESTIC
IMPORT
TOTAL FLEET

FIGURE II-1

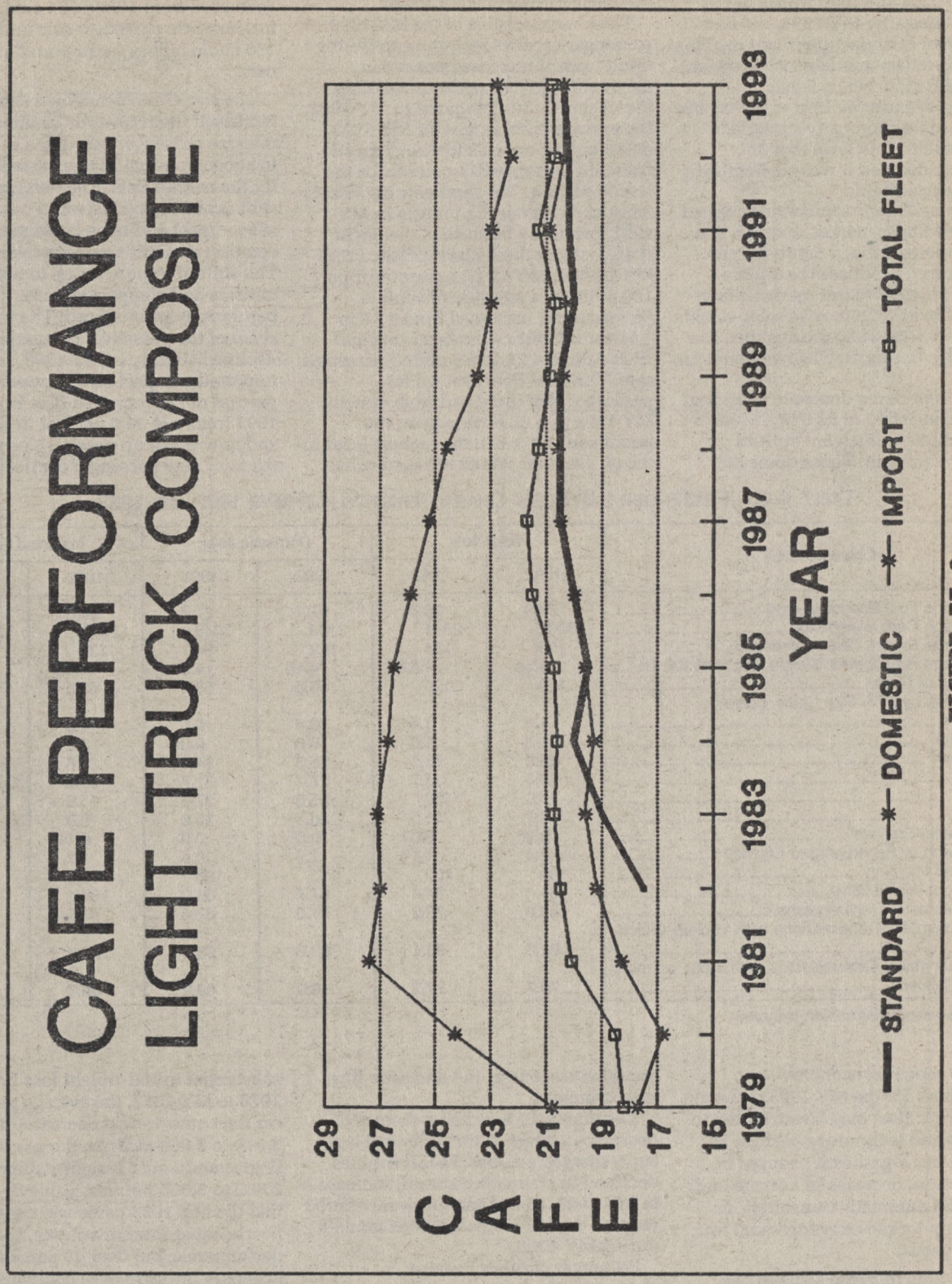

FIGURE II-2

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Fleet average fuel economy for all MY 1993 passenger cars combined and for all light trucks combined exceeded the levels of the MY 1993 standards.

Daihatsu terminated sales of its passenger cars and light trucks in the United States after MY 1992, the first major Asian manufacturer to do so. This manufacturer accumulated substantial CAFE credits during its 5-year marketing span in the United States, but the sales of this company's products reached such a low level that it apparently decided it was economically infeasible to remain.

While one Asian manufacturer exited the United States market, another, Kia Motors, entered. Kia, a South Korean manufacturer, produces the Sephia sedan. It planned to test market a few thousand in MY 1993, with sales slated for October 1993 at 50 dealerships. Kia Motors also builds the Festiva model for Ford.

Mazda reported a domestic passenger car fleet consisting of its 626 and MX6 model vehicles which are built in Flatrock, Michigan. These domestic-built vehicles do not appreciably affect the domestic fleet CAFE.

The characteristics of the MY 1993 passenger car fleet reflect a continuing trend toward increased consumer demand for higher performance cars. (See Table II–3.) Compared to MY 1992, the average curb weight for MY 1993 decreased 62 pounds for the domestic fleet and decreased 14 pounds for the imported fleet. The total new car fleet is 36 pounds lighter than it was in MY 1992, primarily because of the larger share held by the domestic fleet. From MY 1992 to MY 1993, horsepower per/100 pounds, a measure of vehicle performance, increased from 4.48 to 4.56 for domestic passenger cars and from 4.66 to 4.72 for imported passenger cars. The total fleet average for passenger cars increased from 4.56 in MY 1992 to 4.62 horsepower/100 pounds in MY 1993, the highest level in the 38 years for which the agency has data. Average engine displacement decreased from 192 to 184 cubic inches for domestic passenger cars and 139 to 136 cubic inches for imported passenger cars.

The size class breakdown shows an increased trend towards compact and midsize passenger cars and a decrease in subcompact and large passenger cars for the overall fleet. The domestic fleet shift is almost exclusively from subcompact and large passenger cars to compact and midsize passenger cars. The shift of imported cars to both the midsize and compact sizes is particularly pronounced. The imported share of the passenger car market declined slightly in MY 1993, but imported compact cars increased to 36.6 percent of the imported fleet in MY 1993 from just 32.0 percent in MY 1992 and now make up nearly 15 percent of the total new passenger car fleet.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1992 AND 1993

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1992	1993	1992	1993	1992	1993
Fleet Average Fuel Economy, mpg	27.9	28.3	27.1	27.7	29.0	29.5
Fleet Average Curb Weight, lbs	3007	2971	3108	3046	2875	2861
Fleet Average Engine Displacement, cu. in	169	164	192	184	139	136
Fleet Average Horsepower/Weight ratio, HP/100 lbs	4.56	4.62	4.48	4.56	4.66	4.72
Percent of Fleet	100	100	56.5	59.4	43.5	40.6
Segmentation by EPA Size Class, percent:						
Two-Seater	1.0	1.4	0.4	0.5	1.6	2.8
Minicompact	1.3	1.0	0.0	0.0	3.1	2.4
Subcompact*	25.9	23.0	15.3	14.4	39.6	35.4
Compact*	29.6	33.7	27.7	31.7	32.0	36.6
Midsize*	27.0	29.4	35.8	37.8	15.6	17.2
Large*	15.2	11.5	20.8	15.6	8.0	5.6
Percent Diesel Engines	0.06	0.04	0.0	0.0	0.14	0.09
Percent Turbo or Supercharged Engines	2.4	1.1	2.9	0.5	1.9	1.9
Percent Fuel Injection	100	100	100	100	99.8	100
Percent Front-Wheel Drive	84.4	84.4	87.7	86.0	80.1	82.1
Percent Automatic Transmissions	81.6	79.9	91.8	87.4	68.3	69.1
Percent Automatic Transmissions with Lockup Clutches	92.6	93.1	92.8	93.3	92.3	92.6
Percent Automatic Transmissions with Four or more Forward Speeds	70.2	77.2	60.9	69.2	86.3	91.9

*Includes associated station wagons.

The 0.6 mpg fuel economy improvement for the MY 1993 domestic passenger car fleet may be attributed to mix shifts and technology changes in the following: significant changes in engine design, decrease in average curb weight, and automatic transmissions with lockup torque converters and four forward speeds.

The 0.5 mpg increase average fuel economy for the MY 1993 imported passenger car fleet may be attributed to the same reasons as the domestic fleet improvements.

The domestic fleet had a dramatic decrease in share of turbocharged and supercharged engines. Diesel engines declined in share after a small increase in MY 1992. Diesel engines were offered only on certain Mercedes Benz models during MY 1993.

Passenger car fleet average characteristics have changed significantly since the first year, MY 1978, of fuel economy standards. After substantial initial weight loss from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds; the passenger car fleet average curb weight stabilized at 2,800 to 3,000 pounds. Table II–4 shows that the MY 1993 passenger car fleet has nearly equal interior volume, higher performance, but over 40 percent fuel economy improvement compared to the MY 1978 fleet (see Figure II–3).

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS

[Model Years 1978–1993]

Model year	Fuel economy (mpg)	Curb weight (lb.)	Interior space (cu. ft.)	Engine size (cu. in.)	Horsepower/ Weight (hp/100 lb.)
1978	19.9	3349	112	260	3.68
1979	20.3	3180	110	238	3.72
1980	24.3	2867	105	187	3.51
1981	25.9	2883	108	182	3.43
1982	26.6	2808	107	173	3.47
1983	26.4	2908	109	182	3.57
1984	26.9	2878	108	178	3.66
1985	27.6	2867	108	177	3.84
1986	28.2	2821	106	169	3.89
1987	28.5	2805	109	162	3.98
1988	28.8	2831	107	161	4.11
1989	28.4	2879	109	163	4.24
1990	28.0	2908	108	163	4.53
1991	28.3	2934	108	164	4.42
1992	27.9	3007	108	169	4.56
1993	28.3	2971	109	164	4.62

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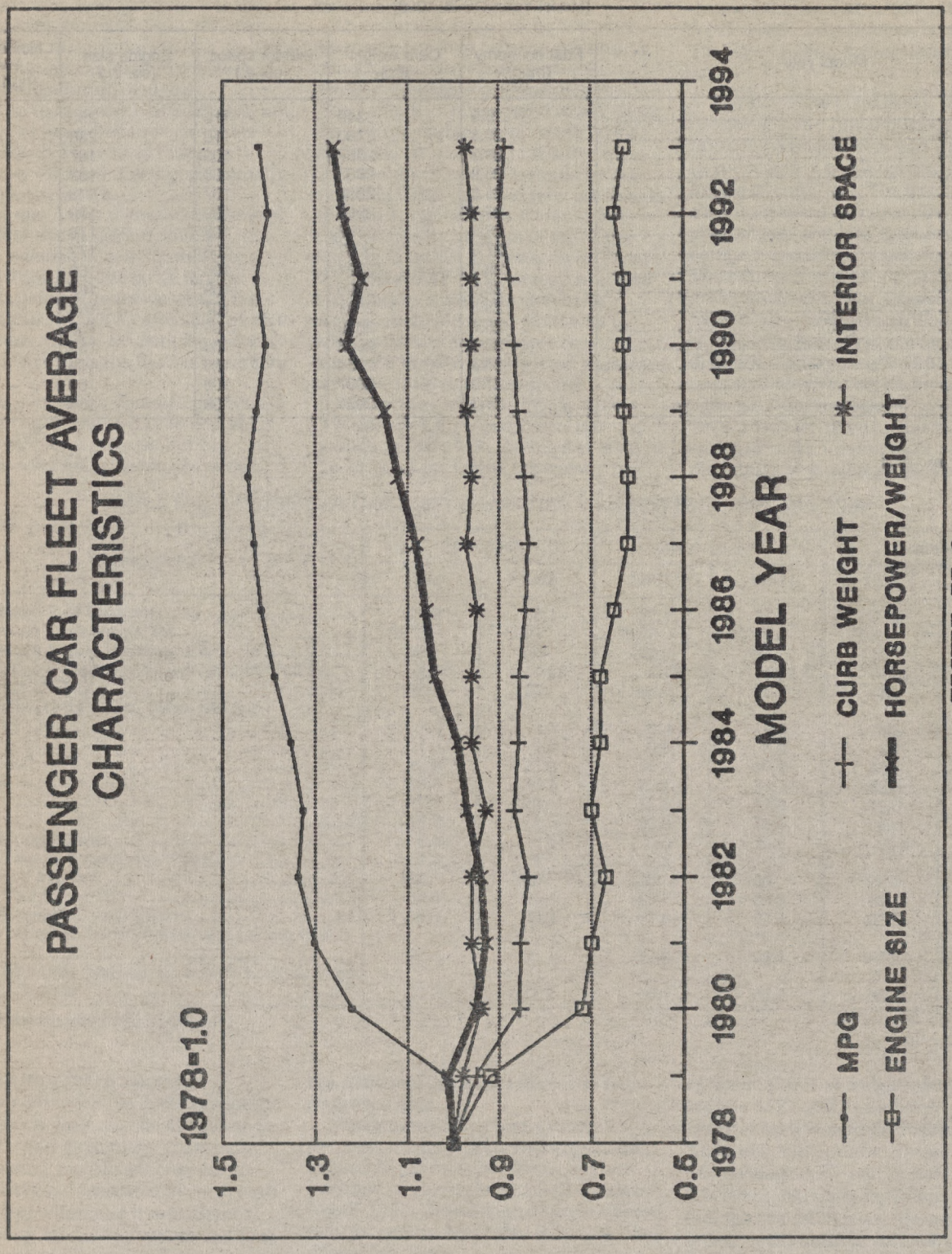

FIGURE II-3

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The passenger car fleet in MY 1993 averaged the highest horsepower-to-weight ratio recorded since 1955, the earliest year for which NHTSA has data.

The characteristics of the MY 1993 light truck fleet are shown in Table II–5. Since light truck manufacturers are not required to divide their fleets into domestic and import fleets based on the 75 percent domestic content threshold used for passenger car fleets (except for United States-based manufacturers with captive import fleets), the domestic and imported fleet characteristics in Table II–5 are estimated. NHTSA assumed foreign-based manufacturer's products would not meet the domestic content threshold, whether they were assembled in the United States, Canada, or another country. The exception is the assumption that the import-badged products of a domestic manufacturer's assembled plant were "domestic" (Mazda Navajo and Nissan Quest).

TABLE II–5.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYS 1992 AND 1993

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1992	1993	1992	1993	1992	1993
Fleet Average Fuel Economy, mpg	20.8	20.8	20.5	20.5	22.5	22.8
Fleet Average Equivalent Test Weight, lbs.	4169	4201	4260	4284	3733	3727
Fleet average Engine Displacement, cu. in.	235	237	251	249	160	167
Fleet Average Horsepower/Weight Ratio, HP/100 lbs.	3.92	3.89	4.02	3.97	3.46	3.47
Percent of Fleet	100	100	82.7	85.1	17.3	14.9
Segmentation by Type, percent:						
Passenger Van:						
Compact	21.4	23.6	23.1	25.8	12.9	11.1
Large	0.6	0.3	0.7	0.4	.....	.....
Cargo Van:						
Compact	1.7	1.4	2.1	1.6	.....	.....
Large	5.4	4.7	6.5	5.6	.....	.....
Small Pickup*	14.2	7.9	13.8	6.6	16.6	15.7
Large Pickup*	31.3	34.2	30.5	33.4	35.3	39.2
Special Purpose	25.4	27.8	23.4	26.7	35.3	33.9
Percent Diesel Engines	0.09	0.07	0.11	0.09	.....	.....
Percent Fuel Injection	98.9	99.0	100	100	93.5	93.0
Percent Automatic Transmissions	72.2	76.2	78.9	82.5	40.3	39.9
Percent Automatic Transmissions with Lockup Clutches	98.1	98.6	98.8	99.1	91.2	92.3
Percent Automatic Transmissions with Four Forward Speeds	88.6	90.5	87.8	89.9	96.5	97.1
Percent 4-Wheel Drive	32.8	33.7	29.9	32.3	47.1	41.2

*Including Cab Chassis.

The average test weight of the total light truck fleet increased by 32 pounds over that for MY 1992. The stability of the 20.8 mpg CAFE level between MYs 1992 and 1993 may be attributed to the small increase in shares of compact vans and special purpose vehicles and the small increase in the use of lockup converter clutches and four forward speed automatic transmissions, offsetting the increased popularity of large pickups and heavier trucks. Diesel engine usage declined in light trucks to 0.07 percent in MY 1993 from 0.09 percent in MY 1992. The imported share of the MY 1993 light truck fleet decreased to 14.9 percent, 2.4 percent lower than MY 1992 and the lowest share since light truck fuel economy standards were established.

During MYs 1980 through 1993, CAFE levels for light trucks in the 0–8,500 pounds gross vehicle weight (GVW) class increased, beginning at 18.5 mpg in MY 1980 and reaching 21.7 mpg in MY 1987 before dropping to lower values in MY 1988 through MY 1993, as average weight, engine size, and performance increased. During these years, light truck production increased from 1.9 million in MY 1980 to 4.6 million in MY 1993. Light trucks comprised nearly a third of the total light duty vehicle fleet production in MY 1993, almost double its share in MY 1980.

Figure II–4 illustrates that the light duty fleet (passenger cars and light trucks together) average fuel economy steadily increased in MY 1987, but subsequently has been below the MY 1987 level (see Table II–6). Light truck average fuel economy also declined, but the passenger car average fuel economy remained relatively constant for MYs 1987–1993. The overall decline illustrates the emergence of light trucks in the light duty fleet.

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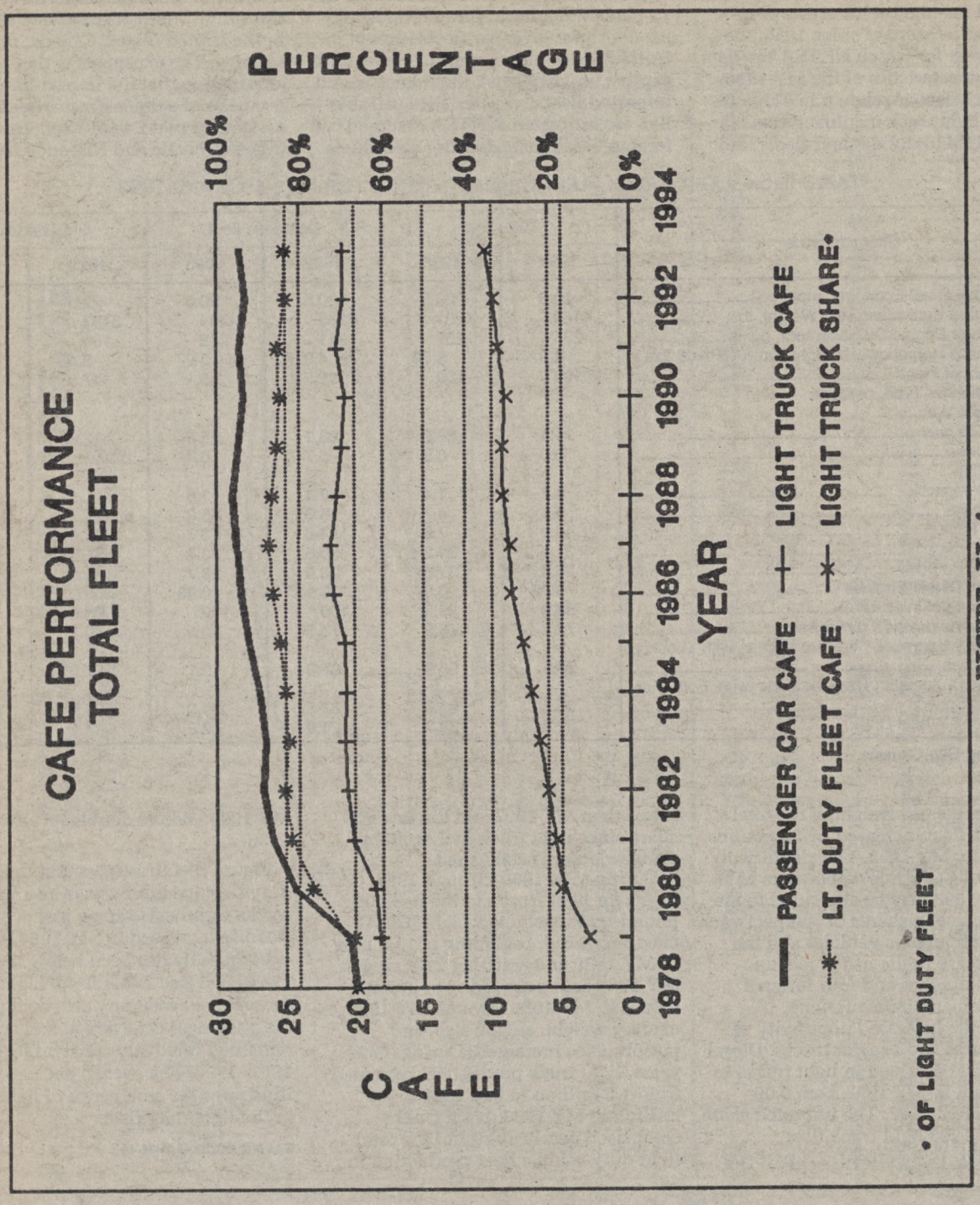

FIGURE II-4

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TABLE II–6.—DOMESTIC AND IMPORTED PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978–1993

[In MPG]

Model year	Domestic			Imported			Total fleet
	Car	Light truck	Combined	Car	Light truck	Combined	
1978	18.7	.....	.....	27.3	.....	.....	.....
1979	19.3	17.7	19.1	26.1	20.8	25.5	20.1
1980	22.6	16.8	21.4	29.6	24.3	28.6	23.1
1981	24.2	18.3	22.9	31.5	27.4	30.7	24.6
1982	25.0	19.2	23.5	31.1	27.0	30.4	25.0
1983	24.4	19.6	23.0	32.4	27.1	31.5	24.8
1984	25.5	19.3	23.6	32.0	26.7	30.6	25.0
1985	26.3	19.6	24.0	31.5	26.5	30.3	25.4
1986	26.9	20.0	24.4	31.6	25.9	29.8	25.9
1987	27.0	20.5	24.6	31.2	25.2	29.6	26.2
1988	27.4	20.6	24.5	31.5	24.6	30.0	26.0
1989	27.2	20.4	24.2	30.8	23.5	29.2	25.6
1990	26.9	20.3	23.9	29.9	23.0	28.5	25.4
1991	27.3	20.9	24.4	30.0	23.0	28.3	25.6
1992	27.1	20.5	23.9	29.0	22.5	27.6	25.0
1993	27.7	20.5	23.8	29.5	22.8	28.0	25.1

While the passenger car fleet fuel economy improved by 0.4 mpg from MY 1992 to MY 1993 and the light truck fleet was unchanged, the total fleet fuel economy for MY 1993 increased only 0.1 mpg over the MY 1992 level (25.0 mpg for MY 1992 and 25.1 mpg for MY 1993). This is attributed to increased sales of light trucks which have a total fleet fuel economy far less than passenger cars. The shift to light trucks for general transportation is an important trend in consumers' preference and has a significant fleet fuel consumption effect.

Domestic and imported passenger car fleet average fuel economies improved since MY 1978. In MY 1993, the domestic and imported passenger car fleet average fuel economies increased to 27.7 mpg and 29.5 mpg, respectively. This reflects an increase of 9.0 mpg since MY 1978 for domestic cars. For imported cars, the MY 1993 average fuel economy is only 2.2 mpg higher than that of MY 1978.

Domestic and imported light truck fleet average fuel economies improved since MY 1980. The domestic manufacturers continued to dominate the light truck market. Domestic light trucks comprised 85.1 percent of the total light truck fleet. For MY 1993, the domestic light truck fleet has an average fuel economy of 2.3 mpg lower than the imported light truck fleet. The imported light truck fleet fuel economy improved rapidly between MYs 1980 and 1981, but has been lower since then. For MY 1993, the imported light truck fleet fuel economy increased 0.3 mpg over MY 1992 to 22.8 mpg. A comparison of MYs 1993 to 1980 was done to avoid comparing the performance of the 0-6,000 pounds GVWR light truck fleet covered by the MY 1979 fuel economy standard to the performance of the 0–8,500 pounds GVWR fleets to which the standards apply for MY 1980 and beyond.

The gap between the average CAFEs of the imported and domestic manufacturers is smaller than in earlier years as domestic manufacturers maintain relatively stable CAFE values while the import manufacturers move to larger, higher performance vehicles and more four-wheel drive light trucks.

Based on a comparative analysis, since the enactment of CAFE standards for passenger cars for MY 1978, the total annual fleet fuel consumption, for both passenger cars and light trucks, has grown from 105.7 billion gallons (81.7 billion gallons for passenger cars + 24.1 billion gallons for 2-axle, 4-tire light trucks) in 1978 (Highway Statistics Summary to 1985, Table VM–201A) to 107 billion gallons (73.9 billion gallons for passenger cars + 33.1 billion gallons for light trucks) in 1992, the most current data (Highway Statistics Summary to 1992, Table VM–1). Over a 14-year period, total fuel consumption increased only 1.2 percent. Improvements in fuel economy have offset growth in the total number of light duty vehicles and in miles traveled per vehicle.

Both vehicle registrations and vehicle miles traveled increased from 1978 to 1992. The total fleet registration increased 27.7 percent from 143,904,787 (118,428,730 for passenger cars + 25,476,057 for light trucks) in 1978 to 183,746,571 (144,213,429 for passenger cars + 39,533,142 for light trucks) in MY 1992. Vehicle miles traveled increased during this period. In 1978, vehicle miles traveled totaled 1.426 trillion (1.147 for passenger cars + 0.279 for light trucks). It increased to 2.072 trillion for the total fleet (1.595 for passenger cars + 0.477 for light trucks) in 1992. This is an increase of over 45.3 percent.

In conclusion, although more vehicles are traveling more miles, fuel consumption by this total fleet (both passenger cars and light trucks) has increased only slightly.

Section III: 1993 Activities

A. Passenger Car CAFE Standards

The following synopsis describes litigation challenging NHTSA actions under the CAFE program.

Competitive Enterprise Institute (CEI) v. *NHTSA*, D.C. Circuit Court, No. 89–1422

This case challenged NHTSA's May 1989 decision to terminate rulemaking on whether to amend the MY 1990 passenger car CAFE standard. On February 19, 1992, in a 2–1 decision, the D.C. Circuit Court held that NHTSA failed to adequately evaluate the safety consequences of its decision to retain the MY 1990 passenger car CAFE standard of 27.5 mpg rather than proceeding with proposed rulemaking to reduce that model year's standard. The Court remanded the matter to NHTSA for further consideration. CEI filed a Motion for Attorney Fees which NHTSA opposed. On August 6, 1992, the Court issued an order deferring decision on CEI's fee motion until NHTSA acts on the Court's remand order. NHTSA's subsequent action on this remand order is discussed below.

Competitive Enterprise Institute v. *NHTSA*, D.C. Circuit Court, No. 93–1210

This case challenges NHTSA's January 15, 1993, decision (D.C. Circuit Court's remand in Case No. 89–1422) to again terminate the rulemaking it commenced to consider amending the MY 1990 passenger car CAFE standard. The petition for review was filed on March 15, 1993. Both sides filed preliminary papers, but the Court has not yet issued a briefing and argument schedule.

B. Light Truck CAFE Standards

NHTSA published a final rule establishing the MY 1995 light truck fuel economy standard on April 7, 1993 (58 FR 18019). NHTSA set a combined standard of 20.6 mpg for MY 1995, the highest CAFE standard the agency has ever established for light trucks. The rule also converted certain measurements into metric units, the agency's first occurrence of using metric conversion for regulations relating to fuel economy standards.

In the final rule for MY 1995 light trucks, NHTSA determined that GM is the "least capable" manufacturer with a combined fuel economy capability of 20.6 mpg.

NHTSA concluded upon balancing the relevant statutory factors, that the relatively small and uncertain energy savings that would be associated with setting a standard above GM's capability would not justify the economic harm to the company and the economy as a whole. NHTSA projected that GM could not achieve a combined fuel economy level higher than 20.6 mpg for MY-1995. In contrast, NHTSA concluded that Chrysler and Ford can achieve CAFE levels of at least 20.6 mpg.

NHTSA selected 20.6 mpg for MY 1995 as the final combined standard to balance the potentially serious adverse economic consequences associated with the realization of the above market and technological risks against GM's opportunity as the "least capable" manufacturer with a substantial share of sales. Since GM produces more than 38 percent of all light trucks that are subject to the fuel economy standards, its capability significantly affects the level of the industry's capability and, therefore, the standard level.

A final rule for light truck fuel economy standards for MYs 1996 and 1997 is pending.

C. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger cars may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured fewer than 10,000 passenger cars worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year preceding that model year.

During 1993, NHTSA acted on one low volume petition that was filed by Rolls-Royce. Rolls-Royce requested an alternative standard for its passenger cars for MYs 1995 and 1996. NHTSA issued a proposed decision to grant an alternative standard of 14.6 mpg for both model years (58 FR 41228 August 3, 1993).

D. Enforcement

Section 508(b)(1) of the Act imposes a civil penalty of $5 dollars for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacturer in that model year. Credits that were earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

With EPA completion of final CAFE computations for MY 1992 for most passenger car fleets, NHTSA initiated enforcement actions for manufacturers that did not meet the CAFE standard.

Table III–1 shows the most recent CAFE fines paid by manufacturers.

TABLE III–1.—CAFE FINES COLLECTED DURING FISCAL YEAR 1993

Model year	Manufacturer	Amount fined	Date paid
1989	Sterling	$588,195	07/93
1990	Fiat	705,220	05/93
	Sterling	162,000	07/93
	Fiat	796,575	05/93
	Mercedes-Benz	19,169,540	12/93
1991	Peugeot	192,660	12/92
	Vector	1,740	07/93
	Volvo	7,768,420	12/92
1992	Fiat	466,750	05/93
	Peugeot	58,375	09/93

The following synopsis describes an administrative adjudication involving NHTSA action under the CAFE program that is pending.

Chrysler Corporation, Docket 47414

On January 8, 1992, an Administrative Law Judge issued an initial decision and order recommending that NHTSA's complaint seeking a civil penalty of $1,371,420 for Chrysler's failure to comply with the MY 1984 domestic light truck fuel economy standard be dismissed without prejudice. He concluded that NHTSA could not interpret the extent to which predecessors or successors are included in the term "manufacturer" without issuing rules pursuant to section 501(8) of the Motor Vehicle Information and Cost Savings Act of 1972, but that Chrysler could not claim credits earned by American Motor Corporation, except under the terms of a properly adopted rule. Both parties filed Notices of Intention to appeal the initial decision to NHTSA's Administrator. On March 31, 1992, after a meeting to consider settlement proposals, the Administrator set aside the initial decision and terminated the enforcement proceeding, without prejudice, to permit NHTSA to prescribe regulations pursuant to section 501(8) of the Act.

Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of Title III of the Department of Energy Act (15 U.S.C. 2704 *et seq.*) which directs the Secretary of Transportation to submit an annual

report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1993.

A. New Models

I. Passenger Cars

a. *Domestic.* The *domestic* manufacturers introduced and replaced several cars, as well as updated several previous passenger cars. Chrysler unveiled its new midsize LH models—the Chrysler Concorde, Dodge Intrepid, and Eagle Vision. These models are built on the new front-drive LH platform, the company's first new platform in 10 years. The main features included advanced technology, roomy interior, ride comfort, handling precision, safety, fuel economy, and power. The LH models' longitudinally mounted engines include a 153 horsepower (hp) overhead-valve (OHV) 3.3 liter (1) V–6 and a 214 hp single-overhead-cam (SOHC) 3.5L 24-valve V–6 (standard on some models, optional on others) developed especially for the LH line. Both engines are mated to only one transaxle: the 42LE automatic, a fully adaptive electronically controlled four-speed with torque converter lockup clutch. The low drag coefficient (0.31 C_D) of these models contributed to their fuel efficiency which averaged 24 mpg for MY 1993.

Also new to the Chrysler Eagle Talon, is a smaller 1.8L I–4 engine offered with either 5-speed manual or 4-speed automatic transmission and delivering an average fuel economy of 27 mpg.

The Plymouth Division offered a redesigned Colt coupe and sedan and Vista wagon with a new 1.8L 16 valve SOHC engine that produces 113 hp and a 2.4L 16 valve SOHC engine on the Vista only that produces 136 hp. The average fuel economy on the Colt's 1.5L 4-cylinder engine with a 5-speed manual transmission increased by 3 mpg city and 5 mpg highway over its MY 1992 counterpart.

Ford has two new models—the Lincoln Mark VIII sport luxury coupe and the Mercury Villager minivan (the latter is discussed later with the light trucks). The Mark VIII features an aerodynamic design style powered by a new aluminum double-overhead-cam (DOHC) V–8 engine and a new Ford "4R70W" 4-speed automatic transmission. The "4R70W" stands for 4-speed, rear-drive, 700 pound-feet torque capacity and wide ratio. The transmission's electronic and hydraulic controls work together to provide smooth shifts and torque-converter lock-up in third and fourth gear. This reduces the converter slippage and improves the fuel economy. The average fuel economy on this model is nearly 24 mpg compared with 22.3 mpg for the predecessor Mark VII model.

Ford redesigned the 2-door Probe for MY 1993 based on Mazda's latest MX–6. The Probe has a cab forward design and is powered by multivalve engines. The base model is equipped with a 115 hp 2L, 4-cylinder engine and the GT is powered by a 165 hp 2.5L V–6 engine. The average fuel economy on the 5-speed manual transmission has improved by 2 mpg over the MY 1992 model.

The limited-edition Ford Mustang Cobra specialty model featured a 230 hp version of the Mustang's 5L V–8 engine, a 5-speed manual transmission, 17-inch aluminum wheels, a spoiler, and ground effects trim. The average fuel economy improved by 1 mpg on the 4-speed automatic transmission version over the MY 1992 counterpart.

General Motors (GM) redesigned the Chevrolet Camaro and Pontiac Firebird. These two sport coupes received smoother lines and a more gradual profile. The base engine for these models is a new 3.4L V–6 engine. Fuel economy improves by 1 mpg over the 1992 model.

b. *Imports.* The *import* manufacturers also introduced a variety of new passenger cars and updates of their previous models for MY 1993. Audi introduced a new 90 series luxury/sport sedans for MY 1993 in front- and all-wheel drive. All models are powered by a 2.8L 172 hp DOHC V-6 engine. The 90S and CS have an average fuel economy of 23 mpg.

BMW replaced the 735i and 735iL with the 740i and 740iL for MY 1993. the 740i and the long-wheelbase 740iL (111.5 inches) are powered by a new 4.0L 32-valve V-8 and a new 5-speed automatic transmission that replaces the 3.5L MY 1992 engine. The V-8 is BMW's first new engine since MY 1985. The average fuel economy improved by 1 mpg over the MY 1992 counterparts. BMW improved the low-end torque and gas mileage for its 2.5L, inline six-cylinder engine used in the subcompact 3-series and the compact 5-series.

Honda introduced the Civic Del Sol which replaced the CRX. The Civic Del Sol is a sporty 2-seater with a 1.5L SOHC 4-cylinder engine mated to a 5-speed manual transmission with an average fuel economy of 43 mpg or a 4-speed automatic with an average of 39 mpg.

Hyundai's Scoupe gets a new Alpha engine, the first engine designed by Hyundai. The Alpha engine is a 1.5L 12 valve, multiport-fuel-injection (MFI) 4-cylinder engine. The engine has 14 percent more horsepower and torque than the engine it replaced. The average fuel economy improved by 1 mpg for the 5-speed manual transmission and 0.5 mpg for the 4-speed automatic transmission over its MY 1992 counterpart.

Jaguar, a Ford subsidiary, introduced two new models—the XJR-S and XJ12. The XJR-S is a limited edition equipped with a 312 hp engine. The MY 1993 XJS Jaguar coupe/convertible uses a 6-cylinder engine instead of a V-12, for the first time in 22 years. The highway rating for the convertible is 23 mpg, compared with 17 mpg for MY 1992. The XJ12 is a 301 hp model based on the XJ6 sedan with the engine compartment modified to fit a 6.0L 24-value V-12 engine. It has a 4-speed automatic transmission with both sport and normal shift modes.

Mercedes-Benz added a soft top, 4-seat convertible—the 300CE Cabriolet—and replaced the 400SE with a long-wheelbase version, the 400SEL. Mercedes introduced 22 new models for MY 1993, the most ever for the company, with emphasis on the 300 class, the Mercedes volume leader.

Four 300-class models get a new 24-valve engine that is bigger and more powerful than the old engine, yet gets better mileage. Better mileage means that the 400E loses a $1,300 gas guzzler penalty and the penalty on the 500E is cut in half to $1,300. both are powered by V-8 engines. The 300CE Cabriolet is based on the 300CE coupe and it is the first Mercedes 4-seat convertible for United States sale since 1971. The Cabriolet comes equipped with a 217 hp 3.2L 24 valve DOHC 6-cylinder engine mated to a 4-speed automatic transmission. The average fuel economy on this model is 20.5 mpg.

Mercedes-Benz also added a new 600 SEC coupe and 600 SL convertible. Both are powered by a 389 hp, 6.0L DOHC V-12 engine mated to a 4-speed automatic transmission with an average fuel economy of 15.7 mpg for the former and 17.1 mpg for the latter, both of which exceed the fuel economy achieved by the Mercedes sedan using the same engine.

Mitsubishi introduced a new wagon version of the Diamante, equipped with a 3.0L SOHV V-6 engine producing 175 hp. This vehicle is imported from Australia. Mitsubishi restyled the Mirage as a FWD, 2-door sporty coupe or a 4-door family sedan. The coupes have a 92 hp 1.5L SOHC 4-cylinder

engine and the sedans have a 1.8L 4-cylinder engine. the Mirage 1.5L 4-cylinder 5-speed transmission average fuel economy improved by 4 mpg over its MY 1992 counterpart. Mitsubishi claims that its ECI-Multipoint sequential fuel injection system and microprocessor-controlled ignition maximize responsive performance, combustion efficiency, and fuel economy (Automotive News, August 3, 1992).

Nissan introduced the Altima, an all-new FWD midsize sedan replacing the Stanza. It has a 150-hp 2.4L DOHC 4-cylinder engine coupled with either a 5-speed manual or 4-speed automatic transmission.

Saab, a GM subsidiary, expanded its 9000 model line by introducing the 9000CS 4-door hatchback and the 9000 aerodynamic hatchback. The 9000CS was powered by a naturally-aspirated 150 hp 2.3L I–4 or optional turbocharged 200 hp engine. The 4-speed automatic and the 5-speed manual each improved by 1 mpg over the MY 1992 model.

Subaru introduced the all-new Impreza, which comes in a choice of 4-door sedan and wagon models. The Impreza replaces the 8-year-old Subaru Loyale compact, although the Loyale station wagon will remain in the line. The Impreza is based on a shortened Legacy platform. The United States models are powered by a 1.8L, 110 hp 4-cylinder engine, essentially a smaller version of the 2.2L engine in the Legacy, and sharing its horizontally opposed arrangement. The fuel economy has improved by one tenth of a mile per gallon over the Loyale with automatic transmission.

Toyota restyled the Corolla and moved it from the sub-compact to compact EPA classification. The Corolla has a new 115 hp 1.8L 16 valve DOHC 4-cylinder engine and a 5-speed manual transmission. The average Corolla fuel economy improved by 1 mpg for MY 1993 over MY 1992. The Toyota Lexus division introduced the all-new GS300 with a 220 hp 3.0L 24-valve DOHC I–6 engine and an average fuel economy of 20.5 mpg.

Volvo introduced the 850GLT, the new front-wheel drive (FWD), sport sedan, powered by a transversely mounted 20-value 168 hp in-line 5-cylinder engine coupled with an all-new 5-speed manual or optional 4-speed automatic transmission designed to take up less space.

II. Light Trucks

a. *Domestic.* Chrysler's Ram passenger van/wagon was restyled in the front and received a redesigned 5.2L engine, along with an increase in horsepower to 230 from 190, improving the average fuel economy on the 4-speed automatic transmission by 1 mpg.

Ford introduced a new redesigned Ranger compact pickup for MY 1993. The Ranger offers a 3.0L V–6 engine replacing the previously standard 2.9L engine. The average fuel economy with the 4-speed automatic transmission improved by 0.1 mpg, and with the 5-speed manual transmission it improved by 0.5 mpg. The Villager FWD minivan was designed and engineered by Nissan Motor Company and produced at the Ford Avon Lake, Ohio, assembly plant for both Mercury and Nissan. It is the first minivan offered by the Lincoln-Mercury Division. The Villager is powered by a 150-hp 3L SOHC V–6 engine with sequential electronic fuel injection and a 4-speed automatic transmission. The Nissan version of the minivan is called the Quest.

b. *Imports.* Toyota introduced the all-new T-100 full-sized pickup truck for MY 1993. The all-wheel drive T-100 comes equipped with a 3.0L SOHC V–6 engine producing 150 hp mated to a 5-speed manual transmission with an average fuel economy of nearly 17 mpg. Compared to the Big 3 (GM, Ford, and Chrysler) pickups with 6-cylinder engines, Toyota's 6-cylinder has better fuel economy than any of the Big 3. GM is its closest competitor, being only one tenth of a mile per gallon behind.

Volkswagen, some 43 years after inventing the passenger van, introduced in the United States its first front-drive van, the Eurovan. The Eurovan has a box shape, as well as an optional "pop top" camper version. The Eurovan is powered by a new in-line, transverse-mounted, 2.5L five-cylinder engine. The 109-hp engine provides 21 percent more power and 20 percent more torque than its predecessor. The new design improved the vehicle's aerodynamics, providing a drag coefficient of 0.37.

B. Engine and Transmission Technology

Some manufacturers made significant improvements in engine technology for MY 1993. Chrysler's Dodge Intrepid, Chrysler Concorde, and Eagle Vision offer a 3.5L, 24-valve V–6 engine combined with a new 42LE electronic 4-speed transaxle to propel the LH cars. Chrysler claims that these are the most technologically advanced, responsive, and reliable powertrains in its history. This SOHC engine delivers a peak 214 hp at 5,800 revolutions per minute (rpm) and 221 foot-pounds (ft.-lbs.) of torque at 2,800 rpm.

Instead of using the usual transverse position of front-wheel-drive engines, Chrysler went longitudinal, or north-south, in part to allow for later adaptation of future rear-to or 4-wheel-drive versions.

Ford improved its MY 1993 Mark VIII with a new DOHC 32-valve all-aluminum version of its 4.6L modular V–8 engine. The engine is rated at 280 hp at 5,500 rpm, with a torque rating of 285 ft.–lbs. at 4,500 rpm, about 33 percent more power than the 4.6L SOHC engine in its 210 hp dual exhaust form. The new engine is the first DOHC, 4-valve V–8 engine mass produced by Ford, and the first Ford all-aluminum V–8 production engine. The engine features improved durability, quality and reliability, improved fuel efficiency through reduced friction and optimized combustion chamber design, and use of advanced technology in design and manufacturing.

GM's powerful, 2-door sporty coupes, the Chevrolet Camaro and Pontiac Firebird, were redesigned for MY 1993 with an OHV 3.4L 6-cylinder engine, that develops 160 hp at 4,600 rpm and 200 ft.-lbs. of torque at 3,600 rpm, an increase of 20 in both hp and ft.-lbs. of torque compared to last year. The added power is the result of a 2 millimeter (mm) increase in bore to 91.9 mm, a rise in compression ratio to 9:1 from 8.5:1 and the addition of sequential fuel injection in place of multipoint fuel injection.

GM's Chevrolet and GMC truck divisions have a new electronically controlled 4-speed automatic transmission in full-sized pickups. The new 4L 60–E transmission replaces the nonelectronic 4-speed unit.

The Geo Prizm has a Toyota-built electronically controlled 4-speed automatic with lockup torque converter. The new transmission is coupled to a 1.8L DOHC 4-cylinder engine delivering 115 hp at 5,600 rpm and 115 ft.-lbs. of torque at 4,800 rpm.

Honda's Acura Legend introduced a new 3.2L 24-valve V–6 engine. The difference in this engine over its predecessor is that the intake and exhaust timing, valve lift, and valve diameter are changed to achieve a 30-hp increase to 230 hp at 6,200 rpm, but with peak torque reduced to 206 ft.-lbs. at 5,000 rpm. Fuel economy is virtually unchanged.

Toyota's Land Cruiser received a new 4.5L DOHC 24-valve 1FZ–FE in-line 6-cylinder engine rated at 212 hp at 4,600 rpm and 275 ft.-lbs. of torque at 3,200 rpm. This is a 37 percent increase in horsepower over its MY 1992 counterpart, and the fuel economy improved by 0.5 mpg.

The Miller Cycle engine offers a 50-percent gain in torque over conventional engines and gets 10 percent to 15

percent better fuel economy. Mazda announced that it is ready to install a version of the Miller-cycle engine in a near-future high-compression, lean-system piston engine that combines lean burn and the M-Miller cycle. (The M denotes Mazda.) Mazda says the engine, which has a compression ratio of 12:1, will produce 50 percent greater torque than a standard engine. The M-Miller cycle uses a Lysholm compressor jointly developed by Mazda and Ishikawajima-Harima Heavy Industries Co. Ltd. (IHI) to boost initial intake pressure, but releases excess air as the piston begins its compression stroke. Mazda plans to introduce this technology in the United States on the Millenia model in the spring of 1994.

Interest in the 2-stroke engine is declining while interest in direct-injected (DI) gasoline 4-strokes is on the rise. With DI engines, the fuel is injected directly into the combustion chamber rather than the intake manifold, which is the general practice on fuel-injected gasoline engines. Reports of poor performance in early 2-stroke Ford Motor Company/Orbital field-test Fiesta models in Europe (Ward's Engine and Vehicle Technology Update, December 15, 1991, p.6) appear to be a factor.

Toyota indicates that the first DI gasoline engines—termed "incylinder injection" by Toyota—will reach the market in late 1993 and will account for over 25 percent of the Japanese manufacturer's gasoline automobile engines by the year 2012. Hyundai developed the company's first internally designed engine, a 1.5L 4-cylinder engine delivering 92 hp at 5,500 rpm and 97 ft.-lbs. of torque at 4,000 rpm. The compression ratio is 10:1. Hyundai's turbocharged version produces 115 hp at 5,500 rpm.

C. Electronics

Applications of electronics components in vehicles continues to rise. Some of the applications include 4-wheel steering, tire-pressure sensing, instrumentation, and in-car entertainment grouping, but the main concentration is in engine management, powertrain managment, antilock braking systems, air bags, air conditioning and, increasingly, suspension control.

Electronically controlled automatic transmissions now account for 33.9 percent of United States cars produced. The automobile manufacturers have advanced toward more sophisticated fuel injection systems. Sequential fuel injection installation rates rose to 43.3 percent in MY 1992, from 28.2 percent in MY 1991. Traction control systems are featured on 2.3 percent of United States-built passenger cars (Ward's Automotive Reports, April 19, 1993).

The role of sensors and sensing systems is becoming increasingly important in the automotive industry. Since the electronics market is growing in the safety and the information fields, the object of sensing will be expanding further in the future. Sensors and sensing technologies for future automotive systems can be categorized into three fields of applications—engine and powertrain control, safety and suspension control, and information exchange.

In engine and powertrain systems, sensors are required for combustion and engine output detection and control. Exhaust emissions and fuel consumption will be reduced simultaneously over the next decade. The primary objective of the sensors is to control engine and transmission paramenters, but sensing technology improvements are needed to determine limit conditions.

Combustion sensing will be an essential technology for engine control. Emissions are strongly dependent on the air/fuel (A/F) ratio, and the best fuel consumption is obtained when engine operation is in the lean burn fuel range. Except for oxides of nitrogen reduction, the lean fuel condition is best for both emissions and fuel consumption reductions. Since the engine's output and emissions are the results of combustion, direct monitoring of combustion is the key for controlling them.

D. Materials

For MY 1993, manufacturers selected sheet molding compound (SMC), plastics, aluminum, high-strength steel, powdered metal (P/M), and magnesium for a number of significant new component applications in their cars, vans, and pickup trucks. The reduced weight of these components contributed to improved fuel economy of the models using them.

SMC was once predicted to be headed for extinction, but continues to have steady growth in usage despite numerous setbacks. The SMC Automotive Alliance trade group forecasts an 18-percent gain in SMC use in MY 1993, from 147 million pounds to 173 million pounds, on North American-produced vehicles (*Ward's Auto World*, September 1992). New SMC applications continue to grow, including roof, doors, and a rear hatch on GM's Pontiac Firebird and Chevrolet Camaro sports cars, a unique plastic-and-steel-body hybrid. Ford's new Mark VIII hood is made of SMC for MY 1993.

Aluminum use in automobiles grew steadily, representing an estimated average of 178 pounds of the content of United States cars for MY 1993 (Ward's Auto World, September 1992). Most applications are in engine blocks and heads, transmission casings, steering systems, shock absorbers, bumper systems, and other non-structural components. Aluminum is used more not only for body panels but for structural components, as well.

Audi engineers say the body-in-white of the next generation V8 model (codenamed 300), which will feature an all-aluminum body and spaceframe, is half the weight of a conventional steel unit.

For the first time, an aluminum-head version of GM's 5.7L V–8 engine is used on vehicles other than the Corvette. The new F-body cars use castings from CMI International, Incorporated in Southfield, Michigan, to help reduce weight. Aluminum heads also are offered for the first time in the Oldsmobile Ciera and Buick Century 2.2L. The aluminum 2.2L I–4 engine replaces the 2.5L 4-cylinder cast iron engine.

Ford is by far the most aggressive United States manufacturer in its plans for aluminum usage, especially in body-panel applications. It uses about 350,000 aluminum hoods per year on large cars such as the Mercury Grand Marquis, Ford Crown Victoria, and Lincoln Town Car.

The cylinder heads for Chrysler's new 24-valve, 3.5L V–6 engine are also aluminum. These applications are currently being used in LH cars—Dodge Intrepid, Eagle Vision, Chrysler Concorde, New Yorker, and LHS—which use about 200 pounds of aluminum, compared with an industry average of less than 180 pounds.

Even as the use of plastics grew, steel continued as the primary material in United States-built family vehicles, comprising well over 50 percent of the weight of the average passenger car according to Ward's 1993 Automotive Yearbook. GM's Cadillac Division has a new steel-intensive Fleetwood, and Fleetwood Broughams use stainless steel on the lower side trim and plated stainless steel trim on all the wheel openings. The Nissan Altima and the Chrysler LH cars, each, use more than 1,500 pounds of steel per car (Ward's Auto World, September 1992). Steel increases to 1,900 pounds per vehicle for the new Mercury Villager and Nissan Quest minivans. Chrysler uses almost as much steel on its new Jeep Grand Cherokee wagon.

Applications for P/M grew steadily in recent years, and several new and

expanded applications were introduced in MY 1993, including the connecting rods used in GM's 5.7L V–8 engines. This marks the first time GM used P/M connecting rods in any of its North American powerplants. The new rods add 12 pounds of P/M per engine. The average United States-built car contains about 25 pounds of P/M. Ford currently is the industry leader in P/M applications; it has P/M connecting rods in two of its engines, a V–8 and the 1.9L 4-cylinder (Ward's Automotive Yearbook, 1993).

Magnesium use increased this model year when Chrysler added magnesium engine-accessory mounting brackets on its Jeep Grand Cherokee and LH cars. Ford, meanwhile, is expanding its use of magnesium steering-column parts, and GM is employing 18 pounds of magnesium components in its Northstar V–8 engines The average domestic vehicle contains about 6 pounds of magnesium (Ward's Auto World, September 1992).

United States manufacturers formed a research partnership, under the United States Council for Automotive Research (USCAR) direction, that will explore the use of new materials. The consortium, called the United States Automobile Materials Partnership (USAMP), will seek to reduce vehicle mass for improved fuel economy, emissions, reliability, safety, crashworthiness, and recyclability by expanding application of new materials.

USAMP states that to improve fuel economy 8–10 mpg through mass reduction in a 4,000-pound car, weight will have to be cut 1,000 pounds. USAMP targeted aluminum as the primary metal in its program to reduce vehicle mass though ceramics, engineered plastics, magnesium/titanium, and steel are also being studied.

E. Summary

Due to the stabilization of oil prices and supply, consumer demand in MY 1993 shifted slightly to more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, increased the horsepower of its engines and shifted production mix to moderately larger cars. There were some considerable technical gains, particularly in lightweight material usage, that contributed to improved fuel economy for several models.

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BILLING CODE 4910–59–M

Announcing the Third Meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the third meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the April 1992 meeting to examine research questions regarding crashworthiness of vehicles under 10,000 pounds GVW.

DATE AND TIME: The meeting is scheduled for March 21, 1994, from 10:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in room 8236 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

At the first meeting of the Crashworthiness Subcommittee on November 16, 1992, a Biomechanics Working Group and an Aggressivity and Compatibility Working Group were established to carry on a technical information exchange of ongoing research with the goal of presenting advice to the Crashworthiness Subcommittee.

This meeting of the Crashworthiness Subcommittee will include status reports by the Biomechanics Working Group and the Aggressivity and Compatibility Working Group as well as an update on related NHTSA biomechanics and crashworthiness research programs and progress.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88–01—Crashworthiness Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Office of Research and Development, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–4862.

Issued on: February 25, 1994.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 94–4894 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1993 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; DIAMOND STATE INSURANCE COMPANY

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code effective December 31, 1993. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35791 to reflect this addition:

DIAMOND STATE INSURANCE COMPANY. BUSINESS ADDRESS: Three Bala Plaza, East Suite 300, Bala Cynwyd, PA 19004. PHONE: (215) 664–1500. UNDERWRITING LIMITATION b/: $2,401,000. SURETY LICENSE c/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OK, OR, RI, SC, SD, TN, UT, VT, VA, WV, WY. INCORPORATED IN: Indiana.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, area in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Fund Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 874–6696.

Dated: February 24, 1994.

Charles F. Schwan III,

Director Funds Management Division, Financial Management Service.

[FR Doc. 94–4793 Filed 3–2–94; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Exchange Program To Enhance the Quality of Public Administration in the Jordan, Lebanon, and Syria (Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities)

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces a competitive grants program for nonprofit organizations to develop a multi-phased exchange program intended to enhance the quality of public administration in Jordan, Lebanon, and Syria.

Twelve to 15 public administrators from Jordan, Lebanon, and Syria, engaged in municipal management, the provision of social services, or educational administration, will travel to the United States for a six-week program in administration and management, combining a short but intensive introduction to management theory and practice and a month-long, hands-on internship in an appropriate American institutional structure.

Subsequently, two or three American public administrators will travel to each of the target countries to conduct workshops and follow-on training activities with the original participants and their colleagues.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–94–21.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on May 13, 1994. Faxed documents will not be accepted, nor will documents postmarked May 13, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: E/P–94–21, Office of Grants Management (E/XE), 301 Fourth Street SW.–room 336, Washington, DC 20547

CONTACT FOR INFORMATION: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), USIA, 301 Fourth Street SW., room 224, Washington DC 20547, fax (202) 619–4350, tel. (202) 619–5319, to request detailed application packages which include all necessary forms and guidelines for RFP proposals, including specific budget preparation. Please specify the name of USIA Program Specialist Thomas Johnston on all inquiries and correspondence.

Background/Objectives of This Program

Within the past two years, political and social evolution in the Middle East has produced democratic elections in Jordan and Yemen, the re-emergence of civil government in Lebanon, an agreement intended to bring about Palestinian self government and the responsibility for providing and administering social services that entails in Gaza and the West Bank, and the gradual emergence, in a number of heretofore closed political systems, of more responsive and accessible governmental institutions.

Essential to the success and fruition of these political experiments is the development, in each society affected, of responsible and responsive administration in public institutions and the perception, often absent in developing societies, of a public office as a public trust. The primary objective of this program is, initially, to instill in a group of public administrators, with responsibility for a variety of civil administrative and management functions, a sense of civil administration as a crucial element in the emergence of a viable civil culture, and secondly, to broaden and refine their ability to fulfill their duties and to contribute to the development of a cadre of enlightened, self-conscious, and responsible public administrators in their home countries.

Participants

Participants for the U.S. component of this exchange will include mid-level public administrators from various sectors health, education, housing, security, and general social welfare—from Jordan, Syria, and Lebanon, whose English-language skills are sufficient to enable them to function successfully during the U.S. internship phase of the program. Participants will be nominated through coordination among USIA, U.S. Information Service personnel in the region, and overseas partner institutions. USIA and the participating USIS posts retain the right to nominate all participants and to accept or reject participants recommended by grantee institutions.

American participants in the program, both those institutions which will host foreign public administrators in the United States and those individuals who will subsequently travel overseas as resource persons in the second component of the exchange, will be selected by the American grantee organization in consultation with the Office of Citizen Exchanges. The consultants travelling overseas should be fluent in the language of the country in which the seminar is presented or the American grantee organization should undertake to provide simultaneous interpretation.

USIS officers in participating countries will facilitate the issuance of visas and other program-related material.

Programmatic Considerations

Thematically, the program should: Analyze the current status of public administration in the participants' countries of origin and determine, in conjunction with USIS posts in these countries and with the administrators selected as participants, the needs to be addressed by the exchange; provide the participants both a general and a specific overview of the administration and management of public service-providing organizations in the United States, beginning with an historic perspective and a survey of the evolution of the civil service system in the context of a socially diverse and politically democratic country; conduct for the participants a short, intensive course, combining lectures with discussion, site visits, and interviews, in public administration theory and practice. This course should also offer an intensive orientation to the concept of public service as an indispensable building block in the structure of democratic society and to the perception of a public office as a public trust; and place the administrators in month-long internships appropriate to their fields of specialization and responsibility in their home countries.

Pursuant to the legislation authorizing the Bureau of Education and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life.

Beyond the immediate goals of this exchange, USIA is also interested in supporting programs which will lay the groundwork for new and continuing links between American and Middle Eastern educational institutions and professional organizations and which will encourage the further growth and development of democratic institutions.

The grantee organization will be responsible for most arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

To prepare foreign public administrators for this project prior to their arrival in the United States, E/P encourages the grantee organization to develop material to be sent to USIS offices overseas for distribution to participants. This material might include a tentative project outline with suggested goals and objectives, relevant background information, and information about American institutions and individuals involved in the exchange.

At the beginning of the U.S. portion of the program, the grantee should conduct an orientation session for the visiting participants which addresses administrative details of the program and provides general information about American society and culture which will facilitate the participants' understanding of and adjustment to daily life in the United States.

At the conclusion of the program, the group should meet in a symposium to review what has been presented to and experienced by the participants and to consider how that which has been learned can most effectively be applied upon the participants' return to their home countries. Plans for the second component of the exchange should also be discussed at this time, and nominations should be accepted from the participants of American specialists who will be invited to conduct follow-up activities overseas.

Additional Guidelines

Program monitoring and oversight will be provided by appropriate USIA elements.

Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a nonprofit grantee institution which receives funds from corporate or other cosponsors should then use those monies to provide food, lodging, and pocket money for the participants. In no case could the intern receive a wage or "be hired" by the sponsoring institution. Internships should also have an American Studies/values orientation component at the beginning of the exchange.

The U.S. grantee institution should try to maximize cost-sharing in all facets of their program and to stimulate U.S. private sector (foundation and corporate) support.

Proposals incorporating internships will be more competitive if letters committing prospective host institutions to supporting these efforts are provided.

Funding

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to the review criteria delineated below.

The amount requested from USIA for this program should not exceed $180,000. However, organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

While applicants must provide an all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost fate computation.

USIA will consider funding the following project costs: 1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. Per diem: For the U.S. program, organizations have the option of using a flat $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities. Note: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in the Middle East, the Standard Government Travel Regulations per diem rates must be used.

3. Book and cultural allowance: Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

4. Consultants: May be used to provide specialized expertise or to make presentations. Honoraria should not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

5. Room rental: Generally should not exceed $250 per day.

6. Materials Development: Proposals may contain costs to purchase, develop and translate material for participants. USIA reserves the rights to these materials for future use.

7. One working meal per project: Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by a factor of more than two to one.

8. Return travel allowance: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

9. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in

accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please Note

All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of Near Eastern, North African, and South Asian Affairs. Proposals may also be reviewed by the Office of General Counsel or other Agency elements. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for granting awards resides with USIA's contracting officer. The awarding of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent the awarding of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea

Proposals should exhibit substance, originality, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. Institutional Reputation/Ability

Institutions should demonstrate their potential for effective program design and implementation and provide, if available, evidence of having conducted successful programs. If an applicant has previously received a USIA grant, responsible fiscal management and full compliance with all reporting requirements for past Agency grants, as determined by USIA's Office of Contracts (M/KG), will be considered. Evaluations of previous projects may also be considered in this assessment.

3. Project Personnel

Information provided regarding the thematic and logistical expertise of project personnel should be relevant to the proposal at hand. Resumes or C.V.s. should be summaries appropriate to the specific proposal and no longer than two pages each.

4. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise

Proposal should demonstrate the organization's expertise in the subject area and its ability effectively to share information.

6. Cross-Cultural Sensitivity and Area Expertise

Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. Ability To Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. Multiplier Effect

Proposed programs should strengthen mutual understanding and should contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness

Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing

Proposals should maximize cost-sharing through private sector support as well as through direct funding contributions and/or in-kind support from the prospective grantee organization and its partners.

11. Follow-on Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the project. USIA recommends that the applicant discuss the evaluation methodology chosen and the techniques which will be employed to assess the effectiveness of the project and the correspondence between observable outcomes and original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the American Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 25, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–4829 Filed 3–2–94; 8:45 am]

BILLING CODE 8230–01–M

NIS Linkage Program (NISLP)

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional linkages between universities and

colleges in the United States and Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Ukraine. The purpose of this college and university linkages program is to foster curriculum development and teaching methodologies, and to modernize the administrative structure at institutions of higher education in these countries.

DATES: *Deadline for proposals:* Proposals must be received at the Academy for Educational Development by 5 p.m. Washington, DC time on May 2, 1994. Proposals received by the Academy after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked on May 2, 1994 but received at a later date. It is the responsibility of grant applicants to ensure that their proposal is received by the above deadline. Grants should begin no later than October 1, 1994.

ADDRESSES: Three originals, containing tabs A–U (see "Application Checklist" in program guidelines packet), and 10 copies, containing tabs A–D of the proposal are to be submitted by the deadline to: USIA NIS Linkage Program, c/o The Academy for Educational Development, 1875 Connecticut Ave., NW., Washington, DC 20009–1202.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets, which include all necessary forms and guidelines for preparing budgets, contact Mr. Chris Dwyer or Ms. Deborah Trent at (202) 619–5289 (tel), or (202) 401–1433 (fax), or write to the following address: Specialized Programs Unit (E/ASU), Attention: USIA/NIS Linkage Program, Office of Academic Programs, rm. 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION:

Overview

The NIS Linkage Program is authorized under the Freedom Support Act of 1992. Funding for this program is contingent upon receipt of FY 94 Foreign Operations Appropriation Bill funds. USIA administers annual university affiliations programs under the authority of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act). The Agency seeks to support at least one linkage each in Armenia, Belarus, Kazakhstan, and Kyrgyzstan, and up to three linkages in Ukraine. Grants will be awarded for a period of two (2) years beginning October 1, 1994.

The NIS Linkage Program is separate from USIA's College and University Partnerships Program for the Russian Federation, the University Affiliations Program and the University Development Program in Business Management, announced annually in this publication. However, the Agency strives to achieve institutional and geographic diversity across all four linkage programs. Institutions planning to submit proposals for more than one competition should note that USIA will not fund the same project activities more than once.

The NIS Linkage Program is limited to the following specific academic disciplines: (1) Law; (2) business/economics; (3) education/continuing education/educational reform; (4) government/public policy/public administration; and (5) communications/journalism. Proposals should focus on curriculum, faculty, and staff development in one of these eligible disciplines. Administrative reform at the foreign partner institution should also be a program component.

Proposals must involve the development of new academic programs or the building and/or restructuring of an existing program. Feasibility studies to plan linkages will not be considered.

Participating institutions must exchange faculty and/or staff members for teaching/lecturing and consulting for periods of not less than one month. Each year at least one U.S. participant should be in residence at the foreign partner institution for one semester to serve in a coordinating role. E-mail communication should be established as part of the exchange.

Other activities which serve the purpose of this program include: Team teaching; visits by faculty to update academic and professional skills, observe teaching techniques and strengthen subject area expertise; expansion of library holdings; textbook development; development of audio-visual instructional materials; distance learning; the translation or reprinting of U.S. texts and other materials; and community outreach in conjunction with curriculum development. Institutional partners may include current MA, MS or PhD students in the exchange.

USIA will strive to achieve broad institutional and geographic diversity in awarding the grants. Participating institutions in the U.S. and relevant countries must maintain their faculty and staff on salary and benefits (with the sole exception of personnel assigned overseas for three or more consecutive months; see "Allowable Costs").

U.S. institutions are responsible for the submission of proposals and must collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with U.S. Information Service (USIS) offices in Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Ukraine. Preference will be given to proposals which demonstrate evidence of previous relations with the proposed foreign partner institution(s).

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this administrative burden, to USIA Clearance Officer, M/ADD, room 624, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. (Information collection involved in this program has been cleared by OMB Approval Number 3116–0179, expiration date 12/31/95.)

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Guidelines

Eligibility

In the U.S., participation in the program is open to two-year and four-year colleges and universities, including community colleges and graduate schools. Consortia of universities and/or community colleges, individually or as systems, are also eligible. The Agency encourages proposals from eligible Historically Black Colleges and Universities and other institutions in the U.S. with at least 25% minority (Native American or Native Alaskan; Asian-American or Pacific Islander; African-American (or Black, non-hispanic); and Hispanic) student enrollment.

Participating U.S. institutions must be accredited by one of the following regional accrediting bodies: Middle States Association of Colleges and Schools; New England Association of Schools and Colleges, Inc.; North Central Association of Colleges and Schools; Northwest Association of Schools and Colleges; Southern Association of Colleges and Schools; or Western Association of Schools and Colleges. Institutions recognized only by national or state institutional

accrediting bodies are not eligible. U.S. universities and colleges applying under this program may collaborate with U.S. scholarly, professional, or international educational associations, foundations and organizations.

Overseas, participation is limited to recognized degree-granting institutions of higher education and internationally recognized or highly regarded independent research institutes. For proposals including a U.S. consortium, submission may be made by a member institution with authority to represent the consortium.

Participants representing U.S. institutions and traveling under USIA grant support must be U.S. citizens.

Participants representing foreign institutions must be citizens, nationals, or permanent residents of the country where the foreign institution is located. All foreign participant exchangees and programs must be in compliance with J–1 visa regulations. The proposal must note whether USIA has granted the U.S. institution authority to issue IAP–66 forms necessary to obtain J–1 visas.

Proposed Budget

A comprehensive line item budget must be submitted with the proposal by the deadline. Funds requested from the Agency must not exceed $300,000. Grants awarded to institutions with less than four years of experience in conducting international exchange programs will be limited to $60,000. Specific guidelines for budget preparation are available in the application packet.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost sharing and matching should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

1. Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

2. Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

3. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

1. Preparation of basic financial statements and other accounting services; and

2. Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Allowable Costs

—Travel: International and domestic (via American flag carriers). May include one planning trip with one participant per institution.

—Per diem and maintenance, including Lodging, meals and incidental expenses.

—Salaries and benefits for faculty assigned overseas for three or more consecutive months, not to exceed 20 percent of the total amount requested from USIA. USIA strongly encourages cost-sharing in this category and requires that salaries and benefits of all other faculty and staff participating in the project be maintained.

—Membership in U.S. professional associations and fees for attendance at professional conferences in the U.S. for foreign participants.

—Educational materials, including but not limited to: The translation and publication of instructional materials, collections to be placed in foreign partner institution libraries, hardware and software necessary to establish e-mail communication, and other computer equipment as needed. These costs may not exceed 25% of the total requested grant amount.

—Medical insurance for foreign participants during U.S. visits. Medical insurance is mandatory for all participants in J–1 visa exchange programs.

—Student exchanges: Travel, per diem/maintenance, memberships and conferences (foreign students only), educational materials, medical insurance, and other project costs for MA, MS or PhD student exchanges. Exchanges may include a maximum of four foreign students and two U.S. students per year.

—Other project costs, limited to: Interpreters, which may include graduate or PhD students; out-of-house administrative support in the foreign partner country; office supplies; and communications expenses (*i.e.*, telephone, facsimile, postage and delivery). The above costs may not exceed 10% of the total amount requested from USIA.

Note: Indirect costs are not allowable costs under the NIS Linkage Program.

Application Requirements

Proposals must be submitted by the deadline and must conform to the eligibility requirements and academic fields identified in this announcement. The proposal package must include three originals, containing tabs A–U (see "Application Checklist" in the guidelines packet), and 10 copies containing tabs A–D, as well as all required documentation. Proposals must also include the following documentation:

1. A narrative, not to exceed 20 double-spaced pages, including descriptions of institutions and participating academic departments or schools; a detailed description of the proposed linkage program, including names and qualifications of designated project directors; a statement of need for the proposed program; a detailed description of proposed activities, including who will travel, when, and where (a timetable is recommended); anticipated benefits to participating institutions; and a plan for institutional evaluation of the project.

2. Documentation of institutional support for the proposed linkage, including signed letters of endorsement from the president, chancellor, or director of the U.S. and foreign institutions, making specific reference to the NIS Linkage Program and committing the institutions to maintaining exchange participants on salary and benefits during the exchange. A general letter of support or an agreement between the participating institutions without reference to the NISLP and maintenance of salaries and benefits will not fulfill this requirement. A sample letter of endorsement and commitment is included in the application packet.

3. Academic resumes of participating faculty/staff from all involved institutions. Resumes must clearly indicate: Relevant overseas experience and language skills; relevant travel, publications, and research activities.

Note: All pages in excess of the two-page limit will be discarded.

Review Process

The NIS Linkage Program review process will be comprised of technical,

academic, and Agency reviews. Proposals will be deemed technically eligible only if they adhere to the guidelines established herein and in the application packet. Technically eligible proposals will be forwarded to ad hoc panels of area and subject specialists who will weigh their academic merit, potential for fostering curriculum reform and development, and feasibility. Proposals recommended for funding by the ad hoc academic panels will be reviewed for relevance to Agency goals and the objectives of the Foreign Operations Appropriations Bill of 1994 by the Office of Academic Programs, the Office of Eastern Europe and the NIS, USIS offices and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Academic Review Criteria

Proposals are reviewed by independent academic peer panels with geographic and disciplinary expertise which make recommendations to the Agency based on the following criteria:

1. Academic merit of the proposal, as reflected by: A clear statement of program goals; a detailed project description; and a statement on how the proposed project will be implemented and evaluated.
2. Probable impact of the proposed linkage in achieving the goal of reforming educational administration and curricula at the foreign partner institution.
3. If the proposal involves an established, active linkage, evidence that the partners will engage in new, innovative activities.
4. Evidence that theme(s) of proposed project fit(s) field(s) stated in this announcement.
5. Feasibility of the program plan as it relates to the stated goals and selected topics and activities.
6. Quality of scholarly and professional credentials/experience of participants in relation to the goals of the proposed exchange plan, including language proficiency.
7. Appropriateness of length of exchange visits, given project goals.
8. Evidence of strong institutional commitment by participating institutions, demonstrated in part by cost-sharing and letters of institutional support.
9. Evidence of mutual advancement of cultural and political understanding through development of individual and institutional ties.
10. Evidence from U.S. institutions of prior experience in the region and previous relations with proposed foreign partner institution(s).

Agency Review Criteria

Academic review panels will recommend proposals to USIA for further review. Agency review will be based on:

1. Academic quality, reflected in academic review commentary and recommendations.
2. Promise of long-term impact in achieving Agency/legislative objectives.
3. USIA and overseas post assessments of need and feasibility.
4. Cost-effectiveness.
5. Geographic and institutional diversity within the foreign country and among U.S. partner institutions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 24, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–4689 Filed 3–2–94; 8:45 am]

BILLING CODE 8230–01–M

Foreign Language and Area Studies—U.S. Students and Scholars; Request for Proposals

ACTION: Notice; request for proposals.

SUMMARY: The United States Information Agency (ASCI) requests proposals from non-profit organizations for programs or projects under the rubric of the FY 1994 "Near and Middle East Research and Training" program. Organizations shall conceive, develop and administer programs in cooperation with USIA that will assist American graduate students and post-doctoral scholars in North African, Middle Eastern and South Asian Studies. Activities permitted under this program include foreign language training, foreign area studies and foreign area research for periods ranging from two months to a full academic year abroad.

For the purpose of this program, the geographic area refers to the region consisting of countries and peoples covered by the Bureau of Near Eastern and South Asian Affairs of the U.S. Department of State as of October 1991. Current eligible locales for overseas research are: Mauritania, Morocco, Tunisia, Egypt, Israel, Jordan, Saudi Arabia, Syria, Kuwait, United Arab Emirates, Bahrain, Oman, Qatar, Yemen, Pakistan, India, Sri Lanka, Bangladesh and Nepal. Proposals for Turkey will be accepted subject to final Congressional approval on pending appropriation bills. The funding of proposals for the above countries is subject to official security and/or travel restrictions.

DATES: Deadline for proposals: One original and 14 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, April 15, 1994. Faxed documents will not be accepted, nor will documents postmarked on April 15, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline. Grants should begin September 1, 1994 and end August 31, 1995.

ADDRESSES: The original and fourteen (14) copies of the completed proposal, including required forms and a budget should be submitted by the deadline to: U.S. Information Agency, Reference: NMERTA, Office of Grants Management (E/XE), room 357, 301 4th St. SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Janey Cole or Ms. Nada Gunnoe, North Africa, Near East and South Asia Branch (E/AEN room 212), Academic Exchange Programs Division, U.S. Information Agency, 301 4th St. SW., Washington, DC 20547, telephone (202) 619–5368 to request detailed application packets which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

Authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 Fulbright-Hays Act. Through the Fulbright program USIA seeks to increase mutual understanding between the people of the United States and

people of other countries. Pursuant to the Agency's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Support is offered for two categories. Organizations may address one or both categories, but must submit a separate proposal for each category. Special emphasis will be given to social sciences and humanities.

Category A. Pre-doctoral students. Organizations that are awarded funding shall solicit and receive applications from American graduate students nationwide who seek to conduct overseas study and research on the Near and Middle East and South Asia. Eligible fields of study and research shall be open to students of all disciplines with a need or established interest in topics requiring study or research in the geographic area. Eligibility shall be restricted to applicants who have a baccalaureate degree and who are already enrolled in graduate level academic programs.

Category B. Post-doctural scholars. Organizations that are awarded funding shall solicit and receive applications from American post-doctoral scholars nationwide who seek to conduct overseas study and research on the Near and Middle East and South Asia area. Eligible fields of study and research shall be open to scholars of all disciplines with a need or established interest in topics requiring study or research abroad. Eligibility shall be restricted to applicants who have a Ph.D. and who have post-doctoral college or university teaching experience.

Eligibility

Non-profit organizations with experience in international education, such as educational and professional organizations and institutions, American overseas research centers, colleges and universities, are invited to submit proposals.

Guidelines

In preparing a proposal, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful proposal should clearly cover publicity, selection process, orientation for participants, logistical and scheduling measures. A basic plan for post-program follow-up and evaluation should also be included. The proposal must be typewritten and double-spaced and cannot exceed fifteen pages, including budget attachments.

Proposed Budget

Funding for both Category A and Category B is estimated at $1,000,000 each. USIA expects to make up to 10 awards ranging from $60,000 to $350,000, each which includes program and administrative costs. A comprehensive line-item budget not to exceed $350,000 must be submitted with the proposal. (Grants awarded to eligible organizations with less than four years experience conducting international exchange activities will be limited to $60,000. Budget submissions from such organizations may not exceed this amount). The budget should list all sources of support for the program including both cash and in-kind contributions.

The budget guidelines apply to both categories above. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant funded items of expenditure may include, but are not limited to, the following:

—International travel (via American flag carrier);
—Domestic travel;
—Maintenance and per diem;
—Academic program costs (e.g. book allowance)
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker;
—Cultural enrichment expenses (admissions, tickets, etc.)
—In-country administration costs (e.g. publicity, recruitment and selection costs).

Administrative Costs—Not To Exceed 20% of the Requested Budget

—Administration (salaries, benefits);
—Communications (e.g. fax, telephone, postage);
—Office supplies;
—Other direct costs;
—Indirect costs.

Organizations should demonstrate substantial cost-sharing (dollar and in-kind support) in both program and administrative expenses, including overseas partner contributions.

USIA reserves the right to reduce, revise or increase budget proposals in accordance with the needs of the program. No grants funded under this program will include profit or fee. Please note: It is required that requested administrative funds, including indirect costs and administrative expenses for recruitment and orientation, not exceed 20 percent of the total amount requested from USIA.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost-sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost-sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution. The recipient's proposal shall include the cost of the audit that:

(1) Complies with the requirements of OMB Circular No A–133, Audits of Institutions of Higher Education and other Nonprofit Institutions.

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of the recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein. Eligible submissions will be forwarded to panels of USIA officers for advisory review. All eligible submissions will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting office.

Review Criteria

Technical by eligible proposals for this competition will be reviewed according to the following criteria:

1. Quality/responsiveness—Quality of administrative plan and adherence of the proposed activity to the criteria and conditions described in the application material available from USIA. Proposals should clearly demonstrate how the organization will meet the programs objectives and plan.

2. Institutional capacity—Proposed personnel and institutional resources to be applied to the project should be adequate and appropriate to achieve all goals and objectives.

3. Cost-effectiveness—The overhead and administrative components of the proposal, including salary/benefits, should be kept to not more than 20 percent of the total budget. All budget items should be necessary and appropriate. Proposals should demonstrate cost-sharing and in-kind support.

4. Track record/potential—Proposals should demonstrate potential for excellence and/or a track record of the organization's involvement in international education, particularly academic exchange.

5. Evaluation plan—Proposals should provide a plan for follow up and evaluation by the grantee organization.

6. Reasonableness, feasibility, flexibility—Proposals should demonstrate how the objectives will be met.

7. Multiplier effect/impact—A particular priority is that the project activity strengthen long-term mutual understanding, include maximum sharing of information and views among participants, and provide opportunities to facilitate the establishment of broader institutional and individual scholarly ties for collaborative teaching and research in the U.S. and the subject country.

8. Mutuality of benefits—Proposals should show evidence of strong mutual benefits to the U.S. and foreign institutions and individuals involved, as well as evidence of strong commitment to the goals of the program.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this Request for Proposals does not constitute an award commitment on the part of the U.S. Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review of full proposals on or about July 1, 1994. Grant awards will be subject to standard periodic reporting and evaluation requirements.

Dated: February 17, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–4588 Filed 3–2–94; 8:45 am]

BILLING CODE 8230–01–M

College and University Development Program in Business Management for Selected Countries in Central and Eastern Europe

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: Subject to the availability of funds, The Bureau of Educational and Cultural Affairs of the United States Information Agency invites applications from accredited post-secondary U.S. educational institutions to conduct exchange programs with post-secondary educational institutions in Albania, Bulgaria, Croatia, Czech Republic, Slovak Republic, Macedonia, Hungary, Poland, Romania and Slovenia to develop curricula and teaching methodologies for foreign faculties in the field of business management.

DATES: Deadline for proposals: Proposals must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on April 29, 1994. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents which are postmarked on April 29, 1994, but received at a later date. It is the responsibility of all grant applicants to ensure that their proposals are received by the above deadline. Grants should begin not later than October 1, 1994 and must be a minimum of two years and a maximum of three years in length.

ADDRESSES: The original and 14 complete copies of the proposal should be submitted by the deadline to: U.S. Information Agency, Ref.: College and University Development Program in Business Management for Eastern and Central Europe (UDPBM), Grants Management Division, E/XE, room 336, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets, which include all necessary forms as well as guidelines for preparing budgets, those interested should contact Ms. Robin Kline or Ms. Deborah Trent at (202) 619–5289, or write to the following address: Specialized Programs Unit, Office of Academic Programs, U.S. Information Agency, 301 4th Street SW., room 349, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Fiscal Year 1994 support for this program is provided under the Support for East European Democracies (SEED) Act. Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also maintain their scholarly integrity and meet the highest standard of academic excellence or artistic achievement.

Overview

Under the auspices of the SEED Act, USIA is offering this program to help foster greater expertise in business management in selected countries of the region. The specific purpose of this program is to assist Central and East European Countries in their transformation to free market economies through the development of business management training capabilities in academic institutions. Proposals that are extensions or enhancements of past or current relationships with a partner institution will be accepted.

Guidelines

Eligibility

Institutions: In the U.S., participation in the program is open to accredited two-year and four-year colleges and universities, including graduate schools. Consortia of universities and/or community colleges, individually or as systems, are also eligible. U.S. colleges and universities or consortia applying under this program may collaborate with U.S. scholarly, professional, or international educational associations and organizations. Proposals from a consortium may be submitted by a single member institution with authority to represent the consortium. Overseas, participation is limited to recognized degree-granting institutions of higher education and internationally recognized and highly regarded independent research institutes.

Special Note: The Agency encourages proposals from eligible Historically Black Colleges and Universities

(HBCUs) and other institutions in the U.S. with significant minority student enrollment. Consortia of colleges/universities including such institutions are also strongly encouraged to apply.

Institutional Representatives: Each participant representing a U.S. institution, whose travel costs are covered under UDPBM funding, must be a U.S. citizen. Each participant representing a foreign institution must be a citizen, national, or permanent resident of the eligible foreign country in which the foreign partner institution is located.

Grant Activities

Grant activities must include placement of U.S. faculty at Central and East European institutions for in-country training of foreign faculty and for development of sustainable programs to educate future foreign business management teachers and business people. An important goal of the program is to create enduring linkages between the designated foreign institutions and U.S. colleges and universities. Targeted program activities may include: Faculty development and enrichment; curriculum design; modernization of the administrative structures within the foreign institution; outreach to the private sector; and direct teaching. U.S. and foreign participants may include post-graduate students on a "faculty track" who are currently involved in teaching at participating institutions (not to exceed 25% of all participants). Components for the development of college/university-to-private sector linkages and the development of appropriate materials are encouraged. Orientation, seminar, workshop and semester-long course formats will be acceptable. Visits to partner institutions by staff or consultants to plan joint projects may be funded under this grant but should be a relatively small part of the overall exchange. Preference will be given to proposals in which a U.S. faculty member is placed at the foreign partner institution for at least one academic year.

Courses developed may include, but are not limited to: Marketing, production management, economics, industrial relations, finance, accounting, and international business and business communications. Proposals should provide for a two-way exchange.

Exchange activities should include establishment of electronic communications between partner institutions and other networks.

Ineligibility

A proposal will be deemed technically ineligible if:

1. It does not fully adhere to the guidelines established herein and in the application packet, including budgetary requirements.
2. The applicant is not an accredited U.S. two-year or four-year college or university;
3. The project does not constitute a direct partnership with a post-secondary business management program in Albania, Bulgaria, Croatia, Czech Republic, Slovak Republic, Hungary, Macedonia, Poland, Romania or Slovenia;
4. The project involves partnerships in more than one country;
5. The project does not seek to address the faculty, curriculum, and administrative aspects entailed in developing the business management program identified;
6. The project does not provide for in-country presence of U.S. faculty; or
7. The project includes profits or fee.

Proposed Budget

Subject to availability of funds, project awards to U.S. institutions will range from $50,000 to $300,000; USIA anticipates awarding approximately ten grants. The Agency reserves the right to reduce, increase or otherwise modify proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

Cost Sharing

Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost-sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the USIA contribution will be reduced in proportion to the recipient's contribution. The recipient's proposal shall include the cost of an audit that:

1. Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;
2. Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and
3. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

1. Preparation of basic financial statements and other accounting services; and
2. Preparation of the supplemental reports and schedules required by OMB Circular A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Allowable Costs

Program Costs

1. International travel (via U.S. flag carriers);
2. Domestic travel;
3. Maintenance (including lodging, meals and incidental expenses);
4. Educational materials (including books, reference materials, computers, costs related to workshops, seminars, etc.) not to exceed 35% of budget request;
5. Honoraria or compensation for in-country work, not to exceed $100 per day per person;
6. Visa fees for foreign participants;
7. Medical insurance for foreign participants during U.S. visits (U.S. project directors must ensure that all participants are covered by a comprehensive health insurance plan);
8. Salaries and benefits of U.S. participant(s) in residence at foreign partner institution for one academic year or longer. Total costs for the U.S. participant(s) in residence must not exceed 30 percent of the total budget.

Administrative Costs

(Not to exceed 20% of requested budget, including administrative expenses for orientation. Indirect costs must be cost-shared.)

1. Salaries and benefits;
2. Communications (e.g. fax, telephone, postage);
3. Office Supplies;
4. Other Direct Costs.

Applications must demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including overseas partner contributions. No grants funded under this program will include profit or fee.

Institutional Commitment

In making award decisions, USIA will focus especially on evidence of an

ongoing commitment by the U.S. partner to internationalizing its educational programs as well as a commitment by both partner institutions to the success of the particular exchange program. Each proposal must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the president, chancellor, or director of the U.S. and foreign institution(s) involved. The documentation may also be submitted in the form of a signed agreement by the same persons. Each agreement or letter of endorsement must describe the institution's commitment to an on-going partnership and make specific reference to the proposed program and how it will fit into and be supported by the institution's current activities in internationalizing its educational programs. Proposals must comment on how the partnership might be continued beyond the period of the grant award. If not submitted with original proposal, documentation of support from foreign institutions must be received by 5 p.m. Washington, DC time on May 13, 1994, addressed to Robin Kline or Deborah Trent, E/ASU, room 349, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547. Applicant institutions are expected to make their own arrangements with the appropriate foreign institutions regarding institutional commitment and visas. All programs and foreign participants must be in compliance with J–1 visa regulations and the proposal must make reference to this requirement.

Review Process

Proposals will be deemed technically eligible only if they adhere to the guidelines established herein and in the application packet. All eligible proposals will be reviewed at USIA by the Office of Academic Programs, appropriate geographic area office, and budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting office.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan—including academic rigor, thorough conception of project (including a timeline of activities and identification of participants), potential to address partner needs, understanding of the needs of the partner institution, and proposed follow-up.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange; e.g., qualifications of program staff and participants, commitment of the institution's administration to internationalize its faculty outlook and curricula. Each proposal should clearly demonstrate how the institution will meet the program objectives and execute the program plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the establishment of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value to U.S.-partner country relations—the assessment by USIA's geographic area office of the potential impact and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar; degree of cost-sharing exhibited.

g. Adherence of proposed activities to the criteria and conditions described above.

h. Institutional commitment as demonstrated by financial and in-kind support of the program.

i. Follow-on Activities—each proposal must provide a plan for follow-on activity (without USIA support) which ensures that the USIA-supported program is not an isolated event. Each proposal must clearly demonstrate long-term commitment from all partners.

j. Evaluation plan—proposals must provide a plan for evaluation by the grantee institution.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Federal Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 31, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 24, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–4690 Filed 3–2–94; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–91]

Section 304 Determination Acts, Policies and Practices of Brazil With Respect To the Protection and Enforcement of Intellectual Property Rights; Termination of Investigation and Revocation of Priority Foreign Country Status

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974, as amended ("Trade Act"); termination of investigation initiated under section 302 of the Trade Act, monitoring under section 306 of the Trade Act, and revocation of identification under section 182(c)(1)(A) of the Trade Act.

SUMMARY: The United States Trade Representative ("USTR") has made a positive determination pursuant to section 304(a)(1)(A)(ii). Since the Government of Brazil has undertaken measures to significantly improve the protection and enforcement of intellectual property rights and market access for persons relying on intellectual property rights and will take additional steps in the future in connection with its intention to implement the results of the Uruguay Round of multilateral trade negotiations including the Agreement on Trade-Related Aspects of Intellectual Rights, the USTR has decided to terminate this investigation and monitor implementation of these measures under section 306(a)(2).

In addition, the USTR has decided to revoke the Government of Brazil's identification as a priority foreign country under section 182 of the Trade Act, as amended, by section 1303 of the Omnibus Trade and Competitiveness Act of 1988.

DATES: This decision is effective as of Monday, February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jon Huenemann, Deputy Assistant USTR for Latin America and Caribbean Affairs (202) 395–5190, Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395–6864, or

Thomas Robertson, Assistant General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On May 28, 1993, the USTR initiated an investigation of the Government of Brazil's (Brazil) acts, policies and practices concerning the protection and enforcement of intellectual property rights under section 302(b)(2)(A) of the Trade Act (19 U.S.C. 2412). See 58 FR 31788 (June 4, 1993). The investigation covered the issues that are the basis for Brazil's April 30, 1993, identification as a priority foreign country under section 182(a) of the Trade Act (19 U.S.C. 2242): (1) several areas in the patent law; (2) failure to provide copyright protection for software as a literary work, too short a term of protection for software and penalties for copyright infringement that are insufficient to deter piracy; (3) inadequate protection for trade secrets; (4) no protection for semiconductor masks works (layout designs); and (5) significant levels of copyright piracy and trademark counterfeiting. The original deadline for determinations under section 304(a)(1) of the Trade Act with respect to the investigation was November 28, 1993, but this was extended until February 28, 1994. See 58 FR 64351 (December 6, 1993).

In the context of the five rounds of discussions that took place during the investigation, Brazil indicated that it has undertaken and will undertake as part of its domestic reform efforts a number of actions to improve the protection of intellectual property in Brazil, and to provide greater market access for products relying on the protection of intellectual property. These include improvements in the areas of protection for trademarks, semiconductor mask works (layout designs), patents and computer programs; market access for computer programs; and improvements in the enforcement of intellectual property rights, including efforts regarding the importation of pirated and counterfeit goods and the penalties for infringement of intellectual property rights. Moreover, since initiation of this investigation, the Uruguay Round of multilateral trade negotiations has been successfully completed. Brazil has stated its intention to present the results of those negotiations for the approval of its Congress, including the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

On the basis of the measures that Brazil has undertaken and will take in the future, the USTR has decided to terminate this investigation. The USTR will monitor Brazil's implementation of these measures under section 306(a)(2) of the Trade Act. In addition, pursuant to section 182(c)(1)(A) of the Trade Act, the USTR has decided that the information received warrants revocation of Brazil's identification as a priority foreign country.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–4904 Filed 3–2–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 42
Thursday, March 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:45 a.m., Tuesday, March 8, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Interim audit report.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5041 Filed 3–1–94; 2:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, March 29, 1994.

PLACE: 2033 K St., NW., Washington, DC, Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application by the New York Cotton Exchange for designation as a contract market in futures and option contracts for five currency cross rates and a related request by the New York Futures Exchange to recommence trading in five dormant currency futures contracts

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5042 Filed 3–1–94; 2:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, March 29, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5043 Filed 3–1–94; 2:49 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–4658.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 3, 1994, 10:00 a.m., Meeting Open to the Public.

The following item was added to the agenda:

Kerrey for President—Revision to Finding II.A. Excessive Contributions Resulting from Staff Advances.

DATE AND TIME: Tuesday, March 8, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, March 9, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

MATTER BEFORE THE COMMISSION: MCFL Rulemaking: Summary of Comments and Draft Final Rules.

DATE AND TIME: Thursday, March 10, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Future Meetings
Correction and Approval of Minutes
Final Audit Report on the 1992 Democratic National Convention Committee, Inc.
Advisory Opinion 1994–2: Berglin for United States Senate Volunteer Committee
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–5052 Filed 3–1–94; 3:57 pm]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, March 9, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that it be moved to the discussion agenda.

1. Publication for comment of proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding discounts on products and services for customers obtaining traditional banking products from affiliates.

Discussion Agenda:

2. Proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding appraisals of real estate. (Proposed earlier for public comment; Docket No. R–0803)

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5053 Filed 3–1–94; 3:58 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11 a.m., Wednesday, March 9, 1994, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and

salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–5054 Filed 3–1–94; 3:58 pm]

BILLING CODE 6210–01–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

MEETING STATUS: Open.

DATE AND TIME:

Tuesday, March 22, 1994, 1:30–5:00 p.m.
Wednesday, March 23, 9:00 a.m.–5:00 p.m.
Thursday, March 24, 8:30 a.m.–3:00 p.m.

PLACE: Westin Peachtree Plaza, 210 Peachtree St., Atlanta, GA.

MATTERS CONSIDERED: The majority of the meeting is for orientation for Commissioners. Official NCLIS business, i.e., Chairperson's report, program planning, consideration of draft minutes, future meeting dates, committee structure, etc., will also be discussed.

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: February 25, 1994.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 94–5005 Filed 3–1–94; 1:00 pm]

BILLING CODE 7527–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., March 10, 1994
9:00 a.m. to 5:00 p.m., March 11, 1994
9:00 a.m. to 12:00 p.m., March 12, 1994

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

MATTERS TO BE CONSIDERED: Grant applications, and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: Grant application reviews, and portions of the business meetings.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 94–4947 Filed 3–1–94; 10:13 am]

BILLING CODE 6820–SC–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–07]

TIME AND DATE: March 7, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 701–TA–312 (Second Remand) (Softwood Lumber from Canada)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: February 28, 1994

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4946 Filed 3–1–94; 9:20 am]

BILLING CODE 7020–02–P

Corrections

Federal Register
Vol. 59, No. 42
Thursday, March 3, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV-92-084FR]

Extension of Date of Disposition of Undersized Dried Prunes Produced in California

Correction

In rule document 93-5788 beginning on page 13697, in the issue of Monday, March 15, 1993, make the following correction:

§ 993.150 [Corrected]

On page 13698, in the second column, in amendatory instruction 2, "amended by revising paragraphs (g)(1)(i)-(iii)" should read "amended by revising the first sentence".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions

Correction

In rule document 94-2145 appearing on page 5701 in the issue of Tuesday, February 8, 1994, make the following correction:

In the second column, in the part heading, in the third line, "of" should read "or".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 21

Special Calls

Correction

In rule document 94-2149 appearing on page 5702 in the issue of Tuesday, February 8, 1994, make the following correction:

In the second column, under **EFFECTIVE DATE:**, "February 7, 1994." should read "February 8, 1994."

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction

Correction

In rule document 94-2156 appearing on page 5527 in the issue of Monday, February 7, 1994, make the following correction:

PART 143—[CORRECTED]

In the third column, the **Authority:** citation should read "7 U.S.C. 9 and 15, 9a, 12a(5), and 13a."

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 156

Registration of Broker Associations

Correction

In rule document 94-2161 beginning on page 5703 in the issue of Tuesday, February 8, 1994, make the following correction:

On page 5703, in the third column, under **EFFECTIVE DATE:**, "February 7, 1994." should read "February 8, 1994."

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Bankruptcy

Correction

In rule document 94-2164 appearing on page 5704 in the issue of Tuesday, February 8, 1994, make the following correction:

PART 190—[CORRECTED]

In the second column, in the **Authority:** citation, in the first line, "7 U.S.C. 1a;" should read "7 U.S.C. 1a,".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-137-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 94-4261 appearing on page 9205 in the issue of Friday, February 25, 1994, the docket number was omitted and should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 165

[OPP-190001; FRL-4168-9]
RIN 2070-AB95

Standards for Pesticide Containers and Containment

Correction

In proposed rules document 94-2969 beginning on page 6712 in the issue of Friday, February 11, 1994, make the following correction:

On pages 6712 through 6789 (Part IV of the **Federal Register**), in the runninghead at the top of each page, "Vol. 26" should read "Vol. 59".

BILLING CODE 1505-01-D

federal register

Thursday
March 3, 1994

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 381

Poultry Products Produced by Mechanical Deboning and Products in Which Such Poultry Products Are Used; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 93–008N]

RIN 0583–AB68

Poultry Products Produced by Mechanical Deboning and Products in Which Such Poultry Products Are Used

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) has decided to pursue the development of amendments to the Federal poultry products inspection regulations to define and standardize, or establish other requirements for poultry products produced by mechanical deboning, including possible provisions for the composition, characteristics, and use of such products, and requirements for manufacturing and labeling such products. FSIS has formed tentative positions on the provisions of such amendments. FSIS needs additional public input on the general approach and parameters of such rulemaking in order to help the regulation development process. FSIS is interested in receiving information from the meat and poultry industries and industry-related organizations, the scientific community, academia, consumers and consumer groups, and other interested parties prior to undertaking any such proposed rulemaking.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to Mr. John W. McCutcheon, (202) 720–2709. (See also "Comments" under **SUPPLEMENTARY INFORMATION**)

FOR FURTHER INFORMATION CONTACT: John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this notice. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket No. 93–008N. Any person desiring an opportunity for an oral presentation of views should make such request to Mr. John W. McCutcheon so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m., and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Introduction

Poultry products produced by mechanical deboning are characteristically finely comminuted (i.e., finely ground) in form and result from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses. The products are prepared from various materials, including necks, backs, and whole carcasses. These starting materials may be raw or cooked, may contain varying amounts of muscle and/or skin, and may contain kidneys, except when product is made from mature chickens or mature turkeys. Kidneys of mature chickens or turkeys may not be used as human food (9 CFR 381.65(d)).

The technology to mechanically separate and remove most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses began in the late 1950's or early 1960's. The Department's initial reaction was to consider the resulting product adulterated because of the amount of bone present and the physical size of the bone particles. By the mid-1960's, the industry had modified and improved the equipment used to produce poultry product by mechanical deboning such that product contained less than 1½ percent bone solids with an extremely small bone particle size. This prompted the Department to reevaluate its position. Widespread commercial production of products containing mechanically deboned poultry began in the early 1970's. By 1975, poultry product produced by mechanical deboning was being used as an ingredient in poultry and meat food products such as franks, bologna, salami, and rolls.

Today, poultry products produced by mechanical deboning are used in a wide variety of poultry products, including cooked poultry sausages (such as chicken frankfurters, turkey salami, and turkey bologna), poultry patties and nuggets (such as chicken patties and nuggets), and poultry baby foods. The level at which it is used has depended in part on technological capabilities and has reached 100 percent of the poultry product portion of a number of cooked poultry sausage products. Poultry product produced by mechanical means is also used at up to 49 percent of the formulations of certain meat food products, e.g., beef and turkey chili, provided that it is identified in the product name as "turkey," "chicken," etc., and used in meat food products including cooked sausages, such as frankfurters and bologna, at a level of up to 15 percent of the total ingredients, excluding water (9 CFR 319.180).

Over the years, the poultry and meat food industries have also referred to poultry products produced by mechanical means as "comminuted (i.e., ground) poultry." Terminology such as "finely comminuted," "finely ground," and "mechanically deboned" have been used on poultry product labels to describe the form of the product according to 9 CFR 381.117(d).

Poultry products produced by mechanical means are subject to 9 CFR 381.117(d) relating to boneless poultry products. This regulation requires boneless poultry products to be labeled in a manner that accurately describes their actual form and composition. The product name must indicate the form of the product, e.g., emulsified or finely chopped, and the kind name of the poultry from which it is derived. If the product does not consist of natural proportions of skin and fat, as they occur in the whole carcass, the product name must also include terminology that describes the actual composition. If the product is cooked, it must be so labeled. Section 381.117(d) also limits the bone solids content of boneless poultry products to one percent.

Poultry products produced by mechanical deboning also are subject to 9 CFR 381.47(e). This regulation requires that rooms or compartments containing mechanical deboning equipment must be maintained at 50° F or less during the mechanical deboning of raw poultry.

Existing regulations do not distinguish between boneless poultry products produced by mechanical deboning and poultry products produced by traditional methods, e.g., hand-deboning using high-speed knives. Poultry product produced by mechanical deboning is declared in the ingredients statement of a product in which it is used, along with any other boneless chicken product used, as "chicken" where skin and fat are

included but not in excess of their natural proportions, or as "chicken meat" when such components are not included.

Report on Health and Safety of Mechanically Deboned Poultry

In 1976, the Department initiated an analytical program to obtain data on a number of nutrients and substances of potential health concern in poultry products produced by mechanical deboning. Data were also gathered from scientific literature, industry, other government agencies, and university scientists. Details of the analytical program and a resulting evaluation were published in a June 1979 report entitled "Health and Safety Aspects of the Use of Mechanically Deboned Poultry" (hereafter referred to as the 1979 health and safety report). An errata supplement correcting certain items in the report was prepared and published on August 14, 1979 (44 FR 47576). (The June 1979 report and the errata supplement are available for public inspection in the FSIS Hearing Clerk's office.) On June 29, 1979, the Department announced the availability of this report and encouraged interested members of the public to comment on its content. The Department also notified the public that it was particularly interested in receiving comments regarding the proper labeling of products containing poultry product produced by mechanical deboning and what means, if any, should be taken to implement the labeling recommendations in the report (44 FR 37965).

The Department received 221 comments, most of which were general reactions to the labeling issues raised in the notice, and health, safety, or economic concerns. Of the 187 commenters that expressed a general opinion on the adequacy of the regulations concerning mechanically deboned poultry products, 175 were supportive. Some commenter stated that the regulations have effectively controlled the use of product produced by mechanically deboning over many years with a wide base of consumer acceptance, that such product is not significantly different from product produced by hand deboning, that these regulations provide truthful labeling, and/or that the report and scientific literature support the adequacy of current regulations. Other commenters indicated that mechanically deboned poultry should be regulated the same as mechanically separated (species) (MS(S)) (then named mechanically processed (species) product).

GAO Report on Mechanically Separated Products

In 1983, the General Accounting Office (GAO) issued a report recommending that the Secretary of Agriculture direct the Administrator of FSIS to establish specific standards on poultry products produced by mechanical deboning and labeling requirements on products made with such poultry products as had been done for MS(S) and products made with MS(S). MS(S) is a finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses that meets the provisions of 9 CFR 319.5.

Improvements in Machinery for the Poultry Products Produced by Mechanical Deboning

The Agency has monitored the advances in the technology for mechanically deboning poultry products over the last decade. There have been improvements in the efficiency of the mechanical separation and removal of most of the bone from attached skeletal muscle and tissue of poultry carcasses and parts of poultry carcasses. Today, it has been estimated that roughly 700 million pounds of raw poultry materials are used to manufacture mechanically deboned poultry which is used, in turn, to formulate approximately 400 million pounds of poultry sausages (including franks, bologna, and salami), and 300 million pounds of poultry nuggets and poultry patties.[1] There have been major advances in mechanical deboning machinery in terms of the effectiveness of bone removal from skeletal muscle and other tissues of poultry carcasses and parts of carcasses. This has been accomplished through enhancements and modifications of the bone-removal devices that are part of the traditional mechanical deboning machines. There have been continued refinements of certain operational parameters of the machinery, e.g., the ability for operators to adjust the pressure needed to force ground poultry bones with adhering muscle and other tissues through screens to separate muscle and other tissues from bone, and the size of the apertures (i.e., holes) in the screens and sieves through which the ground bones, muscle, and other tissues are pushed. These improvements have resulted in the ability to decrease the bone solids that are a result of the mechanical deboning process for poultry to less than the one percent reflected in the current poultry products regulations (9 CFR 381.117(d)).

In 1969, the Department amended the regulations for poultry and poultry products inspection to, among other things, provide labeling requirements for boneless poultry products, including a prescribed bone solids content of not more than one percent (34 FR 13991). This limit was based on an evaluation conducted by the Department of the operating results in a series of poultry plants that used mechanical deboning equipment. Analyses were made of 485 samples of raw, mechanically deboned product from nine commercial operations that used the three types of machines most often used in the process. The analyses showed that the equipment, at that time, could be operated under commercial conditions to produce boneless poultry that contained no more than one percent bone solids, on a raw weight basis, and the Department concluded that it was demonstrated that it was practical to limit the bone content in deboned poultry to one percent.

In light of the improvements that have occurred with regard to the machinery used to mechanically separate and remove most of the bone from the muscle and other tissues of poultry carcasses and parts of carcasses, FSIS recently conducted a study of the bone solids content of mechanically deboned poultry.[2] The percentage of bone solids content (determined by calcium analysis) in boneless poultry products produced by mechanically deboning was collected from approximately 50 plants during August 1993, and represented a sampling of over 2000 products. The data indicate that the mean bone solids content of the samples of these products was approximately 0.6 percent; generally, half of the percentages were above 0.6 percent and half were below 0.6 percent.

Prior Advance Notice of Proposed Rulemaking (ANPR)

On June 15, 1993, FSIS published an advance notice of proposed rulemaking (58 FR 33040) soliciting comments, information, scientific data, and recommendations regarding the consideration of the need for labeling of poultry product produced by mechanical deboning and products in which such poultry product is used. FSIS indicated it was considering the need for rulemaking that would establish regulations on the labeling of poultry product produced by

[1] Information provided by industry available for public inspection at the FSIS Hearing Clerk's office.

[2] Data available for public inspection at the FSIS Hearing Clerk's office.

mechanical deboning and products in which such poultry product is used.

Discussions of Comments on the ANPR

FSIS received 2744 comments in response to the ANPR, most of which were general reactions to the labeling issues. Two thousand five hundred and ninety comments were submitted by consumers, 113 by food manufacturers/distributors, 17 by food retailers, 14 by trade associations, 4 by individuals from the Federal government, 3 by academia, 2 by food consultants, and 1 by a law firm. The majority of the commenters responded to whether there was a need to identify mechanically deboned poultry (MDP) in the ingredients statement on the labels of meat and poultry products in which it is used as an ingredient.

One thousand four hundred and eighty-seven commenters supported identifying MDP in the ingredients statement on the labels of meat and poultry products in which it is used. These commenters include 1452 consumers, 8 food manufacturers/distributors, 17 food retailers, 4 trade associations, 4 individuals, one food consultant, and one law firm representative. The commenters provided the following general reasons why MDP should be identified on a finished meat or poultry product label. They stated that: (1) Consumers have a right to know that MDP is present in a product, (2) meat and poultry products should be labeled the same, i.e., there should be parity in labeling regulations, (3) MDP contains higher amounts of "calcium," "cholesterol," and/or "bone particles" and, therefore, should be identified, and (4) MDP should be identified because there is "a difference" between MDP and hand-deboned poultry. The eight food manufacturers/distributors and four consumers also stated that consumers should be made aware (through labeling) that MDP contains "kidneys," "sex glands," and "lungs." The food manufacturers/distributors also pointed out that mechanical deboning processes that crush or grind bones should be labeled as such, regardless of kind (i.e., species). Most of the food manufacturers/distributors encouraged FSIS to work with industry's scientific experts and the meat community to define "meat" and "poultry" through standards of "product safety and nutritional composition."

The remaining 1,257 commenters did not support identifying MDP in the ingredients statement on the labels of finished meat and poultry products for the following reasons: (1) The Agency's current policy should continue and MDP has a history of safe use for 25-plus years without labeling it as anything other than "chicken," "turkey meat," etc., (2) nutrition labeling will be a means of educating consumers about product composition and will address any concerns with regard to the nutrient qualities of the products they purchase, (3) listing MDP separately in the ingredients statement would mislead consumers into thinking they are purchasing products that are inferior to what they have (historically) purchased, (4) any changes in labeling regulations on MDP would only serve to confuse consumers into believing something "has been added to their products" when, in fact, no changes have been made, and (5) a change in labeling would result in a severe negative economic impact "on the entire poultry industry and U.S. economy, as well as many U.S. trading partners that now use these items as a food source." One food manufacturer stated that beef and pork are different species with obvious differences in bone mass, skeletal size, amount of calcification, and bone hardness, and, therefore, MDP should not be labeled the same as MS(S), which incorporates bone and the constituents of bone in the product. Some of the trade associations recommended that if MS(S) meets the same criteria for MDP in 9 CFR 381.117, it should be entitled to analogous labeling. Some of the trade associations also believe that MDP and MS(S) should not be defined by the process used to make them.

The academicians stated that the method of removal of meat tissue from bones of carcasses should not become part of the name of the product, and, as long as the end products are comparable and meet the "rules" for starting materials, composition, sanitation, etc., the method of processing should not become part of the product name. The commenters also stated that MDP is an excellent source of protein and calcium.

FSIS's Response to the Comments on the June 15, 1993, ANPR and Issues Regarding Poultry Products Produced by Mechanical Deboning

In its June 15, 1993, ANPR, FSIS solicited comments, information, scientific data, and recommendations regarding the consideration of the need for labeling of poultry product produced by mechanical deboning and products in which such poultry product is based. FSIS did not receive any new data regarding the health and safety aspects of the use of such products, and, therefore, FSIS believes that there are no new health and safety concerns.

Although, many of the commenters of the June 15, 1993, ANPR raised concerns regarding the labeling of calcium and cholesterol contents of poultry product produced by mechanical deboning, the provisions of the nutrition labeling regulations (58 FR 632) published by FSIS, which are to be effective July 6, 1994, would be a means of educating consumers regarding certain nutrients and other components of processed meat and poultry products containing poultry product produced by mechanical deboning, including calcium and cholesterol. Calcium and cholesterol declaration becomes necessary on the labeling of most multi-ingredient poultry and meat products upon the effective date. These regulations also establish a voluntary nutrition labeling program for single-ingredient, raw products, and specify that FSIS will evaluate significant participation of the voluntary program. If significant participation is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program. Therefore, with certain exceptions, consumers will have complete information about the nutrients in poultry products. Such information will ensure that consumers are not mislead about the composition of products containing poultry products produced by mechanical deboning.

FSIS recognizes that not all products sold to consumers at the retail level will carry nutrition labeling. FSIS's final regulation on nutrition labeling provided for certain exemptions including products produced by small businesses and products in individually wrapped packages of less than ½ ounce net weight, provided that the labels for these products bear no nutrition claims or nutrition information. However, labeling will be required on most processed products purchased by consumers in retail stores so that, together with the voluntary program for retail store information on single-ingredient, raw products, consumers will have information on calcium and cholesterol for most products purchased for consumption at home.

Regarding the comments FSIS received in response to its June 15, 1993, ANPR on the presence of kidneys in poultry products produced by mechanical deboning, FSIS requires the removal of kidneys of mature turkeys and chickens from their carcasses before the eviscerating operations during the slaughtering process (9 CFR 381.65(d)). Kidneys of mature poultry pose a potential health concern because of the possibility of the presence of certain heavy metals. Further, in regard to the comments made about lungs and sex glands, these are precluded from being present in "ready-to-cook" poultry (i.e.,

poultry subsequent to the slaughtering process) by the poultry products inspection regulations (9 CFR 381.1(b)(44)).

FSIS acknowledges that many of the reasons provided by commenters for maintaining the Agency's current policy on labeling poultry products produced by mechanical deboning are valid. However, a substantial number of comments reflect the consumer's "right to know" that poultry product produced by mechanical deboning is in their food because of the unexpected presence of bone. FSIS believes that these comments refer to the boneless poultry product produced by mechanical deboning which has greater than 0.6 bone solids content, but no more than one percent bone solids content.

FSIS is now considering issues in regard to the lack of a regulatory definition and standard for certain poultry products produced by mechanical deboning—products which are deemed to be similar to mechanically separated (species) (MS(S)), for which a regulatory definition and standard exist (9 CFR 319.5). ("Species" refers to the species of livestock, e.g., beef or pork.) MS(S) is defined as "any finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses" and meeting the other provisions specified in 9 CFR 319.5. Provisions in the Federal meat inspection regulations provide, among other things, a definition and standard that classifies MS(S) as a meat food product and a requirement that MS(S) be separately identified in the ingredients statement of a meat food product in which it is used as an ingredient (9 CFR 317.2 (c) and (f), 319.1, and 319.5). FSIS's 1982 final rulemaking on MS(S) (47 FR 28214) indicates that the Agency determined that material differences in the consistency and the composition of MS(S) place it outside the scope of the product traditionally defined as meat (9 CFR 301.2(rr)), and that its differences are such that it should be defined as a distinctive standardized product. As such, it should be identified by a name that adequately differentiates it from meat, viz., MS(S). When MS(S) is used in meat food products, it must be separately listed in the ingredients statement by its standardized name, e.g., "mechanically separated beef (or pork)."

Over the years, the meat and poultry industries have referred to poultry produced by mechanical deboning as "mechanically deboned poultry" and "comminuted poultry," and have declared the product as poultry or poultry meat (e.g., "chicken" and "turkey meat") in the ingredients statement of the labels of products in which it is used as ingredients. Several red meat sausage manufacturers have alleged that, without a regulatory definition and standard for poultry products produced by mechanical deboning, a disparate situation exists between labeling certain poultry products produced by mechanical deboning and MS(S) which poses an unfair advantage for the manufacturers of poultry products and may deny consumers useful information.

FSIS has considered the appropriate course for addressing these issues, and has initiated two actions in response to them. FSIS is contemplating proposing regulations on poultry products produced by mechanical deboning, and is soliciting comments and requesting data on various tentative positions in this advance notice of proposed rulemaking. The other action is a proposal found elsewhere in this issue of the **Federal Register** which amends the Federal meat inspection regulations by amending the definition of meat to include, as meat, product derived from the advances in meat/bone separation machinery and recovery systems that do not crush, grind, or pulverize bones to remove attached skeletal tissue of livestock carcasses and parts of carcasses from livestock bones.

Purpose of the ANPR: FSIS's Intent to Pursue the Development of Amendments to the Federal Poultry Products Inspection Regulations to Define and Standardize, or Establish Other Requirements for Poultry Products Produced by Mechanical Deboning, Including Possible Provisions for Composition, Characteristics, and Use, and Requirements for Manufacturing and Labeling Such Products.

FSIS is considering, among other things, that certain poultry products produced by mechanical deboning, i.e., those with greater than 0.6 percent bone solids content, but no more than one percent bone solids content, be separately identified on the labels of products in which they are used as ingredients by a distinct name. However, because of the improvements in separating the bone from muscle and other tissues of poultry carcasses and parts of carcasses, FSIS is considering, among other things, that some boneless poultry products derived from mechanical deboning machinery, i.e., those with 0.6 percent or less bone solids, be identified on the label of products in which they are used as poultry or poultry meat, e.g., "chicken" and "turkey meat." Until the Agency receives further data and information to support this position, it cannot take a firm position on the content of a proposed regulation on this topic. Therefore, FSIS is issuing this ANPR that provides an in-depth discussion, which follows, on the labeling of MDP, as well as other issues related to boneless poultry product produced by mechanical deboning, and expresses the Agency's tentative positions regarding these issues. It is FSIS's intent to obtain the information and data necessary to solidify its position regarding the labeling, use, and production of poultry products produced by mechanical deboning.

Tentative Positions

I. *Boneless poultry products produced by mechanical deboning with greater than 0.6 percent bone solids content* (Boneless poultry products produced by mechanical deboning with greater than 0.6 percent bone solids content are hereafter referred to as "MDP.")

A. Tentative position: Definition and standard of identity and composition. FSIS's tentative position is to prescribe a definition and standard of identity for the finely comminuted poultry product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses which has greater than 0.6 percent bone solids content. While whole carcasses sometimes are used, the starting materials for this type of processing frequently are parts of carcasses, such as frames, backs and necks, which contain relatively low proportions of skeletal muscle, or parts, such as breast frames, from which most of the skeletal muscle already has been removed by traditional deboning techniques. This product is commonly known in the poultry industry as mechanically deboned poultry or MDP.

The changes under consideration would include (1) amending the Federal poultry products inspection regulations by defining MDP as "mechanically separated (kind)," or another appropriate term, using limits for bone solids content and bone particle size, and criteria for protein quality, and requirements for labeling of the product in products in which it is used as an ingredient, and (2) amending the poultry products inspection regulations to require that such poultry products produced by mechanical deboning be kept at temperatures of 40 degrees F or below within 2 hours of the deboning operation. The resulting product differs from poultry products produced by traditional deboning techniques in its

highly comminuted and spread-like consistency and in its content of bone and associated tissue, as well as muscle, skin, and fat. These differences have a potential consequence for finished product microbiological quality and, thus, for health and safety. Therefore, certain handling requirements may be needed.

In view of the differences between MDP and boneless poultry derived by traditional methods (e.g., hand-deboning), it appears inappropriate to continue to include MDP within the category of "boneless poultry products" (9 CFR 381.117(d)). Instead, FSIS is considering defining it as a distinct poultry product ingredient and standardizing its characteristics under Subpart P of the poultry products inspection regulations (9 CFR part 381, subpart P).

FSIS's tentative position is that the boneless poultry products regulation (9 CFR 381.117(d)) no longer would apply to MDP. Consequently, the current restriction on bone solids content in this regulation—as enforced by limiting calcium content—would be included with other compositional requirements in a MDP standard. Product failing to meet the bone particle size, or protein quality requirements of the standard could be used only in producing poultry extractives, including fats, stocks, and broths, (i.e., processors would be permitted to employ acceptable procedures for extracting components such as fat, but such product resulting from the mechanical separation and removal process could only be used for further processing). Mechanically deboned poultry with a protein content of less than 14 percent and/or a fat content of more than 25 percent would be deemed to be product for processing. Moreover, as a standardized product, MDP would be differentiated from other poultry product ingredients; and it would be designated in the ingredient statements on finished product labels by the name specified in its definition and standard, in accordance with 9 CFR 317.2(c)(2) and (f)(1) and 381.118(a).

(1) *Tentative position: Product name.* FSIS's tentative position is to consider amending the Federal poultry products inspection regulations to define the standardized product that results from the mechanical separation and removal of most of the bone from poultry carcasses and parts of carcasses by a distinctive name. FSIS is tentatively considering that "Mechanically Separated (Kind) (MS(K))" is an appropriate, nonmisleading name for this product. It appears to accurately and concisely describe the product, indicating the nature of the process by which and the kind of poultry from which it is made, distinguishing it from poultry product ingredients produced by traditional hand-deboning techniques. The name under consideration includes "(kind)" rather than "poultry" to make it clear that the kind of poultry (9 CFR 381.1(b)(40)) from which the product is made is specified (e.g., "Mechanically Separated Chicken").

As previously indicated, FSIS believes that MDP differs sufficiently from boneless poultry products produced by traditional hand-deboning techniques that it should be regulated as a separate, standardized ingredient. As such, this product would be defined by its own, distinctive name, and it would be referred to by that name in relevant regulations and in labeling. In this regard, FSIS is requesting public input on other names that would accurately and appropriately describe MDP as a distinct ingredient.

FSIS is aware that other descriptions have been associated with poultry products produced by mechanically deboning. In addition to the use of terminology such as "finely comminuted" poultry to specify the form of the product and "mechanically deboned" poultry, such product has been referred to as mechanically separated poultry within the meat and poultry industries. FSIS believes that where a primary distinguishing characteristic of a standardized product, is its bone content, it would be inappropriate to define it by a name that includes the term "deboned" and use of this term in labeling might mislead consumers by implying such product contains no bone.

Persons commenting on this portion of the ANPR should be aware that FSIS does not consider that current familiarity with terminology or its appeal to consumers is dispositive on the question of what terminology is most likely to achieve its objectives for the name of a standardized product: instantaneous consumer familiarity and acceptance cannot and should not be expected when labels declare the presence of a product for the first time. However, consumer perceptions are important in determining whether or not terminology that is technically accurate nevertheless may be confusing or even misleading. When FSIS establishes a definition and standard for a product with respect to which a specified name is deemed appropriate, the product must be called by that name in labeling.

(2) *Tentative position: Bone solids content.* FSIS is considering that a definition and standard for MDP would incorporate the existing restriction on the bone solids content of mechanically deboned poultry products, viz., not more than one percent (9 CFR 381.117(d)). Because this restriction is enforced by limiting calcium content, FSIS is considering that the definition and standard for MDP should include maximum calcium content levels of not more than 0.235 percent in product made from turkeys or mature chickens or 0.175 percent in product made from other poultry, as a measure of bone solids content—based on the weight of product that has not been prepared with heat treatment.

As previously discussed, FSIS adopted the one percent bone solids restriction after appraising the operating results in a series of poultry plants using mechanical deboning equipment, analyzing 485 samples of raw product, and concluding that existing equipment can be operated under commercial conditions to produce product which meets this limit (34 FR 13991, 13992). When processors applied the mechanical deboning technology to poultry products such as fowl frames that have been heat treated using various cooking methods, FSIS modified its procedures to take into account weight loss that can occur with cooking. Thus, the practice has been to permit an allowance for weight loss in order to reflect the bone solids content that would have been present if heat treatment has not occurred; and the adjusted level may not exceed one percent. The "Chemistry Laboratory Guidebook," U.S. Department of Agriculture (section 6.010F, page 6–33),[3] currently includes procedures for different degrees of adjustment depending on whether conventional cooking methods (i.e., open kettle) or other heat treatment (e.g., pressure cooking) are used.

After evaluating data on substances of potential concern that may tend to concentrate in bone, the 1979 report on health and safety aspects of the use of mechanically deboned poultry did not recommend any change in the existing bone solids limit. (The report did, however, recommend limitations on the use of product made from fowl because of bone constituents like fluoride; FSIS's tentative position is to amend the poultry products inspection regulations accordingly, as discussed below.) Because enforcement is based on calcium content analyses, rather than direct measurements of bone solids, FSIS is considering that an amended regulation would include the maximum

[3] Document is available for public inspection at the FSIS Hearing Clerk's office.

amount of calcium permitted in determining whether mechanically deboned poultry is in compliance. As discussed below, FSIS is also considering that production under an approved quality control program is needed to assure that such product is manufactured to comply with regulatory requirements on a consistent basis and that implementation of a quality control program would increase the effectiveness of enforcement of the restriction on bone solids content.

FSIS has developed two different calcium content levels for this purpose. Both of these levels account for the fact that poultry tissues, other than bone, contain some calcium. The higher level—0.235 percent—reflects the greater proportion of calcium in the bones of mature chickens and turkeys as compared with young chickens (i.e., the lower ratio of bone solids to calcium). The lower level—0.175 percent—has been used by FSIS in enforcing the one percent restriction on product made from young chickens. Both of these calcium levels are equivalent to one percent bone solids using the conversion formulas for calculating bone solids from calcium on a weight basis.[4]

Since FSIS is considering proposing a definition and standard that includes potential types of mechanically deboned product, FSIS's tentative position is to allow 0.175 percent calcium as the maximum for all MDP that is made from poultry other than turkeys or mature chickens. FSIS is interested in receiving comments regarding the calcium levels applicable to MDP made from other kinds of poultry, e.g., ducks, geese, and guineas, especially calcium levels applicable to mature poultry.

In addition, the "Chemistry Laboratory Guidebook" (section 6.010F, page 6–33) has been revised to include a procedure that could be applied to mechanically deboned product made only in part from mature chickens. That procedure involves a determination of the relative mature and young chicken proportions when product is made from a combination of young and mature chickens. FSIS is considering, as discussed below, that production of MDP under an approved quality control program is necessary to assure consistent compliance with regulatory requirements, including the calcium content requirement utilized in restricting bone solids content. Therefore, as the discussion of the proposed quality control provision indicates, FSIS's tentative position is that, if mechanically deboned chicken is made from a combination of young and mature chickens, the application of any intermediate value between 0.175 and 0.235 percent in verifying compliance would be contingent upon an establishment's program for quality control including methods that support such value's appropriateness as a measure of a bone solids content to not more than one percent; and without such methods, the 0.175 percent limit should apply. FSIS wishes to receive comments on the determination of the calcium levels associated with MDP made from a combination of young and mature poultry.

The inclusion of these calcium content levels in the definition and standard FSIS is considering should not be misinterpreted as indicating a concern about the amount of the essential nutrient calcium that is provided by poultry and meat food products. FSIS agrees with the findings in the 1979 health and safety report that, even assuming all further processed poultry were made with mechanically deboned poultry (i.e., a far greater level of production and use than actually occurs), the projected calcium contribution such products would represent only a negligible increase in per capita daily intakes and cannot be considered hazardous, particularly since the dietary intake of a large sector of the population may be below the recommended level of calcium consumption.

(3) *Tentative position: Bone particle size.* FSIS is considering restricting the size of the bone particles in MDP to a maximum of less than 1.5 millimeter (mm) in the greatest dimension, but permitting up to 5 bone particles per 50 grams of MDP to be from 1.5 mm to less to 2.0 mm in the greatest dimension. The need to limit the size of bone particles in MDP has been acknowledged since the poultry industry began to use mechanical methods for manufacturing this product.

In the 1979 health and safety report, it was recommended that bone particle size be controlled to ensure that equipment type of processing does not result in unacceptably large fragments and concluded that, provided this is done, the bone particles in the product will not present any health hazard because of size or hardness.

FSIS is considering that it is appropriate to permit up to 5 particles per 50 grams of product to be from 1.5 mm to less than 2.0 mm as an acceptable defect in complying product. FSIS is requesting comments and information on the extent to which manufacturers should be required to control the production of mechanically separated poultry product to limit the size of bone particles. FSIS will consider any information submitted during the comment period on the size and distribution of bone particles that may occur with various mechanical deboning procedures conducted in accordance with good manufacturing practices (e.g., the extent to which deviations or nonconforming particles occur, and data substantiating the absence of potential health or finished product quality problems with such particles).

(4) *Tentative position: Protein quality.* FSIS is considering requiring that MDP meet a minimum protein quality requirement—a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent and to accept as evidence of compliance with this requirement an alternative measurement—the content of 7 essential amino acids being at least 33 percent of the total of 17 amino acids present. Protein quality is a measure of the content, proportion, and availability of essential amino acids in food protein and a measure of the ability of the food protein to support human growth and body protein maintenance.

When the regulation on MS(S) (a finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses that meets the provisions of 9 CFR 319.5) was published in 1982 (47 FR 28214), one of the methods specified for measuring protein quality was the Protein Efficiency Ratio (PER) procedure. The PER method measures the ability of a protein source to support growth in young growing rats, and is an expensive and time-consuming assay. FSIS adopted a newer method for measuring protein quality, in order to assure the value of the protein contributed by meat and poultry to human dietary needs, in its final regulations on nutrition labeling of meat and poultry products published in the **Federal Register** on January 6, 1993 (58 FR 632). The newer procedure, termed the protein digestibility—corrected amino acid score method, is contained in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990 (PDCAAS method).[5] The protein digestibility—

[4] The formula for calculating bone solids from calcium for poultry products is in the "Chemistry Laboratory Guidebook," U.S. Department of Agriculture (6.010F, page 6–33), and is available for public inspection at the FSIS Hearing Clerk's office.

[5] A copy of the document is available for public inspection in the FSIS Hearing Clerk's office.

corrected amino acid score method is based on human amino acid requirements and, therefore, is more appropriate for evaluating the protein quality of foods for human consumption that the PER which is based on amino acid requirements of rats. The protein digestibility-corrected amino acid score method measures the ability of amino acids in food proteins to meet the dietary protein needs of humans.

FSIS is considering proposing a requirement that the protein in MDP have a protein quality value that is a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent. This value is consistent with nutrition labeling requirements for protein in foods for children older than one but less than four years of age, as provided in 21 CFR 101.9(c)(7), which is cross-referenced in its final nutrition regulations (58 CFR 632) in 9 CFR 317.309(b). FSIS believes this value protects the young consumer from inadequate nutrition and from the use of poor quality protein (i.e., protein that does not meet the dietary needs for growth), and in turn, protects people other than young consumers. FSIS also believes that it may be appropriate to assure comparability of MDP with boneless poultry and poultry that is derived by hand-deboning in terms of the protein contributed to human dietary needs to maintain the quality and integrity of the poultry products supply.

FSIS is proposing to permit an alternative measurement to the protein digestibility-corrected amino acid score method, which requires a digestibility measurement in addition to an amino acid analysis, to control the cost of monitoring compliance with the protein quality requirement. FSIS is considering proposing that, for the purpose of measuring the protein quality of MDP, an alternative measurement of protein quality would be allowed that is comparable to the protein digestibility-corrected amino acid score. This measure would be based on a comparison between the "essential amino acid content of MDP" and "total amino acids present in MDP." Essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present including isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content. It is being considered that the essential amino acid content would be determined by methods given in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation."

FSIS believes that MDP found to be in compliance by the proposed amino acid content measurement would have protein of high quality. This belief is supported by the 1982–83 evaluation of an Expert Work Group that was organized by the Department's Agricultural Research Service, in cooperation with the University of Maryland, to develop recommendations based on available scientific knowledge for consideration in policy decisions regarding the protein quality of meat, poultry, and their products.[6]

The public should be aware that FSIS continues to have interest in investigations of protein quality which include among their objectives the identification of improved methods for determining protein quality. In evaluating the possible use of alternative approaches to assuring protein quality, FSIS will consider data and other comments submitted by the public.

(5) *Tentative position: Protein and fat contents.* FSIS is considering allowing for two categories of MDP for use in the formulation of poultry products and meat food products: (1) A category which meets minimum protein and maximum fat content requirements of not less than 14 percent and not more than 25 percent, respectively, and (2) a category designated "for processing" for which there are no protein or fat content requirements. As discussed below, it is contemplated that a wider range of use would be permitted for product containing not less than 14 percent protein and not more than 25 percent fat, than for product for processing.

Poultry products produced by traditional deboning techniques vary significantly in fat content, largely depending on the extent to which they include skin (with attached fatty tissue) and/or separable fat—the major sources of fat in poultry. A similar pattern was evident in the data on mechanically deboned poultry products reviewed in the 1979 health and safety report, although mechanically deboned product tended to contain more fat. This tendency is not surprising since mechanically deboned product frequently is prepared from necks, which have a higher skin content than other poultry parts, and/or backs, which have a higher skin content than other poultry parts, and because it can include bone marrow, which contains as much or more fat than skin.

While, as with fat content, there is considerable variability in the protein content of both mechanically deboned poultry and poultry products produced by traditional deboning techniques, in the data reviewed in the 1979 health and safety report on MDP, MDP generally contained less protein. In addition, the 1979 report found much higher moisture to protein ratios in mechanically deboned poultry, indicating considerable dilution of poultry product, possibly by ice.

Currently, the poultry products inspection regulations do not directly control the fat or protein content of poultry product ingredients. However, they do differentiate between "poultry meat" and "poultry," i.e., chicken meat and chicken, with the latter encompassing edible parts such as skin and fat not in excess of their natural proportions in addition to poultry meat. As skin (with attached fatty tissue) and separable fat are the places in which most of the fat in poultry products is found and poultry products are composed essentially of fat, protein, and moisture, these definitions have served, to some extent, to distinguish among poultry products in terms of their relative fat and protein contents. Moreover, these differentiations in fat and protein have consequences for the use of poultry product ingredients, since many of the standards of identity or composition for finished poultry products include minimum poultry meat requirements (9 CFR 381.167) and others limit skin and fat to natural proportions (9 CFR 381.160).

The goal FSIS is considering is to develop a regulatory approach that fulfills its responsibility to protect the public by maintaining the quality and integrity of the poultry and meat food product supply while continuing to permit flexibility in the composition of mechanically deboned poultry product, as well as in its use at various levels in a broad range of products. In FSIS's view, its responsibility to the public includes the objectives of preventing increases in the fat content of this portion of the food supply and preventing poultry product dilution that could result in the public no longer being able to rely on poultry products and meat food products as reasonably good sources of high quality dietary protein.

FSIS is considering that MDP should have a fat content of not more than 25 percent and a protein content of not less

[6] "The Protein Nutritional Quality of Meat and Poultry Products: Scientific Basis for Regulation" is the final report of the Expert Working group, with accompanying background papers. C.E. Bodwell, ed., American Journal of Clinical Nutrition, 40(3): 671–742, supplement, September 1984. A copy of the report is available for public inspection in the FSIS Hearing Clerk's office.

than 14 percent or it shall be deemed to be product for processing. If these views are adopted, the effect of this provision would be to impose no maximum on the fat content or minimum on the protein content of this ingredient where other regulatory provisions assure that the fat content of finished products does not exceed appropriate limits and protect against decreases in their protein content by establishing finished product content requirements. In such a product, it is contemplated that MDP could be used, regardless of its fat or protein content, in ingredient mixtures that accord with the standard for the finished product.

(6) *Tentative position: Quality control.* FSIS is considering that a quality control program is necessary to assure that establishments manufacture mechanically deboned poultry product that complies consistently with the tentative definition and standard that is being considered by FSIS. Utilization of such a program in producing the ingredient MDP would be a prerequisite for the approval of labels for products consisting of or containing MDP. The function of plant quality control is to restrict potential variability within the limits of the tentative requirements FSIS is considering by controlling the factors that can affect the resulting product's characteristics.

FSIS expects to require that MDP be produced under an approved plant quality control program. Also, FSIS is considering a requirement that the plant quality control program provide the controls and information necessary to assure that MDP manufactured under such a program meets any requirements established and that it will enable establishment personnel and FSIS to monitor it for effectiveness. FSIS is focusing on methods that will minimize inter-lot variation by maintaining the uniformity of starting materials and controlling the handling and processing of starting materials and resulting product.

Because it appears that this goal can be achieved effectively and efficiently where a program for quality control incorporates appropriate methods and monitoring techniques and adheres to good manufacturing practice, FSIS contemplates requiring that an establishment conduct only limited analyses for protein quality and fat, and for MDP represented as containing not less than 14 percent protein and not more than 25 percent fat, to confirm that production is, in fact, under control. After it has been demonstrated that the quality control program is able to yield complying product, confirmatory analyses would be required only periodically, as long as the product is in compliance.

FSIS anticipates establishing basic parameters for the chemical analyses that must be performed to verify compliance with the requirements, e.g., defining production lots and sampling schedules, and the accepted methodology for performing analyses. FSIS wishes to receive comments on the parameters necessary for an adequate quality control program.

B. *Tentative position: Handling requirements.* Current regulatory requirements, including provisions for sanitation, operating procedures, and heat processing (9 CFR part 381, subpart H and I, and § 381.150), already provide the basic controls necessary to prevent spoilage and assure poultry product wholesomeness. However, because the mechanical deboning process presents greater opportunities for bacterial growth than traditional poultry product processing, FSIS is considering amending the poultry products inspection regulations to more specifically address the requirements for the various starting materials used for MDP and the resulting product.

Although the data reviewed in the 1979 health and safety report indicate that MDP products generally are acceptable from a microbiological standpoint, the data also show that where bacterial loads tend to be higher, it can be attributed to the starting material used. This is not surprising as common starting materials for mechanical deboning are products that remain after the removal of a substantial portion of skeletal muscle or other tissue (e.g., skin) from poultry carcasses or parts of carcasses. As a result, the resistance of the exposed surface area to microbial penetration has been reduced and the ratio of the surface area to the volume of total product which is exposed to contaminating influences has been increased. Higher microbial counts in MDP have been associated with the time and conditions of holding such starting materials.

Mechanically deboned poultry itself also presents opportunities for excessive microbiological growth because it consists of small particles which have a greater surface area than most poultry products and because during its preparation any microorganisms that are present are distributed throughout the product.

FSIS believes that potential bacterial hazards are diminished as long as handling accords with good manufacturing practices. FSIS is, therefore, considering that processing and storage requirements are warranted for the raw materials used to make the product and for the product itself.

FSIS is considering proposing handling requirements that would provide that material to be processed into MDP be processed within 2 hours from the time it is separated from the bones of poultry carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F (4 °C) or less, or held indefinitely at 0 °F (−18 °C) or less. Within 2 hours of the mechanical deboning operation, FSIS is also considering proposing that MDP be chilled to 40 °F (4 °C) or less, frozen at 0 °F (−18 °C) or less, or cooked. FSIS is further considering proposing that MDP be used as an ingredient in a poultry or meat food product directly after being processed, except that it may be held prior to such use for no more than 72 hours at 40 °F (4 °C) or less or indefinitely at 0 °F (−18 °C) or less.

FSIS recognizes that different starting materials will be processed into MDP, i.e., poultry carcasses or parts of carcasses chilled and maintained in accordance with 9 CFR 381.66; unchilled poultry carcasses or parts of carcasses; and heat-treated poultry carcasses or parts of carcasses, and such carcasses or parts from which a substantial portion of skeletal muscle or other tissue has been removed. FSIS wishes to receive comments on whether specific handling requirements other than those being considered are appropriate for specific types of starting materials.

In addition, in order to avoid confusion about the parts or physical state of poultry that may be processed into MDP, FSIS is considering providing a definition of "poultry carcasses or parts of carcasses." The terms "poultry carcasses" or "parts of carcasses" would apply to whole carcasses or disjointed portions of such carcasses that are "ready-to-cook poultry" within the meaning of 9 CFR 381.1(b)(44) of the poultry products inspection regulations. In other words, the head, feet, crop, oil gland, trachea, esophagus, entrails, mature reproductive organs, and lungs of the slaughtered poultry have been removed and such poultry is free from protruding pinfeathers and vestigial feathers and suitable for cooking without need of further processing.

FSIS is considering that adoption of the handling requirements discussed above would eliminate the need to require that the temperature of rooms or compartments in which equipment for mechanical deboning of raw poultry is operated be maintained at 50 °F or less. Thus, if the requirements FSIS is

considering are adopted, FSIS would need to rescind 9 CFR 381.47(e).

C. Tentative position: Limitations on use. FSIS's tentative position is to establish and codify limitations with respect to use of MDP in the formulation of poultry and meat food products. FSIS is contemplating imposing such restrictions based on the potential fluoride contribution of MDP made from fowl (i.e., mature female chickens) and the characteristics of MDP, including the kind of poultry from which it is made, its consistency, and its protein and fat contents. FSIS believes that such requirements are necessary to prevent potential health and safety problems, and to maintain the quality and integrity of the poultry and meat food product supply.

(1) *Tentative position: Kind of product limitation.* FSIS is considering that when a poultry product is required to be prepared from a particular kind or kinds of poultry (e.g., chickens), use of MDP of any other kind (e.g., mechanically deboned turkey) should not be permitted. This provision would assure that MDP made from a different kind of poultry is not used in a poultry product represented as containing ingredients from a particular kind or kinds of poultry.

The tentative definition and standard for MDP that FSIS is considering covers MDP prepared from any kind of poultry. FSIS is not considering, however, to permit use of MDP as an ingredient in any given poultry product regardless of the kind of poultry from which it is made. Such action would be inconsistent with existing regulatory requirements and interpretations and could, among other things, result in false or misleading labeling. For example, the definition and standard for (Kind) patties (9 CFR 381.160) requires that poultry product ingredients be "of the kind indicated" (e.g., turkey products in turkey patties). FSIS believes that in considering to amend the poultry products inspection regulations to provide for the use of MDP as a distinctive poultry product ingredient, this consideration should not abrogate this type of requirement (e.g., to permit use of mechanically deboned chicken in turkey patties).

(2) *Tentative position: Limitations on product made from fowl.* FSIS is considering that the use of mechanically deboned chicken made, in whole or part, from fowl (i.e., mature female chickens, as defined in 9 CFR 381.170(a)(1)(vi)) should not be permitted in baby, junior, or toddler foods. Also, FSIS is considering that it should not be permitted in combination with MS(S) to constitute more than 20 percent of the livestock and poultry product portion of any other poultry product or meat food product. These restrictions are based on the potential fluoride contribution of product made from fowl to dietary intakes. The 1979 health and safety report found only slight differences between the fluoride content of MDP made from poultry other than fowl and that of poultry products produced by traditional deboning techniques, but considerably higher amounts in MDP made from fowl.

FSIS believes that, in addition to prohibiting use of MDP made from fowl in baby (i.e., strained), junior, and toddler foods, MDP also should be limited in other foods, because infants also consume table foods, with most eating adult-type foods by age 2. This would limit the potential fluoride contribution to dietary intakes of other young children in high fluoride areas. FSIS believes that MDP made from fowl should be limited to a maximum of 20 percent of the livestock and poultry product portion of any poultry or meat food product.

(3) *Tentative position: Poultry product limitations.* FSIS is considering that the use of MDP should be limited in certain poultry products. FSIS is considering allowing MDP in the sauce portion or any dressing of poultry products and is soliciting comments on this use. FSIS is also soliciting comments on whether MDP should be allowed in poultry products for which there are standards of identity or composition (e.g., Boned (Kind)—Solid Pack, Boned (Kind) with Natural Juices, Shredded (Kind), (Kind) burgers, (Kind) A La Kiev and (Kind) Steak or Fillet).

MDP is a finely comminuted ingredient and FSIS considers its use to be inconsistent with the basic characteristics associated with poultry products that have been processed only to the extent of cutting or grinding or that are made from poultry products so processed, such as chicken breasts, turkey fillets, and chicken burgers, or shredded chicken. FSIS also considers its use to be inconsistent with the basic characteristics associated with poultry products that are processed, convenience versions of ready-to-cook poultry or cuts or solid pieces of poultry or poultry meat, such as roasted chicken, boned turkey with natural juices, chicken an la Kiev, and turkey ham. FSIS recognizes, however, that these types of products sometimes are prepared with components the characteristics of which are not inconsistent with those of MDP.

It is poultry meat—particular muscle(s)—that characterize cuts of poultry. The characteristics associated with a cut can be retained when trimmings removed during processing are reincorporated; and the association with the cut remains when there is chunking, chopping, or grinding of the muscle as in versions of turkey ham product (9 CFR 381.171). FSIS regards these processes as different than using product made by the mechanical deboning of accompanying bones. MDP does not, in FSIS's view, retain the characteristics of the cuts themselves. It appears inconsistent with the basic characteristics expected of products represented as having been made from a particular part of the poultry carcass, whether the muscle from that part is essentially intact or has been processed only to the extent of cutting or grinding, to include this finely comminuted ingredient.

The same preparation procedures used in making a turkey ham product can be applied to other cuts, such as turkey breast, for which definitions and standards have not been prescribed in subpart P of part 381 of the poultry products inspection regulations (9 CFR part 381, subpart P). Cured turkey breast and turkey ham products have in common their method of preparation and their association with a particular cut of poultry. They differ only in the cut of poultry product used. As this difference is not relevant to whether inclusion of MDP would be appropriate, FSIS believes that use of MDP should not be permitted in these products nor in products that are similar.

FSIS is interested in receiving comments on its views as to the products in which use of MDP or its use in anything but sauces and dressings should be prohibited as inconsistent with their basic characteristics, including data and other information on the effects of using MDP on the characteristics and quality of specific products. Persons who support allowing use of MDP in any of the poultry products covered in the above discussion should be aware that FSIS is interested in their views.

(4) *Tentative position: Limitations on product "for processing."* FSIS is considering that, in addition to complying with any applicable limitations discussed with regard to the requirements of the definitions and standards of identity or composition for particular poultry products and meat food products (9 CFR parts 319 and 381, subpart P thereto), use of MDP "for processing," i.e., MDP that has a protein content of less than 14 percent and/or a fat content of more than 25 percent, not be permitted in the formulation of a poultry product or meat food product

at levels above 2 or 3 percent because of the effect on finished product quality. FSIS is requesting comments regarding this approach and possible conditions for exceptions, e.g., when poultry and meat food products are subject to a regulatory definition and standard which establishes a minimum requirement for protein content and a maximum limit on fat content which ensure finished product quality.

FSIS also recognizes that MDP "for processing" may be used at very low levels (2 or 3 percent) as a binder—i.e., for a technological or functional purpose. FSIS is particularly interested in receiving comments on whether such product should be permitted for this purpose and, if so, in what products and under what conditions. For example, would it be adequate and appropriate to permit this type of use so long as it is limited to the 3 percent level in formulating processed product?

D. *Tentative position: Labeling.* FSIS expects to include special provisions for the labels of MDP and products in which it is used as an ingredient. If adopted, these provisions would supplement other, more general requirements for such labels (see 9 CFR parts 317 and 381, subpart N).

(1) *Tentative position: The product.* FSIS is considering the following possible labeling provisions for MDP: (a) The name of the product (e.g., "Mechanically Separated (Kind)," must be followed immediately by the phrase(s) "for processing" unless it has a protein content of not less than 14 percent and a fat content of not more than 25 percent, "made from fowl" unless it is not made, in whole or part, from mature female chickens (see 9 CFR 381.170(a)(1)(vi)), and "with excess skin" unless it is made from poultry product that does not include skin in excess of the natural proportion present on the whole carcass (see 9 CFR 381.117(d)); (b) after any such required information, the name of the product may be followed by "without skin" and/or "without kidneys and sex glands" if it is made from poultry product that does not include skin and/or that does not include kidneys or sex glands; and (c) there must be appropriate descriptive terminology if heat treatment has been used in the preparation of such product. Because the characteristics specified are ones which would affect use of MDP, FSIS is considering that, in order to assure compliance with regulatory requirements and thereby prevent the adulteration and misbranding of finished poultry products and meat food products, it is necessary to provide for their clear identification on the label when MDP leaves the establishment at which it is manufactured (see 9 CFR 381.115).

As indicated previously, the regulations already require that information bearing on use—including deviations from the natural whole carcass proportion of skin as well as the fact of cooking—appear on the label of mechanically separated poultry product (9 CFR 381.117(d)). The presence of skin or its presence in excess of the natural whole carcass proportion would, as discussed previously, continue to affect product use if the regulations are amended. The use of heat treatment in the preparation of the product also would be of continuing relevance (9 CFR 381.157(a)). In addition, since the presence of poultry kidneys or sex glands can affect use (9 CFR 319.180(b)), a number of manufacturers of MDP not containing these parts currently choose to note this fact on the label. The other information that would be required is identification of product made from fowl and product for processing.

(2) *Tentative position: Finished poultry products and meat food products.* As indicated above in the discussion of FSIS's tentative position regarding the definition and standard for MDP, FSIS is considering that in view of the differences between MDP and poultry products produced by traditional hand-deboning techniques and the developments since its introduction, MDP should be regulated as a distinctive ingredient with standardized characteristics. Therefore, it is FSIS's tentative position to define such product by its own name, e.g., "Mechanically Separated (Kind)," that would be declared in the ingredient statements on finished product labels by the name specified in its definition and standard.

FSIS recognizes the importance of the identification of the calcium and cholesterol content of MDP to consumers who, according to the comments received on the June 15, 1993, ANPR, indicated a desire to know of the presence of calcium and cholesterol. FSIS wishes to point out that the effective date for its mandatory nutrition labeling regulations (9 CFR 317.309, 381.409) is July 6, 1994. These rules require mandatory declaration of calcium and cholesterol content on most processed meat and poultry products which will address this particular labeling concern. FSIS believes that nutrition labeling is the most appropriate vehicle for conveying a product's nutrient content, which includes calcium, cholesterol as well as other nutrient information.

Tentative Position

II. *Boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids.* FSIS is considering amending its current boneless poultry regulations to allow boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids to be classified as poultry or poultry meat if produced under the provisions of a quality control program that would require compliance with certain criteria for this product, e.g., protein quality, bone solids (calcium), and bone particle size. FSIS is also considering having handling requirements and limitations on use of boneless poultry products with 0.6 percent or less bone solids in certain products. Further, FSIS is considering that protein and fat content requirements would not be necessary, for such products, because protein and fat are nutrients whose declaration becomes mandatory on the labeling of most multi-ingredient meat and poultry products when FSIS's nutrition labeling regulations become effective on July 6, 1994.

A. Tentative position: Product name and labeling. FSIS is contemplating amending the labeling regulations on boneless poultry products to change the allowable bone content for products currently labeled as poultry or poultry meat. The mechanical deboning machinery used to produce boneless poultry products has undergone significant changes since 1969. Over the years, there have been continued refinements in certain parameters, e.g., the ability to adjust the pressure and aperture size, resulting in far less than current allowance of no more than one percent bone solids for mechanically deboned poultry. According to an August 1993 study done by FSIS [7] regarding bone content of boneless poultry products produced by mechanical deboning, the average bone solids content was approximately 0.6 percent. The changes in mechanical deboning machinery have resulted in improved manufacturing processes. We believe it results in products which are comparable to "poultry" and "poultry meat" derived from hand-deboning.

FSIS is considering provisions that will enable boneless poultry products with 0.6 percent or less bone solids to be classified as poultry or poultry meat and labeled accordingly. It is FSIS's tentative view that these products need not be labeled to describe their form (i.e., consistency) by terms such as "emulsified" and "finely chopped."

[7] A summary report of the study is available for public inspection at the FSIS Hearing Clerk's office.

FSIS believes that the form of the product may not be important because these products are primarily used as ingredients in poultry and meat products, such as poultry sausages, which are themselves categorized as finished products that are "emulsified," "finely chopped," etc., in terms of texture. Therefore, FSIS wishes to receive comments on whether there is a need to include the term used to describe the form of the boneless poultry products with 0.6 percent or less bone solids, e.g., "emulsified," "finely ground," etc., in the ingredients statement of the product in which such product is used as an ingredient and whether these terms are important to the consumer.

(1) *Tentative position: Bone solids content.* FSIS is considering having the bone solids content of boneless poultry product with 0.6 percent or less bone solids be measured by calcium analysis with a maximum calcium content of not more than 0.147 percent in product made from turkeys or mature chickens or 0.111 percent in product made from other poultry. Both of these levels account for the fact that poultry tissues, other than bone, contain some calcium and that turkeys and mature chickens contain more calcium naturally than other poultry.

FSIS is considering, as discussed below, that production of boneless poultry products with 0.6 percent or less bone solids under an approved quality control program is necessary to assure consistent compliance with regulatory requirements, including the calcium content requirement utilized in restricting bone solids content.

The inclusion of these calcium content levels should not be misinterpreted as indicating a concern about the amount of the essential nutrient calcium that is provided by poultry and meat food products. FSIS considers that, even assuming all further processed poultry were comprised of boneless poultry with 0.6 percent or less bone solids, the projected calcium contribution of such product would represent only a negligible increase in per capita daily intakes and cannot be considered hazardous, particularly since the dietary intake of a large sector of the population may be below the recommended level of calcium consumption. For the new boneless poultry products with 0.6 percent or less bone solids, the calcium level would be significantly lower than mechanically deboned poultry.

(2) *Tentative position: Bone particle size.* FSIS is considering that the size of the bone particles in boneless poultry products with 0.6 percent or less bone solids should be restricted to a maximum of less than 1.5 millimeter (mm) in the greatest dimension, but permitting up to 5 bone particles per 50 grams of boneless poultry products with 0.6 percent or less bone solids to be from 1.5 mm to less than 2.0 mm in the greatest dimension.

FSIS's objective is that the limitation imposed be adequate to prevent any digestibility problems while not restricting the operation of equipment in accordance with the improved good manufacturing practices more than is necessary for this purpose or to protect finished product quality. Bone particle size should be controlled to ensure that equipment type or processing does not result in unacceptably large fragments and, provided this is done, the bone particles in the product will not present any health hazard because of size or hardness.

FSIS is considering that it is appropriate to permit up to 5 particles per 50 grams of product to be from 1.5 mm to less than 2.0 mm as an acceptable defect in complying product. FSIS is requesting comments and information on the extent to which manufacturers should be required to control the production of boneless poultry products produced by mechanical deboning that have 0.6 percent or less bone solids to limit the size of bone particles. FSIS will consider any information submitted during the comment period on the size and distribution of bone particles that may occur with various mechanical deboning procedures conducted in accordance with improved good manufacturing practices (e.g., the extent to which deviations or nonconforming particles occur, and data substantiating the absence of potential health or finished product quality problems with such particles).

(3) *FSIS tentative: Protein quality.* FSIS is considering proposing to require that boneless poultry products with 0.6 percent or less bone solids meet a minimum protein quality requirement—a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent and to accept as evidence of compliance with this requirement an alternative measurement—the content of 7 essential amino acids being at least 33 percent of the total of 17 amino acids present. Protein quality is a measure of the content, proportion, and availability of essential amino acids in food protein and a measure of the ability of the food protein to support human growth and body protein maintenance.

When the regulations on MS(S) were published in 1982 (47 FR 28214), one of the methods specified for measuring protein quality was the Protein Efficiency Ratio (PER) procedure. The PER method measures the ability of a protein source to support growth in young growing rats, and is an expensive and time-consuming assay. FSIS adopted a newer method for measuring protein quality, in order to assure the value of the protein contributed by meat and poultry to human dietary needs, in its final regulations on nutrition labeling of meat and poultry products published in the **Federal Register** on January 6, 1993 (58 FR 632). The newer procedure, termed the protein digestibility-corrected amino acid score method, is contained in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990 (PDCAAS method).[8] The protein digestibility-corrected amino acid score method is based on human amino acid requirements and, therefore, is more appropriate for evaluating the protein quality of foods for human consumption than the PER which is based on amino acid requirements of rats. The protein digestibility-corrected amino acid score method measures the ability of amino acids in food proteins to meet the dietary protein needs of humans.

FSIS is considering proposing a requirement that the protein in boneless poultry products with 0.6 percent or less bone solids have a protein quality value that is a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent. This value is consistent with nutrition labeling requirements for protein in foods for children older than one but less than four years of age, as provided in 21 CFR 101.9(c)(7), which is cross-referenced in its final nutrition regulations (58 CFR 632) in 9 CFR 317.309(b). FSIS believes this value protects the young consumer from inadequate nutrition and from the use of poor quality protein (i.e., protein that does not meet the dietary needs for growth), and in turn, protects people other than young consumers. FSIS is also considering that it is appropriate to assure comparability of boneless poultry products with 0.6 percent or less bone solids with poultry that is derived by hand-deboning in terms of the protein contributed to human dietary needs to maintain the quality and integrity of the poultry products supply.

FSIS is proposing to permit an alternative measurement to the protein digestibility-corrected amino acid score method, which requires a digestibility measurement in addition to an amino

[8] A copy of the document is available for public inspection in the FSIS Hearing Clerk's office.

acid analysis, to control the cost of monitoring compliance with the protein quality requirement. FSIS is considering proposing that, for the purpose of measuring the protein quality of boneless poultry with 0.6 or less bone solids, an alternative measurement of protein quality would be allowed that is comparable to the protein digestibility-corrected amino acid score. This measure would be based on a comparison between the "essential amino acid content of boneless poultry" and "total amino acids present in boneless poultry." Essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present including isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content. It is being considered that the essential amino acid content would be determined by methods given in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation."

FSIS believes that boneless poultry with 0.6 percent or less bone solids found to be in compliance by the proposed amino acid content measurement would have protein of high quality. This belief is supported by the 1982–83 evaluation of an Expert Work Group that was organized by the Department's Agricultural Research Service, in cooperation with the University of Maryland, to develop recommendations based on available scientific knowledge for consideration in policy decisions regarding the protein quality of meat, poultry, and their products.[9]

The public should be aware that FSIS continues to have interest in investigations of protein quality which include among their objectives the identification of improved methods for determining protein quality. In evaluating the possible use of alternative approaches to assuring protein quality, FSIS will consider data and other comments submitted by the public.

(4) *FSIS tentative position: Protein and fat contents.* FSIS is considering whether there is a need to establish minimum protein and/or maximum fat content(s) for boneless poultry products with 0.6 percent or less bone solids. FSIS has concluded that such action is not necessary because protein and fat are nutrients whose declaration becomes mandatory on the labeling of most multi-ingredient meat and poultry products upon the effective date of the nutrition labeling regulations (58 FR 632). These regulations also establish a voluntary nutrition labeling program for single-ingredient, raw products, and specify that FSIS will evaluate significant participation of the voluntary program. If significant participation is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program. Therefore, with certain exceptions, consumers will have complete information about the nutrients in poultry products.

FSIS recognizes that not all products sold to consumers at the retail level will carry nutrition labeling. FSIS's final regulation on nutrition labeling provided for certain exceptions including products produced by small businesses and products in small packages of less than ½ ounce net weight, provided that the labels for these products bear no nutrition claims or nutrition information. However, labeling will be required on most processed products purchased by consumers in retail stores so that, together with the voluntary program for retail store information on single-ingredient raw products, consumers will have information on protein and fat for most products purchased for consumption at home. Based on these considerations, FSIS maintains that there is no need to establish minimum protein and/or maximum fat contents for boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids.

(5) *Tentative position: Quality control.* FSIS believes that a quality control program is necessary to assure that establishments that manufacture boneless poultry products with 0.6 percent or less bone solids comply consistently with the criteria being considered. Utilization of such a quality control program in producing the boneless poultry products with 0.6 percent or less bone solids would be a prerequisite for the approval of labels for products consisting of or containing boneless poultry. The function of a quality control program is to restrict potential variability within the limits of FSIS's tentative requirements by controlling the factors that can affect the resulting product's characteristics.

FSIS expects to require that boneless poultry products with 0.6 percent or less bone solids be produced under an approved quality control program. Also, FSIS expects to require that the quality control program provide the controls and information necessary to assure boneless poultry with 0.6 percent or less bone solids will meet each of the requirements under consideration and will enable establishment personnel and FSIS to monitor it for effectiveness. FSIS is focusing on methods that will minimize inter-lot variation by maintaining the uniformity of starting materials and controlling the handling and processing of starting materials and resulting product.

Because it appears that this goal can be achieved effectively and efficiently where a program for quality control incorporates appropriate methods and monitoring techniques and adheres to good manufacturing practices, FSIS plans to require that an establishment conduct only limited analyses for calcium, protein quality, and bone particles for boneless poultry products with 0.6 percent or less bone solids to confirm that production is, in fact, under control. After it has been demonstrated that the quality control program is able to yield complying product, confirmatory analyses would be required only periodically, as long as the product is in compliance.

FSIS anticipates establishing basic parameters for the chemical analyses that must be performed to verify compliance with the requirements, e.g., defining production lots and sampling schedules, and the accepted methodology for performing analyses. FSIS wishes to receive comments on the parameters necessary for an adequate quality control program.

B. Tentative position: Handling requirements. Current regulatory requirements, including provisions for sanitation, operating procedures, and heat processing (9 CFR part 381, subpart H and I, and § 381.150), already provide the basic controls necessary to prevent spoilage and assure poultry product wholesomeness. However, because the mechanical deboning process presents greater opportunities for bacterial growth than traditional poultry product processing, FSIS is considering amending the poultry products inspection regulations to more specifically address the requirements for the various starting materials used to manufacture boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids and the resulting boneless poultry product.

FSIS believes that potential bacterial hazards are diminished as long as

[9] "The Protein Nutritional Quality of Meat and Poultry Products: Scientific Basis for Regulation" is the final report of the expert Working group, with accompanying background papers. C.E. Bodwell, ed., American Journal of Clinical Nutrition, 40(3): 671–742, supplement, September 1984. A copy of the report is available for public inspection in the FSIS Hearing Clerk's office.

handling accords with good manufacturing practices. FSIS is, therefore, considering that processing and storage requirements are warranted for the raw materials used to make the product and for the product itself.

FSIS is considering proposing handling requirements that would provide that material to be processed into boneless poultry products produced by mechanical deboning with 0.6 percent or less bone solids be processed within 2 hours from the time it is separated from the bones of poultry carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F (4 °C) or less, or held indefinitely a 0 °F (−18 °C) or less. Within 2 hours of the mechanical deboning operation, FSIS is also considering proposing that boneless poultry with 0.6 percent or less bone solids be chilled to 40 °F (4 °C) or less, frozen to 0 °F (−18 °C) or less, or cooked. FSIS is further considering proposing that boneless poultry with 0.6 percent or less bone solids be used as an ingredient in a poultry or meat food product directly after being processed, except that it may be held prior to such use for no more than 72 hours at 40 °F (4 °C) or less or indefinitely at 0 °F (−18 °C) or less.

FSIS wishes to receive comments on whether specific handling requirements other than those being considered are appropriate for specific types of starting materials. In addition, in order to avoid confusion about the parts or physical state of poultry that may be processed into boneless poultry with 0.6 percent or less bone solids, FSIS intends to provide a definition of "poultry carcasses or parts of carcasses." The terms "poultry carcasses" or "parts of carcasses" would apply to whole carcasses or disjointed portions of such carcasses that are "ready-to-cook poultry" within the meaning of 9 CFR 381.1(b)(44) of the poultry products inspection regulations. In other words, the head, feet, crop, oil gland, trachea, esophagus, entrails, mature reproductive organs, and lungs of the slaughtered poultry have been removed and such poultry is free from protruding pinfeathers and vestigial feathers and suitable for cooking without need of further processing.

FSIS is considering that adoption of the handling requirements discussed above would eliminate the need to require that the temperature of rooms or compartments in which equipment for mechanical deboning of raw poultry is operated be maintained at 50 °F. or less. Thus, if the requirements FSIS is considering are adopted, FSIS would need to rescind 9 CFR 381.47(e).

C. Tentative position: Limitations on Use. At a level of 0.6 percent or less bone solids content there is no need for consumer concern regarding potential fluoride contribution of mechanically separated product made from fowl (i.e., mature female chickens).

(1) Tentative position: Kind of product limitation. FSIS's tentative position on amending the poultry products produced by mechanical deboning with 0.6 percent or less bone solids covers such product prepared from any kind of poultry. It is not, however, FSIS's intention to permit use of boneless poultry products with 0.6 percent or less bone solids as an ingredient in any given poultry product regardless of the kind of poultry from which it is made. Such action would be inconsistent with existing regulatory requirements and interpretations and could, among other things, result in false or misleading labeling.

FSIS intends to provide that when a poultry product is required to be prepared from a particular kind of kinds of poultry (e.g., chickens), use of boneless poultry products with 0.6 percent or less bone solids of any other kind (e.g., poultry product made from turkey) should not be permitted. This provision would assure that boneless poultry product made from a different kind of poultry is not used in a poultry product represented as containing ingredients from a particular kind or kinds of poultry.

(2) Tentative position: Limitation on product made from fowl. In the past, the Agency has had a policy of discouraging the use of MDP containing 1.0 percent or less bone solids content for use in baby, junior, and toddler foods because of concern for higher levels of fluoride present in the bones of mature poultry. However, FSIS believes that at the low level of 0.6 percent or less bone solids content there would be no reason to place a restriction on boneless poultry products with 0.6 percent or less bone solids for use in baby, junior, and toddler foods based on the potential fluoride contribution of product made from fowl to dietary intakes. Furthermore, there is research to indicate a very poor absorption of fluorine from bone particles coupled with a large body of research indicating beneficial effects of fluoride at lower levels. With the restriction of 0.6 percent or less bone solids content, levels of fluoride present would not present a health and safety concern.

FSIS anticipates permitting the use of boneless poultry products with 0.6 percent or less bone solids made, in whole or part, from fowl (mature female chickens, as defined in 9 CFR 381.170(a)(1)(vi)) in baby, junior, or toddler foods. The Agency is interested in receiving comments and supporting scientific documentation if there are valid, scientific findings contradicting this view.

(3) *Tentative position: Poultry product limitations.* Because boneless poultry products with 0.6 percent or less bone solids is comminuted, i.e., finely ground, in form, FSIS is considering its use to be inconsistent with the basic characteristics associated with poultry products that have been processed only to the extent of cutting or grinding or that are made from poultry products so processed, such as chicken breasts, turkey fillets, and chicken burgers or shredded chicken. FSIS also considers its use to be inconsistent with the basic characteristics associated with poultry products that are processed, convenience versions of ready-to-cook poultry or cuts or solid pieces of poultry or poultry meat, such as roasted chicken, boned turkey with natural juices, chicken a la Kiev, and turkey ham. FSIS is interested in receiving comments on its views as to the products in which use of boneless poultry product produced by mechanical deboning with 0.6 percent or less bone solids or its use in anything but sauces and dressings should be prohibited as inconsistent with their basic characteristics.

FSIS's tentative position on limitations of use is intended to provide a mechanism for assuring that boneless poultry products with 0.6 percent or less bone solids is not an ingredient in products marketed as classes or cuts of raw poultry which have undergone additional preparation such as boning and/or cooking where regulatory standards currently do not address their poultry or poultry meat content (e.g., boneless turkey breasts), as well as where they do.

FSIS does not anticipate adopting any restrictions on the amount of boneless poultry products with 0.6 percent or less bone solids that can be used in poultry products, or meat food products, in which it is a permitted ingredient. However, standards for particular products may contain quantitative limits (e.g., the limit on the amount of poultry product ingredients permitted in cooked sausages such as frankfurters and bologna (9 CFR 319.180)) or other restrictions on the way in which various poultry product ingredients may be used.

(4) *Tentative position: Finished poultry products and meat food products.* As indicated previously, FSIS is considering proposing that boneless poultry product with 0.6 percent or less

bone solids should be classified as "poultry" or "poultry meat" and that it should be described accordingly. Although boneless poultry product with 0.6 percent or less bone solids is finely ground in form, it is expected that this product would be used as an ingredient in products which are, themselves, categorized as finely ground in texture, e.g., frankfurters and bologna. Therefore, FSIS is considering that when boneless poultry product with 0.6 percent or less bone solids is used as ingredient in a poultry or meat product, it should be declared by terms that accurately describe it as a poultry or poultry meat product, e.g., "chicken" and "turkey meat."

FSIS's tentative position is not to require special declaration of calcium and/or cholesterol content on labeling of a poultry or meat food product containing boneless poultry products with 0.6 percent or less bone solids because calcium and cholesterol declaration becomes necessary on the labeling of most multi-ingredient poultry and meat products upon the effective date of FSIS's nutrition labeling regulations (58 FR 632).

FSIS's tentative labeling provisions reflect FSIS's belief that nutrition labeling is the most appropriate place for calcium and cholesterol content information by requiring that the declaration of calcium and/or cholesterol content appear as part of any nutrition labeling that a poultry product or meat food product bears.

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

Done at Washington, DC on: February 25, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

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Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 301 and 318

Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301 and 318

[Docket No. 94–003P]

RIN 0583–AB76

Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations by amending the definition of meat to include as meat product resulting from advanced meat/bone separation machinery and recovery systems that do not crush, grind, or pulverize bones to remove attached skeletal tissue from the bones of livestock carcasses and parts of carcasses, establishing the criteria for meat from advanced meat/bone separation machinery and meat recovery systems to assure consistency with the characteristics and composition of meat, and establishing requirements for the handling of meat derived from advanced meat/bone separation machinery and meat recovery systems, as well as the material from which it is derived. This action is being taken to update the definition of meat to acknowledge and include as meat product derived from the advances made in the modification of traditional mechanical means of separating meat from the bones of livestock and the development of advanced recovery systems that do not involve grinding, crushing, or pulverizing bones to remove the adhering skeletal tissue.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under SUPPLEMENTARY INFORMATION.)

FOR FURTHER INFORMATION CONTACT: John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Executive order 12866

This proposed rule has been reviewed under Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing with respect to the premises, facilities, and operations of federally inspected establishments any requirements that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, impose recordkeeping and other requirements within the scope of section 202 of the FMIA, if consistent therewith, with respect to any such federally inspected establishment. States and local jurisdictions are also preempted under the FMIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements that are at least equal to those required under the FMIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge to the provisions of this rule, if the challenge involves any decision of a program official. The administrative procedures specified in 9 CFR part 335 must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule does not require either large or small establishments to use meat/bone separation machinery and meat recovery systems. Although there are initial costs involved with the purchase of machinery and establishing quality control programs, there are no apparent direct competitive advantages that large establishments would have over small establishments.

Paperwork Requirements

Manufacturers producing "meat" resulting from advances in meat/bone separation machinery that does not grind, crush, or pulverize bone in order to remove skeletal muscle tissues (i.e., meat) adhering to livestock bones would be required to develop and maintain a quality control program that provides the controls and information necessary to assure that the product will meet the requirements established for such product as proposed. The paperwork requirements contained in this proposed rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and refer to Docket No. 94–003P. All written comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4:00 p.m., Monday through Friday.

Background

Introduction

The FMIA (21 U.S.C. 601 *et seq.*) requires that the Secretary of Agriculture administer an inspection program that assures consumers that meat and meat food products distributed in commerce and within designated States [1] are wholesome, not adulterated, and are properly marked, labeled, and packaged. Under the FMIA and regulations promulgated thereunder, FSIS provides mandatory inspection, except for certain exceptions, of meat and meat food products prepared for distribution in interstate and foreign commerce, as well

[1] Designated States are States that have failed to develop or are not effectively enforcing requirements at establishments, within their jurisdiction, for the slaughter of livestock and/or the preparation of products thereof, that are at least equal to those of subchapters I and IV of the FMIA. Once a State is designated, the provisions of subchapters I and IV of the FMIA apply to the operations and transactions of establishments that operate solely within the State.

as for distribution within designated States.

The Federal meat inspection regulations define meat in 9 CFR 301.2(rr) as follows:

> The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

The Federal meat inspection regulations also establish a definition and standard of identity for a meat food product called "mechanically separated (species)" (MS(S)) in 9 CFR 319.5. "Species" refers to the species of livestock, e.g., beef or pork. At various times, this product has also been called mechanically deboned meat and mechanically processed (species) product. This meat food product is defined as "any finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses" and meeting the other provisions specified in 9 CFR 319.5. This provision and other provisions in the Federal meat inspection regulations provide, among other things, for: (1) A definition and standard that classifies MS(S) as a meat food product, (2) limitations on the amount of MS(S) that can be used in permitted products (viz., 20 percent of the livestock and poultry product portion of the product), (3) prohibitions on the use of MS(S) in certain products (e.g., baby food), (4) limitations on certain components of MS(S), e.g., bone particle size, bone content (measured as calcium content), protein quality, and a maximum fat content and minimum protein content, (5) requirements for handling and for the production of MS(S) under an approved quality control program, and (6) a requirement that MS(S) be separately identified in the ingredients statement of a meat food product (9 CFR 317.2 (c) and (f), 318.18, 319.5, and 319.6). FSIS's 1982 final rulemaking on MS(S) (47 FR 28214) indicates that the Agency determined that material differences in the consistency and the composition of MS(S) place it outside the scope of product traditionally defined as meat (9 CFR 301.2(rr)), and that its differences are such that it should be defined as a distinctive standardized product. As such, it should be identified by a name that adequately differentiates it from meat, viz., MS(S). When MS(S) is used in meat food products, it must be separately listed in the ingredients statement by its standardized name, e.g., "mechanically separated beef (or pork)."

FSIS is considering issues in regard to the lack of a regulatory definition and standard for certain poultry products produced by mechanical deboning—products which are deemed to be similar to MS(S). Poultry products produced by mechanical deboning result from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses. Over the years, the meat and poultry industries have referred to poultry product produced by mechanical deboning as "mechanically deboned poultry" and "comminuted poultry," and have declared the product as poultry or poultry meat (e.g., "chicken" and "turkey meat") on the labels of products in which they are used as ingredients.

Several red meat sausage manufacturers have alleged that without a regulatory definition and standard for poultry products produced by mechanical deboning, a disparate situation exists between labeling poultry products produced by mechanical deboning and MS(S) which poses an unfair advantage for the manufacturers of poultry products.

FSIS has considered the appropriate course for addressing these issues and has initiated two actions in response to them. FSIS is contemplating proposing regulations on poultry products produced by mechanical deboning, and will be soliciting comments and requesting data on various tentative positions in a notice that appears elsewhere in this issue of the Federal Register. The second action is the subject of this proposed rule which focuses on the meat product derived from the advances in meat/bone separation machinery and recovery systems that is comparable to "meat" as traditionally defined in 9 CFR 301.2(rr).

FSIS now believes that advances in meat/bone separation machinery and meat recovery systems, which do not grind, crush, or pulverize bone in order to remove skeletal muscle tissue adhering to bones of livestock (i.e., bones of cattle, sheep, swine, and goats) result in a product which, unlike MS(S), is comparable to "meat" as traditionally defined.

Since the 1970's, there has been increasing commercial production of processed meat products that are formulated with comminuted (i.e., ground) meat, e.g., hot dogs, in order to meet the demands of the market for such products. Most of the technology that has found commercial use will evolve in the form of improvements to meet the demands of consumers and industry. The demands of the industry have centered around the desire to harvest more usable protein, i.e., muscle tissue, and to find alternatives to recovering more usable protein, from livestock carcasses to meet consumer demands for the processed meat products formulated with skeletal muscle tissue obtained by mechanical removal. Mechanization also diminishes the economic implications of removing meat by hand caused by repetitive motion disorders for workers that hand-debone carcasses and parts of carcasses using knives, and by knife accidents. Industry data [2] indicate that over 300,000 cases of cumulative trauma disorder (e.g., Carpal Tunnel Syndrome) have occurred in the meat industry due to the strain of repetitive movements to remove meat from bones. The demands of the consumer and industry have resulted in improvements in meat/bone separation machinery and meat recovery systems to improve yields and, simultaneously, to make the process better ergonomically.

Over the past decade, FSIS has monitored the tremendous strides in modernizing the meat/bone separation machinery. FSIS believes that there are meat/bone separators and meat recovery systems that are fundamentally different than the machines used to manufacture MS(S). These differences occur in terms of the efficiency and effectiveness of the process of separating skeletal muscle tissue and bone.

The Removal of Muscle Tissue From Livestock Bones

Since the advent of automatic means of skeletal muscle tissue removal from bone using high-speed knives, e.g., the Wizard knife, machines that are classified as meat/bone separators have been developed that emulate the physical action of the high-speed knives. The advances in meat/bone separation have led to recovery systems that separate meat from bone without crushing, grinding, or pulverizing bones such that the meat is removed by shaving, pressing, or scraping the

[2] Data received in comments from Longmont Foods and Butterball Turkey Company on Docket No. 93-008ANPR, "Labeling of Poultry Products Produced by Mechanical Deboning and Products in Which Such Poultry Product is Used," (58 FR 33040) June 1993. These data are available for public inspection in the FSIS Hearing Clerk's office.

muscle tissue from the bone surface similar to the action of the hand-held high-speed knives. Thus, this meat is obtained in much the same manner as that which is obtained using traditional hand-deboning techniques, where the bones emerge separately from the meat in the process, essentially intact and in natural physical conformation. For example, the most commonly used bones would include rib bones and loin bones and would be recognized as such when they emerge from the meat/bone separation machinery. FSIS believes that the description of the bones from which muscle tissue has been removed as "essentially intact" is consistent with the description of the bones resulting from the removal of muscle tissue by hand-deboning using knives, including high-speed mechanical knives, such as the Wizard knife. FSIS recognizes that even with the use of hand-operated knives, e.g., in the processing establishment, at the supermarket meat counter, or by the consumer, there is the possibility of shaving, pressing, or scraping close to the bone surface so as to unavoidably remove a minute amount of the bone's surface when meat is removed. FSIS believes that this is a normal occurrence because of the difficulty in exercising precision in hand-deboning operations, and, as such, it is still in conformance with good manufacturing practices that render products safe and wholesome. Because the bones emerge from the advanced meat/bone separators in their natural shape and structure, i.e., with the connective tissue linkages that normally occur in bones, FSIS maintains that they are in natural physical conformation. Furthermore, under FSIS's longstanding boneless meat inspection procedure for meat derived by hand-deboning techniques, it is expected that the finished comminuted (i.e., ground) meat product made from the meat removed from livestock bones contains no bone perceptible to sight or touch. This result would be expected for meat derived from the advanced meat/bone separation machinery and recovery systems.

In contrast, the mechanism of traditional mechanical deboning machines from which MS(S) results, involves mechanically separating and removing most of the bone from attached skeletal muscle of livestock through the application of high pressure to crush, grind, and pulverize bones from which most of the meat has already been removed, and then using high pressure to force the resulting paste through a sieve to separate bone particles and fragments that result from crushing and pulverizing bones during processing. Due to the mechanism of the machinery used to manufacture MS(S), bone and bone particles, including bone marrow, are incorporated into the finished product.

The regulation on MS(S) in 9 CFR 319.5 does not specify the type of equipment used to separate and remove bone because it is intended to cover the product manufactured by any such machinery that operates on the differing resistance of hard bone and soft tissue to passage through small openings, whether it employs sieves, screens, or other devices and whether or not bones are pre-broken before being fed into such equipment. However, the regulation on MS(S) is not intended to apply to whole pieces of muscle tissue which have been removed from livestock bones by mechanical or other means (47 FR 28223). FSIS has determined that the consistency of MS(S) and its content of bone, including bone marrow, and certain minerals, as well as muscle tissue, are materially different from those of "meat," and that these differences have potential consequences for finished product quality and for health and safety which are addressed by the regulations for MS(S) (9 CFR 318.18, 319.5, and 319.6) and supported by the Agency's 1979 report on the health and safety aspects of mechanically deboned meat.[3]

Starting Materials

The starting materials from which the meat from advanced meat/bone separation machinery and meat recovery systems results are intact livestock bones with adhering skeletal muscle and other soft tissue. While it has been reported that it is possible to use whole carcasses, the raw materials for this type of processing generally are parts of carcasses with skeletal muscle attached. Adhering skeletal muscle tissue usually varies in amount, depending on the anatomical origin and size of the bones. Typically, the livestock bones with adhering skeletal tissue applicable to the advances in meat recovery are those where the adhering tissue cannot be efficiently or effectively removed by traditional hand-deboning techniques, and the bones are of sufficient hardness and of appropriate size compatible with the operation of the advanced meat/bone separator/meat recovery system. It is FSIS's understanding that the advanced machinery is capable of handling medium to smaller size bones, e.g., rib bones, button bones, loin bones, and feather bones. The fact that no bone crushing, grinding, or pulverizing occurs limits the types of bones that are used. The bones must be hard enough to emerge from the process essentially intact and in natural physical conformation.

In the traditional mechanical deboning process, described in the 1982 final regulations on MS(S) (47 FR 28214), it is possible to use whole carcasses; however, generally, the raw materials for the conventional process are parts of carcasses from which most of the skeletal muscle already has been removed by traditional hand-deboning methods. With the mechanical deboning technology described in the regulations on MS(S), these bones are broken up and pushed under high pressure through equipment with apertures that allow a small amount of powdered bone to pass through with the soft tissue.

Characteristics and Composition of Meat

FSIS believes that the resulting product derived from advanced meat/bone separation machinery and meat recovery systems is comparable to meat derived by hand-deboning techniques, including the use of mechanical knives and that, as such it warrants classification as "meat." FSIS believes that current relevant Federal meat inspection regulations on labeling meat should apply, and, as such, the "meat" derived from advanced meat/bone separation machinery and recovery systems may be described by any term that accurately reflects it as meat. Advanced meat/bone separation machinery and meat recovery systems apply a process mechanism that shaves, presses or scrapes adhering tissue from the surface of livestock bones. The machines do not grind, crush, or pulverize bones to separate muscle tissue, and the bones and the interconnecting soft tissues that link bones emerge from the process in a manner consistent with hand-deboning operations that use knives.

Meat products derived by advanced meat/bone separation are characterized by identifiable muscle fiber structure, visible differentiation of lean and fat, and components normally associated with and expected in meat obtained by hand-deboning. The advanced recovery systems produce distinct whole pieces of skeletal muscle tissue with a well-defined particulate size similar in consistency to (species) trimmings derived by hand-deboning and used to formulate processed meat products. The

[3] A copy of the report entitled, "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Final Report and Recommendations Select Panel" and "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II. Background Materials and Details of Data" is available for public inspection in the FSIS Hearing Clerk's office.

color of the meat derived from these systems is similar to that of (species) trimmings.[4] As such, the meat derived from the advanced recovery systems conforms to the definition of "meat" because it has the functional and chemical characteristics of meat; there are no powdered bone or constituents of bone, e.g., bone marrow, that are not in conformance with the definition and expectation of meat or that which would render the product adulterated or misbranded under the regulations. It is FSIS's belief that, unlike MS(S), consumer expectations of "meat" are met with regard to the product obtained from the advances in meat/bone separation machinery and recovery systems, because the product's characteristics, in terms of appearance and texture, and its composition are similar to those of "meat," as currently defined in 9 CFR 301.2(rr).

In contrast, MS(S) differs from hand-deboned meat and the meat derived from advanced meat/bone separation due to its highly comminuted, spread-like consistency and its content of varying amounts of bone, including bone marrow, and certain minerals, as well as muscle tissue. MS(S) is amorphous and lacks the characteristic components seen in meat, e.g., muscle fiber, the presence of connective tissue fibers in the way they occur naturally, and distinct lean and fat components. These characteristics render the product materially different than meat.

The Proposal

FSIS is proposing to amend the definition of meat in the Federal meat inspection regulations (9 CFR 301.2(rr)) to include as meat product resulting from advanced meat/bone separation machinery and recovery systems, establish criteria for meat from advanced meat/bone separation machinery and recovery systems, and establish requirements for the handling of meat derived from advanced meat/bone separation machinery and recovery systems, as well as the material from which it is derived. FSIS is proposing these amendments to the Federal meat inspection regulations to update the definition of meat to include as meat product produced from advanced meat/bone separation machinery and recovery systems. It is FSIS's intent to recognize that (1) substantial advances have occurred with regard to the machinery for separating skeletal muscle of livestock carcasses and parts of carcasses from livestock bones, since the promulgation of rules on the production, use, and labeling of MS(S) and the products in which it is used as an ingredient, and that (2) the characteristics and composition of the meat from these advances are comparable to the product traditionally defined as "meat." In proposing the amendments, FSIS continues to fulfill its statutory responsibility to prevent the preparation and distribution in commerce of meat and meat food products which are adulterated or misbranded or not properly marked, labeled, or packaged.

1. Definition of Meat

The proposal would amend the definition of "meat" set forth in 9 CFR 301.2(rr) of the Federal meat inspection regulations to include as meat product, meeting certain criteria, that is derived from the mechanical separation of skeletal muscle tissue from the bones of livestock by using advanced mechanical meat/bone separation machinery and meat recovery systems that do not crush, grind, or pulverize bones, and from which the bones emerge comparable to those resulting from hand-deboning, i.e., essentially intact and in natural physical conformation such that they are recognizable as loin bones, rib bones, etc., when they emerge from the machinery.

As previously stated, FSIS believes that meat derived from advanced meat/bone separation machinery and recovery systems has the functional and chemical characteristics of "meat." This product is also comparable to meat derived by hand-deboning techniques, including mechanical high-speed knives. FSIS further believes that consumer expectations of "meat" are met with regard to the identity of the product, because the product's characteristics, in terms of appearance and texture, and its composition are similar to those of "meat," as currently defined in 9 CFR 301.2(rr). Therefore, FSIS is proposing to amend the definition of "meat" to include meat derived from advanced meat/bone separation machinery and recovery systems.

2. Criteria for Meat Derived From Advanced Meat/Bone Separation Machinery and Recovery Systems

The proposal would establish protein quality and calcium content criteria for meat derived from advanced meat/bone separation machinery and meat recovery systems and assure its compliance with such criteria through a quality control program in order to assure conformance with consumer expectations of "meat" and production of "meat" comparable to that obtained by hand-deboning techniques. A maximum calcium content (as a measure of bone solids) of not more than 0.15 percent or 150 mg/100 gm of product (within a tolerance of 0.03 percent or 30 mg) and a minimum protein quality requirement of a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent, or an alternative measure of at least 33 percent essential amino acids of the total amino acids present, would be established for the product.

FSIS has carefully considered whether there is a need to establish minimum protein and/or maximum fat content(s) for product derived from advanced meat/bone separation machinery and recovery systems. FSIS believes that such action is not necessary because protein and fat are nutrients whose declaration becomes mandatory on the labeling of most multi-ingredient meat and poultry products upon the effective date of the nutrition labeling regulations which is July 6, 1994 (58 FR 632). These regulations also establish a voluntary nutrition labeling program for single-ingredient, raw products, and specify that FSIS will evaluate significant participation of the voluntary program. If significant participation is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program. Therefore, with certain exceptions, consumers will have complete information about the two nutrients in muscle meat that are the sole source of calories and are characteristic of the nutrient profile of meat. Such information will ensure that consumers are not misled about the composition of products containing meat obtained using advanced meat/bone separation machinery.

FSIS recognizes that not all products sold to consumers at the retail level will carry nutrition labeling. FSIS's final regulation on nutrition labeling provided for certain exceptions, including products produced by small businesses and products in individually wrapped packages of less than ½ ounce net weight, provided that the labels for these products bear no nutrition claims or nutrition information. However, labeling will be required on most processed products purchased by consumers in retail stores so that, together with the voluntary program for retail store information on single-ingredient, raw products, consumers will have information on protein and fat for most products purchased for consumption at home. Furthermore, FSIS believes that the fat and protein contents of meat derived from advanced meat/bone separation machinery and

[4] Data provided to the Agency by Millbank Processing Machinery Inc., Englewood, Colorado, are available for public inspection in the FSIS Hearing Clerk's office.

recovery systems would be comparable to the fat and protein contents of meat derived from hand-deboning. Based on these considerations, FSIS maintains that there is no need to establish minimum protein and/or maximum fat contents for products derived from advanced meat/bone separation and recovery systems.

a. *Calcium content.* FSIS is proposing to include in the amendment to the definition of "meat," criteria on maximum calcium content (as a measure of bone solids content) of this meat to assure that the meat derived from advanced meat/bone separation machinery and recovery systems is both consistent with consumer expectations of "meat," e.g., beef trimmings, and comparable to "meat," as traditionally defined, that is used to formulate further processed meat food products. The criteria is a measure designed to ensure that bones are not crushed, ground, or pulverized during processing. The maximum calcium content of 0.15 percent or 150 mg/100 gm of product is supported by data submitted to FSIS for the product derived from advanced meat/bone separation machinery.[5] Furthermore, based upon analytical repeatability studies conducted by the Agency for calcium, FSIS proposes to establish a tolerance, i.e., allowance for statistical variability, of 0.03 percent or 30 mg/100 gm for individual samples.[6]

b. *Protein quality.* FSIS is proposing to require that meat derived from advanced meat/bone separation machinery and recovery systems meet a minimum protein quality requirement—a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent and to accept as evidence of compliance with this requirement an alternative measurement—the content of 7 essential amino acids being at least 33 percent of the total of 17 amino acids present. Protein quality is a measure of the content, proportion, and availability of essential amino acids in food protein and a measure of the ability of the food protein to support human growth and body protein maintenance.

When the regulations on MS(S) were published in 1982 (47 FR 28214), one of the methods specified for measuring protein quality was the Protein Efficiency Ratio (PER) procedure. The PER method measures the ability of a protein source to support growth in young growing rats, and is an expensive and time-consuming assay. FSIS adopted a newer method for measuring protein quality, in order to assure the value of the protein contributed by meat and poultry to human dietary needs, in its final regulations on nutrition labeling of meat and poultry products published in the **Federal Register** on January 6, 1993 (58 FR 632). The newer procedure, termed the protein digestibility-corrected amino acid score method, is contained in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990.[7] The protein digestibility-corrected amino acid score method is based on human amino acid requirements and, therefore, is more appropriate for evaluating the protein quality of foods for human consumption than the PER which is based on amino acid requirements of rats. The protein digestibility-corrected amino acid score method measures the ability of amino acids in food proteins to meet the dietary protein needs of humans.

FSIS is proposing to require that the protein in meat derived from advanced meat/bone separation and recovery systems have a protein quality value that is a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent. The protein digestibility-corrected amino acid score would be required to be determined by methods given in sections 5.4.1, 7.2.1, and 8.00 in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation" which is incorporated by reference in the proposed rule. The proposed protein digestibility-corrected amino acid score or not less than 40 expressed as a percent is consistent with nutrition labeling requirements for protein in foods for children older than one but less than four years of age, as provided in 21 CFR 101.9(c)(7), which FSIS cross-referenced in its final nutrition labeling regulations (58 FR 632) in 9 CFR 317.309(b). FSIS believes this value protects the young consumer from inadequate nutrition from the use of poor quality protein (i.e., protein that does not meet the dietary needs for growth) and, in turn, protects people other than young consumers. FSIS also believes it is appropriate to assure comparability of the meat derived from advanced meat/bone separation systems with that derived by hand-deboning to maintain the quality and integrity of the meat supply.

FSIS is proposing to permit an alternative measurement to the protein digestibility-corrected amino acid score method, which requires a digestibility measurement in addition to an amino acid analysis, to control the cost of monitoring compliance with the protein quality requirement. FSIS is proposing that, for the purpose of measuring the protein quality of meat derived from advanced meat/bone separation machinery and recovery systems, an alternative measurement of protein quality would be allowed that is comparable to the protein digestibility-corrected amino acid score. This measure would be based on a comparison between the "essential amino acid content of meat" and "total amino acids present in meat," i.e., an essential amino acid content of at least 33 percent of the total amino acids present in the meat. Essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present include isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content. The essential amino acid content would be required to be determined by methods given in sections 5.4.1, 7.2.1, and 8.00 in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation" which is incorporated by reference in the proposed rule.

FSIS continues to believe that meat found to be in compliance by the proposed amino acid content measurement would have protein of high quality. This belief is supported by the 1982–83 evaluation of an Expert Work Group that was organized by the Department's Agricultural Research Service, in cooperation with the University of Maryland, to develop recommendations based on available scientific knowledge for consideration in policy decisions regarding the protein quality of meat, poultry, and their products.[8]

The public should be aware that FSIS continues to have interest in investigations of protein quality which

[5] A summary report of data provided to FSIS on the calcium content of meat from advanced meat/bone separation machinery and recovery systems is available for public inspection in the FSIS Hearing Clerk's Office.

[6] A copy of an FSIS report containing data on the repeatability of analyzing calcium content (June 1992) is available for public inspection in the FSIS Hearing Clerk's Office.

[7] A copy of the document is available for public inspection in the FSIS Hearing Clerk's Office.

[8] "The Protein Nutritional Quality of Meat and Poultry Products: Scientific Basis for Regulation" is the final report of the Expert Working group, with accompanying background papers. C.E. Bodwell, ed., American Journal of Clinical Nutrition, 40(3): 671–742, supplement, September 1984. A copy of the report is available for public inspection in the FSIS Hearing Clerk's office.

include among their objectives the identification of improved methods for determining protein quality. In evaluating the possible use of alternative approaches to assuring protein quality, FSIS will consider data and other comments submitted by the public.

c. *Qualify control.* FSIS is proposing to require that meat derived from advanced meat/bone separation machinery and recovery systems be produced under an approved quality control program. FSIS believes quality control is necessary to assure that establishments manufacture meat from advanced meat/bone separation machinery and recovery systems that complies with the provisions of the proposed amendment of the definition of meat. Utilization of such a quality control program in producing this product would be prerequisite for the approval of labels for products consisting of or containing meat from advanced recovery systems. In other words, an approved quality control program would be necessary prior to the production of meat using advanced meat/bone separation machinery and recovery systems.

The function of a quality control program would be to restrict potential deviations from the prescribed definition of meat by controlling the factors that can affect conformance with the definition. Thus, it is proposed to require that the quality control program provide the controls and information necessary to assure that the meat from advanced meat/bone separation and recovery systems will meet each of the requirements of the regulations and will enable establishment personnel and FSIS to monitor it for effectiveness. FSIS is focusing on methods that will maintain the uniformity of starting materials and control the handling and processing of starting materials and resulting product. The methods of analysis for calcium and protein quality that are permitted and are intended to be used should be identified in the quality control system.

Under the proposal, the owner or operator of an establishment that intends to manufacture meat from advanced meat/bone separation machinery and recovery systems would request the Administrator of FSIS to approve the establishment's quality control program. The procedures and criteria for receiving such requests and assessing the adequacy of programs for quality control, as well as for terminating approval, would be those set forth in 9 CFR 318.4. These provisions provide guidance on the development and maintenance of appropriate quality control programs.

FSIS believes that with a quality control approach to preventing noncompliance from occurring, the need for testing the resulting product to assure compliance can be reduced and, consequently, the costs of production kept down. Moreover, the proposed quality control requirement builds on the control and information programs that processors use to predict and minimize the likelihood of manufacturing products that are inconsistent and of varying quality, and do not comply with regulatory requirements. Proposing to rely on a approved quality control program, rather than continual testing by processors, is a means for assuring that operations achieve compliance with the applicable proposed requirements and, thereby, prevents misbranding and adulteration of the resulting meat.

The goal of preventing misbranding and adulteration are key issues with regard to meat products produced by mechanical meat/bone separation, and can be achieved effectively and efficiently where a program for quality control incorporates appropriate methods and monitoring techniques, and adheres to good manufacturing practices. FSIS believes that product exceeding the calcium limit should not be classified as meat because if it exceeds the proposed calcium limits, it would reflect unacceptable incorporation of bone in the product during processing. To ensure that product satisfies the calcium requirement, FSIS is proposing that a sample of at least one pound from each lot of production would be taken and analyzed for calcium. A lot would consist of the meat derived from advanced meat/bone separation machinery and recovery systems, designated as such by the operator of the establishment or his or her agent, from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours. The results from chemical analyses would be compared to the requirement of 150 mg/100 gm of product within a tolerance of 0.03 percent or 30 mg. If statistical evidence exists that product may not be in compliance, then further sampling of the product will be required to demonstrate that the product is in compliance with requirements for meat derived from meat/bone separation and recovery systems.

It is proposed that statistical evidence of non-compliance exists when an individual analytical result is more than 0.03 percent (i.e., 30 mg) above the requirement, i.e., greater than 0.18 percent (i.e., 180 mg). (This tolerance is derived by equating it to three times the expected standard deviation (i.e., 0.1 percent) of the analytical procedure used by FSIS to measure the calcium contents in samples.)[9]

If any single analytical result is more than 0.18 percent, FSIS proposes that, before product from a production lot that is still at the establishment or one subsequently produced can be considered to be in compliance, at least three samples[10] from that lot must be taken and analyzed for calcium, either separately or as a composite (i.e., combining the three samples for analysis), at the option of the establishment. The average of the results or the composite result must comply with the requirement for calcium (i.e., less than or equal to 0.15 percent). Taking three samples from each lost would continue until five consecutive lots[11] have mean or composite results less than or equal to 0.15 percent. Individual results or an average of results would be rounded to the nearest 0.01 percent based on the precision of the methodology for measuring calcium. If the FSIS program official detects any results out of compliance, the program official may undertake normal compliance procedures.

FSIS believes that, if the statistical evidence indicates that a production lot is not in compliance with the calcium requirement, the lot must be labeled as MS(S) and meet the requirements for MS(S) in 9 CFR 319.5. In this situation, FSIS believes that the process is out of control, and there is the likelihood that too much calcium has been incorporated in the recovered meat, and, therefore, it should be identified as MS(S).

FSIS is proposing that at least one pound of product be sampled each week during production of a lot for conformance with protein quality criteria. Once three consecutive results from 3 production lots are in compliance with the criteria on protein quality (i.e., a protein digestibility-corrected amino acid score or essential amino acid content), sampling of production lots can be reduced to a monthly basis. After 6 months, sampling

[9] Data from a FSIS study are available for public inspection in the FSIS Hearing Clerk's office.

[10] Three samples, either analyzed as individual samples or as a composite sample (i.e., combining the three samples), are statistically representative for measuring calcium in a production lot.

[11] The provision for sampling five consecutive production lots is based on statistical sampling principles that ensure the process is in control and that mean or composite calcium results are less than or equal to the calcium requirement.

of production lots can be reduced to a quarterly basis.[12]

Subsequently, if samples are out of compliance, sampling each week would be repeated until the results are in compliance.

A major concern of FSIS is the assurance that consumers receive the quality of meat they expect in terms of the value of protein needed to sustain good nutrition. Therefore, FSIS is proposing that product from advanced meat/bone separation machinery and recovery systems that does not meet the requirements of the criteria for protein quality must be identified as "(species) fat" or "(species) connective tissue," and labeled in accordance with the applicable provisions in 9 CFR Part 317. Protein quality values less than the proposed criteria are comparable to those associated with "(species) fat" and "(species) connective tissue."

3. *Handling requirements.* FSIS is proposing to specify requirements for the handling of material that is to be processed into meat derived from advanced meat/bone separation machinery and recovery systems and for handling such product. FSIS is proposing that the handling of such material comply with the same provisions as are currently prescribed in 9 CFR 318.18 for handling material for mechanical processing.

FSIS believes that potential bacterial hazards are diminished as long as handling accords with good manufacturing practices. Because meat from advanced meat/bone separation machinery and meat recovery systems consists of particulates of muscle tissue having more surface area than whole muscle cuts, there is a greater potential for bacterial hazards. FSIS has, therefore, concluded that processing and storage requirements are warranted for the raw materials used to make the product and for the product itself.

FSIS is proposing to adopt the handling requirements prescribed in 9 CFR 318.18. These requirements would provide that material to be processed into meat derived from advanced meat/bone separation machinery and meat recovery systems be processed within 1 hour from the time it is cut or separated from livestock carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F (4°C) or less, or held indefinitely at 0°F (−18° C) or less. Meat from advanced meat/bone separation machinery and recovery systems must be used as an ingredient in a meat food product directly after being processed, except that it may be held prior to such use for no more 72 hours at 40 °F (4 °C) or less or indefinitely at 0 °F (−18° C) or less.

[12] This sampling schedule ensures the statistical representation of the production lots is achieved in regard to measuring protein quality.

List of Subjects

9 CFR Part 301

Meat inspection.

9 CFR Part 318

Incorporation by reference, Meat inspection, Quality control, Reporting and recordkeeping requirements.

Proposed Rule

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR parts 301 and 318 as follows:

PART 301—DEFINITIONS

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 301.2 would be amended by revising paragraph (rr) to read as follows:

§ 301.2 Definitions.

* * * * *

(rr) *Meat.* (1) The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(2) The product derived from the mechanical separation of the skeletal muscle tissue from the bones of livestock using the advances in mechanical meat/bone separation machinery and meat recovery systems that do not crush, grind, or pulverize bones, and from which the bones emerge comparable to those resulting from hand-deboning (i.e., essentially intact and in natural physical conformation such that they are recognizable, such as loin bones and rib bones, when they emerge from the machinery) which:

(i) Meets the criteria of no more than 0.15 percent or 150 mg/100 gm of product for calcium (as a measure of bone solids content) within a tolerance of 0.03 percent or 30 mg and meets the criteria of a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent or an essential amino acids content of at least 33 percent of the total amino acids present in the meat, as assured by an approved quality control program described in § 318.24 of this subchapter;

(ii) Is produced under an approved quality control program set forth in § 318.24 of this subchapter; and

(iii) Is handled in conformance with § 318.18 of this subchapter.

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 318.18 would be revised to read as follows:

§ 318.18 Handling of certain material for mechanical processing.

Material to be processed into "Mechanically Separated (Species)" or meat derived from advanced meat/bone separation machinery and recovery systems shall be so processed within 1 hour from the time it is cut or separated from carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F. (4 °C.) or less, or held indefinitely at 0 °F. (−18 °C.) or less. "Mechanically Separated (Species)" or meat derived from advanced meat/bone separation machinery and recovery systems shall, directly after being processed, be used as an ingredient in a meat food product, except that it may be held prior to such use for no more than 72 hours at 40 °F. (4 °C.) or less or indefinitely at 0 °F. (−18 °C.) or less.

5. Part 318 would be amended by adding a new § 318.24 to read as follows:

§ 318.24 Compliance procedures for meat derived from advanced meat/bone separation machinery and recovery systems.

(a) The product resulting from the separating process shall not have a calcium content exceeding 0.15 percent or 150 mg/100 gm of product within a tolerance of 0.03 percent or 30 mg, and it shall have a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent (except as modified in paragraph (b) of this section).

(b) An essential amino acid content of at least 33 percent of the total amino acids present in the meat derived from

advanced meat/bone separation machinery and recovery systems shall be accepted as evidence of compliance with the protein quality requirement set forth in paragraph (a) of this section. For purposes of this paragraph, essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present include isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content.

(c) A prerequisite for label approval for meat derived from advanced meat/bone separation machinery and recovery systems is that it shall have been produced by an establishment under an approved plant quality control program. The Administrator shall receive, evaluate, and approve requests for plant quality control in accordance with § 318.4(d) (1) and (2) and (e). Such a plant quality control system shall provide the controls and information necessary to assure that the product will meet the requirements described in § 301.2(rr)(2) of this subchapter and will enable establishment personnel and program employees to monitor the system for effectiveness. The system shall include a written description of the methods used by the establishment to maintain uniformity of the raw ingredients used in manufacturing the product and to control the handling and processing of the raw ingredients and the finished product, and shall contain provisions for chemical analyses of the product and other procedures to determine and assure compliance with the definition of the product. For purposes of this paragraph, a lot shall consist of the meat derived from advanced meat/bone separation machinery and recovery systems, designated as such by the operator of the establishment or his or her agent, from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours. All units of any lot must be available for inspection by program employees. The plant quality control program shall be subject to periodic review, and the approval of such program may be terminated in accordance with § 318.4(g).

(1) To verify the calcium content in meat derived from advanced meat/bone separation machinery and recovery systems, an analysis of a sample of at least one pound from each lot shall be performed by the operator of the establishment or his or her agent. Individual results from the chemical analyses shall be compared to the calcium limit, prescribed in paragraph (a) of this section, in order to demonstrate compliance. If compliance is not demonstrated, that is, if any single analytical result is more than 0.18%,[1] [2] before product from a production lot that is still at the establishment or one that is subsequently produced can be considered to be in compliance, at least three samples from that production lot shall be taken and analyzed for calcium, either separately, or, at the option of the establishment, as a composite (i.e., combining the three samples for analysis). The average of the results or the composite result must be less than or equal to 0.15%. Taking three samples from each subsequently produced lot and analyzing them in order to demonstrate compliance shall continue until five consecutive lots have mean or composite results less than or equal to 0.15%. If the statistical evidence indicates that a production lot is not in compliance with the calcium limit, as prescribed in § 301.2(rr)(2) of this subchapter, the lot must be labeled as MS(S) and meet all of the requirements for MS(S) in § 319.5 of this subchapter.

(2) To verify the protein digestibility-corrected amino acid score or the essential amino acid content in meat derived from advanced meat/bone separation machinery and recovery systems, an analysis of a sample of at least one pound shall be performed by the operator of the establishment or his or her agency each week during production of a lot to assure that product will meet the requirements of § 301.2(rr)(2) of this subchapter. Once three consecutive results from three production lots are in compliance with the criteria on protein quality (i.e., a protein digestibility-corrected amino acid score of not less than 40 expressed as a percent, as reflected in paragraph (a) of this section or an essential amino acid content of at least 33 percent of the total amino acids present, as reflected in paragraph (b) of this section), sampling of production lots can be reduced to a monthly basis. After 6 months, sampling of production lots can be reduced to a quarterly basis. Subsequently, if samples are out of compliance, sampling each week would be repeated until three consecutive results from three production lots are in compliance. The protein digestibility-corrected amino acid score and the essential amino acid content shall be determined by methods given in sections 5.4.1, 7.2.1, and 8.00 in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990. The "Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation" as published by the Food and Agriculture Organization of the United Nations/World Health Organization is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Nutrition, Center for Food Safety and Applied Nutrition (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. It is also available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Product resulting from the separating process which fails to meet the protein quality requirement in § 301.2(rr)(2) of this subchapter, shall be labeled as "(Species) fat" or "(Species) connective tissue."

[1] The value 0.18% was derived by multiplying by 3 the expected analytical standard deviation obtained by FSIS laboratories on the approved chemical procedure for measuring calcium which uses Ethylenediaminetetraacetic acid (EDTA) as provided in the "Official Methods of Analysis of the AOAC International" (formerly the Association of Official Analytical Chemists), 15th Ed. (1990).

[2] Individual or an average of results shall be rounded to the nearest 0.01% calcium.

Done at Washington, DC on: February 25, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4891 Filed 3–2–94; 8:45 am]

BILLING CODE 3410–DM–M

federal register

Thursday
March 3, 1994

Part IV

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Open Meeting; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of a meeting of the Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of a NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services for the Council.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993.

DATES: The meeting will be held on Friday, March 18, 1994, from 8 a.m. until 5 p.m.

ADDRESSES: The meeting will take place in the Thomas Jefferson Memorial Auditorium, at the Department of Agriculture South Building, 14th Street and Independence Avenue NW., Washington, DC 20500. The Wing 4 entrance on Independence Avenue in the middle of the building or the Wing 7 entrance at the corner of 14th Street and Independence Avenue should be used.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Maloney (or Ms. Alison Andrews, alternate), Designated Federal Officer for the Advisory Council on the NII and Chief, Policy Coordination Division at the National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, room 4625; 14th Street and Constitution Avenue, NW.; Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: niintia. doc.gov.

SUPPLEMENTARY INFORMATION: Current members of the Advisory Council on the National Information Infrastructure include:

Mr. Morton Bahr, President, Communications Workers of America, AFL–CIO.

Dr. Toni Carbo Bearman, Dean and Professor, School of Library and Information Science, University of Pittsburgh.

Ms. Bonnie L. Bracey, Teacher, Ashlawn Elementary School, Arlington County Public Schools.

Mr. John F. Cooke, President, The Disney Channel.

Ms. Esther Dyson, President, EDventure Holdings, Inc.

Dr. Craig I. Fields, Chairman and Chief Executive Officer, Microelectronics and Computer, Technology Corp.

Ms. Lynn Forester, President and Chief Executive Officer, FirstMark Holdings, Inc.

Honorable Carol Fukunaga, Senator, State of Hawaii.

Mr. Haynes G. Griffin, President and Chief Executive Officer, Vanguard Cellular Systems, Inc.

Dr. George H. Heilmeier, President and Chief Executive Officer, Bellcore.

Ms. Susan Herman, General Manager, Department of Telecommunications, City of Los Angeles.

Mr. James R. Houghton, Chairman and Chief Executive Officer, Corning Incorporated.

Mr. Stanley S. Hubbard, Chairman, President, and Chief Executive Officer, Hubbard Broadcasting.

Mr. Robert L. Johnson, President, Black Entertainment Television.

Dr. Robert E. Kahn, President, Corporation for National Research Initiatives.

Ms. Deborah Kaplan, Vice President, World Institute on Disability.

Mr. Mitchell Kapor, Chairman, Electronic Frontier Foundation, Inc.

Mr. Delano E. Lewis, President and Chief Executive Officer, National Public Radio.

Mr. Alex J. Mandl, Executive Vice President, AT&T and Chief Executive Officer, Communications Services Group.

Mr. Edward R. McCracken, President and Chief Executive Officer, Silicon Graphics, Inc.

Dr. Nathan P. Myhrvold, Senior Vice President, Advanced Technology, Microsoft Corporation.

Mr. N.M. (Mac) Norton, Jr., Attorney-at-Law, Wright, Lindsey, and Jennings.

Mr. Vance K. Opperman, President, West Publishing Company.

Ms. Jane Smith Patterson, Adviser to the Governor of North Carolina for Policy, Budget, and Technology, State of North Carolina.

Mr. Bert C. Roberts, Jr., Chairman and Chief Executive Officer, MCI Communications Corp.

Mr. John Sculley,

Ms. Joan H. Smith, Chairman, Oregon Public Utility Commission.

Agenda

1. *How Should the Advisory Council Define the NII?*
   Definition will be proposed and discussed.
2. *Mega-Project I: Access to the NII*
   Scope of project will be proposed and discussed.
3. *Council Priorities*
   Co-chairs will propose priorities and lead discussion.
4. *Council Administration and Logistics.*
5. *Discussion on Telecommunications Issues.*
6. *Public Discussion, Questions and Answers.*
7. *Next Meeting Date and Agenda Items.*

Public Participation: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Members of the public should bring a photo identification. The Wing 4 entrance on Independence Avenue in the middle of the building or the wing 7 entrance at the corner of 14th Street and Independence Avenue should be used.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the address listed above. Within thirty (30) days following the meeting, copies of the minutes of the Council meetings may be obtained through Bulletin Board Services at 202–501–1920. 202–482–1199, over the Internet at iitf.doc.gov. or from the U.S. Department of Commerce, National Telecommunications and Information Administration, room 4892, 14th Street and Constitution Avenue, NW.; Washington, DC. 20230; Telephone 202–482–1835.

Dated: February 28, 1994.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–4912 Filed 3–2–94, 8:45 am]

BILLING CODE 3510–60–M

federal register

Thursday
March 3, 1994

Part V

Department of Education

Fund for Innovation Education: Program—Partnerships for Standard-Based Professional Development of K–12 Educators; Notice of Proposed Priority

DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program—Partnerships for Standard-Based Professional Development of K–12 Educators

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal years 1994 and 1995.

SUMMARY: The Secretary proposes an absolute priority for fiscal years 1994 and 1995 under the Fund for Innovation in Education (FIE): Innovation in Education Program to support innovative projects that provide K–12 teachers and other educators with sustained, high quality professional development opportunities that are aligned with challenging content and professional standards developed at the national, State or local levels. The intent of this priority is to enable school educators, working with appropriate university, community, and business partners, to create and maintain model learning environments that will help *all* students in elementary and secondary schools achieve challenging academic standards in subjects such as English, mathematics, science, history, geography, civics, foreign languages, and the arts.

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to Bryan Gray, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. 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: An essential step in achieving our National Education Goals is ensuring that we have high academic expectations for all students and that each student has the opportunity to fulfill those expectations. Current national, State, and local efforts to define high standards for what students should know and be able to do in the various subject areas provide a starting point for creating the type of learning opportunities that an education system of excellence must provide for all members of an increasingly diverse student population.

In order to provide learning opportunities where more rigorous and complex learning is expected of all students, teachers will need high-quality, career-long professional development programs. Other educators who help to create teaching and learning environments that better serve the academic and other needs of students will need similar high-quality professional development opportunities. Such educators might include school and district administrators, school and university-based teacher educators, curriculum and supervisory personnel, paraprofessionals/instructional aides, and members of school boards. To provide effective professional development programs for teachers and other educators, applicants must ensure that their proposed projects are aligned with high standards for student learning. Applicants should also consider related standards for teacher effectiveness and for the preparation, credentialling and continuing development of educators. More specifically, in designing policies and practices for professional development, applicants are urged to draw on relevant work, as appropriate, from groups such as the National Board for Professional Teaching Standards, the Interstate New Teacher Assessment and Support Consortium, and the National Council for the Accreditation of Teacher Education.

The Secretary recognizes that successful well-articulated programs that provide for continuous improvement of professional educators from recruitment to retirement will require educators to work together across traditionally separated roles and organizations. Therefore, projects must be carried out by partnerships. Finally, the design of professional development efforts must incorporate what is known about developing and managing high-performance school systems that support education excellence and equity.

The Secretary proposes to direct financial assistance to projects that develop new or further develop existing innovative partnerships of school, university, community, and other entities to establish and maintain high-quality, standards-based professional development programs for teachers and other educators. The purpose of these partnerships may be to improve the entire continuum of professional development or to focus on one or more points along that continuum (e.g., preservice, induction, inservice).

In accordance with recommendations in the Senate Report that accompanied the Fiscal Year 1994 Department of Education Appropriation Act, the Secretary supports development of programs based on existing strategies, such as creating model professional development schools, or applicants' newly designed strategies. The Secretary also recognizes the need for professional development efforts, as identified in the Senate Report, that prepare educators for working with other human service professionals to address non-academic student/family problems (e.g., drugs, violence, nutrition, unemployment) as well as other conditions that place students at-risk for failure in school. The Secretary is particularly interested in projects that provide relevant development opportunities for educators who work in urban school communities.

The Secretary strongly encourages the development of challenging and feasible school-based collaborations that are based upon appropriate research results and exemplary teaching and professional development practices, as well as the contributions of expert school, higher education, and community practitioners. Emphases might include collegial strategies such as in-school mentoring for teachers; school-university teams integrating teacher preparation and school curriculum to effectively educate at-risk students; teacher sabbaticals to work in model schools; and practitioner-led inquiry and reform activities.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities; nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Projects that design and implement innovative, high quality, standards-based preservice, induction and/or inservice professional development

programs for K–12 teachers and other educators.

Each project must involve one or more local education agencies (LEAs) working in partnership with one or more institutions of higher education (IHEs), and others such as State education officials and representatives from professional organizations, private schools, business, and the community, as appropriate. Programs and activities must be built upon relevant and current research including a demonstrated relationship between the professional development approach and lessons learned from relevant research and exemplary practice. A grounding in research findings must also be evident in the content of the professional development activities.

Required Activities

Each project must:

(a) Provide professional development opportunities that are aligned with challenging academic content standards for students as developed through voluntary national, State, and/or local efforts in one or more subjects such as English, mathematics, science, history, geography, civics, foreign languages, and the arts.

(b) Consider the implications of available professional standards such as those for beginning and expert teachers and other educators, as well as for teacher preparation, credentialling, and ongoing staff development as appropriate to the particular focus of the project.

(c) Establish an advisory committee composed of school and university practitioners; state education officials; parents; professional organization, community and business representatives; and others as appropriate. The advisory committee must guide the project activities to ensure a systemic approach including cross-institutional planning, coordination, and resource allocation.

(d) Evaluate the following aspects of the project:

(1) The degree to which the professional development content and strategies reflect relevant research and exemplary practice;

(2) The degree to which the project activities were actually implemented as compared to the original design; and

(3) The nature and impact of project outcomes related to improved teaching and increased student learning and development.

The evaluation must use state-of-the-art documentation and assessment approaches.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number: 84.215J Secretary's Fund for Innovation in Education: Innovation in Education Program)

Dated: February 28, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–4890 Filed 3–2–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
March 3, 1994

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 157
Construction, Alteration, Activation, and Deactivation of Airports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 157

[Docket No. 25708, Amendment No. 157–6]

RIN 2120–AE52

Construction, Alteration, Activation, and Deactivation of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments to final rule.

SUMMARY: On July 24, 1991, the FAA issued a final rule concerning part 157 of the Federal Aviation Regulations that deleted an impending requirement to provide 90 days advance notice of construction, alteration, activation, and deactivation of certain temporary airports and heliports located within a specified distance from another airport; revised the applicability section of part 157 to exclude proposals involving the intermittent use of sites that are not established airports; and clarified that telephone notice for certain emergency or unreasonable hardship situations be directed to the appropriate Airports District/Field Office or Regional Office. The final rule revised certain provisions contained in a previous amendment to this part before the effective date of that amendment. The final rule became effective on August 30, 1991. The public was invited to submit comments on the final rule by November 21, 1991. Based on the comments received, the FAA has determined that no further rulemaking action is necessary.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1988, the FAA published a notice of proposed rulemaking (notice No. 88–15, 53 FR 39062) that addressed certain safety issues concerning the construction, alteration, activation, and deactivation of airports. On August 27, 1990, the FAA published a final rule (amendment No. 157–4, 55 FR 34994), based on the proposals contained in Notice No. 88–15 and the public comments to that notice. Amendment No. 157–4: (1) Established a requirement to provide notice to the Administrator prior to establishing or changing a traffic pattern or traffic pattern altitude; (2) defined a new term, "private use of public lands or waters;" (3) eliminated the term "personal use" as an airport use designation; and (4) revised the applicability section of part 157 regarding notice criteria.

Prior to Amendment No. 157–4, part 157 notice criteria applied to any proposal to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport except for those proposals involving: (1) Certain projects for which Federal aid had been requested, and (2) a "temporary" airport or aircraft landing or takeoff area. The term "temporary" meant that the airport or aircraft landing or takeoff area was intended to be used solely in visual flight rules (VFR) conditions for less than 30 days, with no more than 10 operations a day. Amendment No. 157–4 revised the temporary airports exclusion from the notice requirements of part 157. The amendment provided that only the following temporary airports and heliports would be excluded from the part 157 notice provisions: (1) Temporary private use airports for fixed-wing aircraft and ultralight vehicles that are located beyond specified distances from other airports, and (2) temporary private use heliports and helicopter landing areas that are located outside a control zone, a residential, business, or industrial area, and beyond specified distances from other airports and heliports.

After the publication of Amendment No. 157–4, and before its original effective date of February 27, 1991, the FAA received comments from aviation organizations and operators regarding the potential impact of the revised notice requirement for temporary airports and landing areas. To provide time to review and possibly revise Amendment No. 157–4, the FAA delayed its effective date until August 30, 1991 (Amendment No. 157–5, 56 FR 8674, February 28, 1991).

On July 24, 1991, the FAA published a final rule (Amendment No. 157–6, 56 FR 33994) that eliminated the impending requirement to provide 90 days advance notice of construction, alteration, activation, and deactivation of certain temporary airports and heliports. Amendment No. 157–6 also revised the applicability section of part 157 to exclude proposals involving the intermittent use of sites that are not established airports. The "intermittent use of a site" means that the site is used or intended to be used in VFR conditions for no more than three days in any one week with no more than 10 operations a day. Finally, Amendment No. 157–6 clarified that telephone notice for certain emergency or unreasonable hardship situations should be directed to the appropriate FAA Airports District/Field Office or Regional Office. Amendment No. 157–6 and Amendment No. 157–4 (with the revisions noted above) became effective on August 30, 1991.

The FAA invited comments on amendment No. 157–6. The FAA stated that the request for comments to Amendment No. 157–6 did not represent a reopening or reconsideration of the proposals in notice No. 88–15, or of the revisions resulting from amendment No. 157–4 that were not revised or otherwise affected by amendment No. 157–6. Therefore, issues relating to the notice requirement for a change to, or the establishment of an airport traffic pattern; the elimination of the term "personal use" as an airport use designation; and other changes resulting from amendment No. 157–4 will not be specifically addressed in this document.

Discussion of Comments

The FAA received eleven comments to amendment No. 157–6. Eight commenters address changes resulting from amendment No. 157–4 that were not revised or affected by amendment No. 157–6. As discussed above, such changes will not be discussed in this document.

One commenter does not believe that there was a need for regulations to require notice of temporary aircraft operations to and from a landing site that is not intended to be used as a permanent airport or heliport. Amendment No. 157–6 provides that notice of temporary airports and landing or takeoff areas would be required if the airport will be used (other than on an intermittent basis) for a period of more than 30 days, or if more than 10 operations will be conducted a day. The FAA believes that a level of activity in excess of 10 operations a day warrants closer examination for appropriate consideration of the potential impact to adjacent airspace users.

Several commenters believe that the 90-day advance notification requirement would cause economic hardship for certain operators, particularly emergency medical service and other helicopter operators.

Section 157.5(b)(1) provides that "in an emergency involving essential public service, public health, or public safety or when the delay arising from the 90-day advance notice requirement would result in an unreasonable hardship, a proponent may provide notice to the appropriate FAA Airport District/Field Office or Regional Office by telephone

or other expeditious means as soon as practicable in lieu of submitting FAA Form 7480–1." The FAA believes that this provision provides for adequate relief from the 90-day advance notice requirements for emergency medical service helicopter operations and other similar emergency or unreasonable hardship situations.

One commenter disagrees with the provision that excludes from the applicability section of part 157 a proposal involving the intermittent use of a site that is not an established airport. The commenter believes that the provision "lowers standards" pertaining to notice of construction, alteration, activation, or deactivation of landing areas. Further, the commenter believes that the change could provide a "loop hole" for operators whose landing intentions are to rustle cattle, transport drugs, or illegally dispose of chemicals. This provision was promulgated because there may be a number of reasons for multiple operations to a site with no intent to establish an airport within the meaning of part 157. For example, medical, firefighting, law enforcement, construction, logging, and agricultural functions may require repeated flights to and from an accident, incident, construction, or other temporary landing site. Certain construction, agricultural, and logging functions may not require the continuous use of a site over the course of the project but would instead involve occasional and infrequent return visits to the site. Prior to Amendment No. 157–4, proponents who intended to operate to and from a site on an intermittent or sporadic basis for more than 30 days were required to notify the FAA 90 days before conducting such an operation. Such notice would be required even in a situation involving only two operations to the same site when the return visit is conducted 30 or more days after the first operation. The FAA believes that the majority of such operations would not require or result in the establishment of an airport nor constitute an intent to establish an airport.

With regard to the commenter's concern that the intermittent-use exclusion could affect the ability to deter certain illegal activities, the primary purpose of part 157 is to establish notice requirements for the construction, alteration, activation, or deactivation of certain airport, heliport, and aircraft landing area proposals. Such notice provides the FAA with an opportunity to conduct an aeronautical study of an airport proposal to determine the effects of that proposal on neighboring airports, existing or contemplated traffic patterns at neighboring airports, and existing airspace environment and projected FAA programs. Further, the FAA studies the effects that existing or proposed man-made objects and natural objects within the affected area would have on the airport proposal. As such, part 157 is not intended or designed to assist law enforcement agencies or otherwise prevent or deter illegal activity. However, the FAA agrees with the commenter regarding the general need for reasonable measures to monitor and deter illegal activities. Accordingly, the FAA cooperates with agencies such as the United States Customs Service, the Federal Bureau of Investigation, the Department of Defense and other Federal and state agencies in support of their law enforcement and national security missions.

Conclusion

The FAA has determined, after carefully considering the comments submitted in response to amendment No. 157–6, that no further rulemaking action is necessary at this time. Amendment No. 157–6 remains in effect as prescribed by the July 24, 1991, final rule.

Issued in Washington, DC, on February 25, 1994.

Willie C. Nelson,

Assistant Division Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 94–4872 Filed 3–2–94; 8:45 am]

BILLING CODE 4910–13–M

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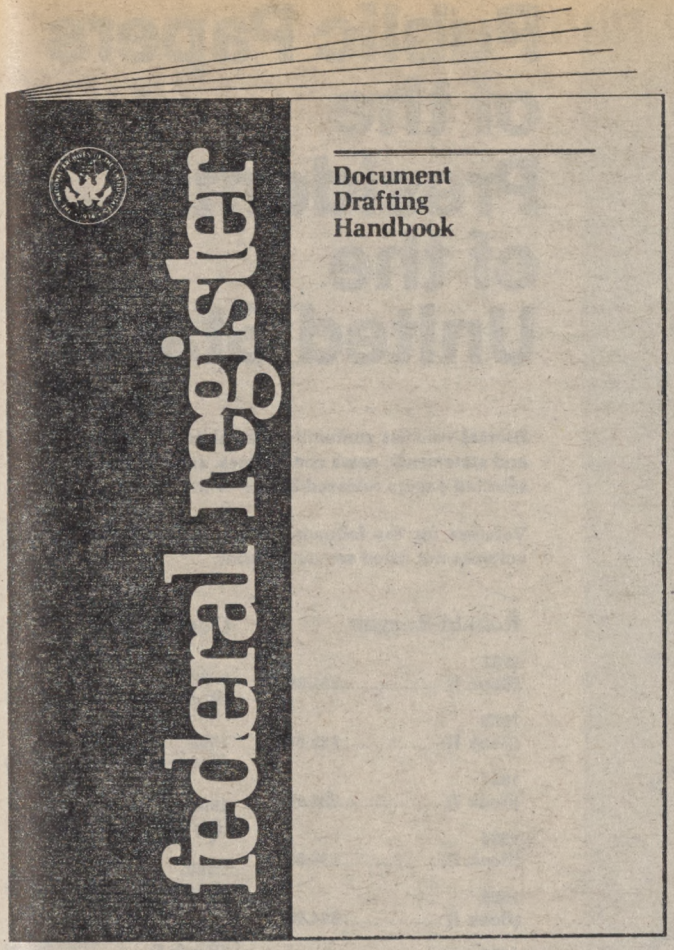

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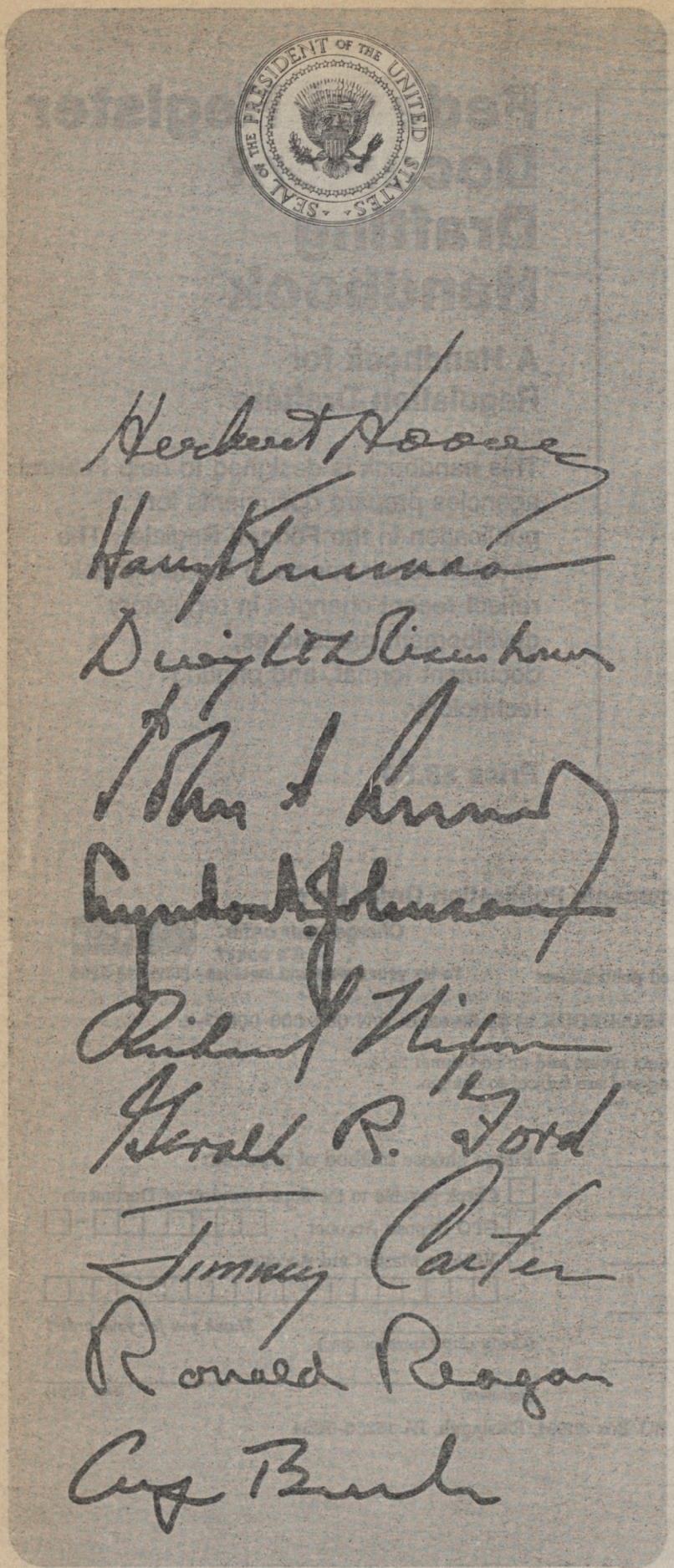

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