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Briefing on How To Use the Federal Register
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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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: April 20 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

Contents

Federal Register

Vol. 59, No. 60

Tuesday, March 29, 1994

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Bunker Hill superfund site, ID, hazardous exposures; public health interventions to prevent or mitigate possible adverse health effects, 14625–14626

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
Wine, labeling and advertising—
Miscellaneous amendments, 14551–14554

Army Department
NOTICES
Environmental statements; availability, etc.:
Fort Lewis, WA; mechanized or armored combat forces, 14613
Military traffic management:
Trip leasing procedures for DOD freight, 14613–14614

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Developmental disabilities—
Basic support and protection and advocacy formula grant programs, 14624–14625

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 14606–14607

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Silk apparel from China; import restraint limits, 14612–14613

Customs Service
RULES
Petitions by domestic interested parties:
Frozen produce packages; country of origin marking, 14548–14549
PROPOSED RULES
Country of origin marking:
Frozen produce packages, 14579–14580
Merchandise classification and appraisement:
Duties in excess of $100; importer notification (Customs Form 29); withdrawal, 14580–14581

Defense Department
See Army Department
RULES
Organization, functions, and authority delegations:
Under Secretary of Defense for Personnel and Readiness et al., 14561–14564
Personnel:
Transition assistance for military personnel, 14559–14561
NOTICES
Meetings:
Science Board task forces, 14613

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Cooperative education program, 14614
Parent information and training programs, 14614–14615

Employment and Training Administration
NOTICES
Adjustment assistance:
Kaiser Aluminum & Chemical Corp., 14673
Owens-Brockway et al., 14673–14674

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Southeastern Power Administration
PROPOSED RULES
Acquisition regulations:
Patent regulations update, 14593–14605

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Climate change action plan; regional roundtables, 14615–14616

Environmental Protection Agency
NOTICES
Toxic and hazardous substances control:
Premanufacture exemption approvals, 14619–14620

Equal Employment Opportunity Commission
RULES
Employment discrimination:
Charges; designation of State and local fair employment practices agencies (706 agencies)—
Virginia Human Rights Council, 14554
NOTICES
Meetings; Sunshine Act, 14711

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Organization, functions, and authority delegations:
Chief Operating Officer; charters, termination and redesignation of existing orders, 14620

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 14545–14547
Class E airspace, 14547–14548

PROPOSED RULES
Airworthiness standards:
Special conditions—
Cessna Aircraft Co. model 750 (Citation X) airplane, 14571–14573
Class D airspace, 14577–14578
Class E airspace, 14573–14579
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 14707–14708
RTCA, Inc., 14708

Federal Communications Commission
RULES
Radio and television broadcasting:
Political programming policies; use definition, 14567–14568
Radio stations; table of assignments:
Alabama, 14567
NOTICES
Applications, hearings, determinations, etc.:
Family Broadcasting, Inc., 14620

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Tennessee, 14620–14621
Meetings:
Emergency Management Institute Board of Visitors, 14621

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Seattle, WA, 14616
Southern New Hampshire Hydroelectric Development Corp., 14616
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 14616
Arkla Energy Resources Co., 14616
Columbia Gas Transmission Corp., 14616–14617
Eastern Shore Natural Gas Co., 14617
Kansas Gas & Electric Co., 14617
Overthrust Pipeline Co., 14617–14618
Texas Eastern Transmission Corp., 14618

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
BankAmerica Corp., 14621
Kerndt Bank Services Inc.; correction, 14621
USBancorp, Inc., et al., 14621–14622
Valley Financial Corp., 14622

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 14622–14623

Fish and Wildlife Service
NOTICES
Meetings:
Aquatic Nuisance Species Task Force, 14666–14667

Food and Drug Administration
RULES
Food additives:
Substances generally recognized as safe; technical amendments, 14549–14551
Organization, functions, and authority delegations:
Chief Mediator and Ombudsman et al., 14549
NOTICES
Food additive petitions:
General Electric Co., 14626–14627
Human drugs:
Export applications—
NEUTROLITE kit for preparation of technetium TC99m bicisate, 14627
PHOTOLEX plus broad spectrum sunscreen lotion, 14627–14628
ULTRAM (tramadol hydrochloride) 50 and 100 mg tablets, 14628

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Nebraska
Kawasaki Motors Manufacturing Corp., U.S.A.; utility work trucks manufacturing facilities, 14607

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Public Health Service
NOTICES
Scientific misconduct findings; administrative actions:
Hiserodt, John C., M.D., Ph.D, 14623–14624

Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations, 14628–14662

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Comprehensive health promotion, disease prevention, and primary health care services to native Hawaiians, 14662–14664
Special projects of national significance—
Ryan White Comprehensive AIDS Resources Emergency Act, 14664–14666

Housing and Urban Development Department
PROPOSED RULES
Mortgage and loan insurance programs:
Low cost and moderate income mortgage insurance; multifamily mortgages auction, 14581–14584

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Color picture tubes from—
Canada, 14607
Antidumping duty orders; determinations not to revoke, 14608–

Antidumping duty orders and findings; intent to revoke, 14608
Harmonized system of tariff classification; conversion for antidumping and countervailing duty proceedings:
Apparel from Sri Lanka, 14609
Textile mill products from Sri Lanka, 14609–14610
Applications, hearings, determinations, etc.:
University of—
California, Los Alamos, 14610
North Carolina, 14610–14611

Interstate Commerce Commission
RULES
Tariffs and schedules:
Payment of discounts by motor carriers of property to nonpayer of freight charges, 14570
NOTICES
Railroad operation, acquisition, construction, etc.:
Claussen, H. Peter, et al., 14668–14669
Piedmont & Atlantic Railroad Co., Inc., 14669–14670
Southern Electric Railroad Co., 14670
Railroad services abandonment:
Norfolk & Western Railway Co., 14669
Texas Mexican Railway Co., 14670–14671

Justice Department
See National Institute of Justice
See Prisons Bureau

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 14672–14673
Committees; establishment, renewal, termination, etc.:
Future of Worker-Management Relations Commission, 14672

Land Management Bureau
NOTICES
Oil and gas leases:
Michigan, 14666

Minerals Management Service
RULES
Royalty management:
Solid minerals and geothermal leases; late payment or underpayment of monies due; interest rate, 14557–14559

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Dance Advisory Panel; correction, 14684
Music Advisory Panel, 14684

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Lap belts or lab belt portion of lap/shoulder belts; child safety seats securing capabilities, 14569–14570
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 14708–14709

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Gang resistance education and training program evaluation, 14671

National Oceanic and Atmospheric Administration
NOTICES
Facility and vessel response plans fish and wildlife and sensitive environments; guidance availability, 14714–14722
Meetings:
International Whaling Commission; proposed U.S. position, 14611–14612
Permits:
Endangered and threatened species, 14612

National Park Service
RULES
National Park System:
Glacier Bay National Park, AK; wildlife protection, 14564–14566
NOTICES
Boundary establishment, descriptions, etc.:
Big Thicket National Preserve, TX, 14667
National Register of Historic Places:
Pending nominations, 14667–14668

Nuclear Regulatory Commission
NOTICES
Meetings:
Industry representatives; in-service inspection performance demonstration requirements, 14684–14685
Meetings; Sunshine Act, 14711
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co. et al., 14685
Commonwealth Edison Co., 14685–14688
Dailey, Robert C., 14688
Virginia Electric & Power Co., 14689
Yankee Atomic Electric Co., 14689

Occupational Safety and Health Administration
RULES
State standards enforcement; approved State plans:
Alaska et al., 14554–14556
PROPOSED RULES
State plans; development, enforcement, etc.:
California, 14584–14586
Michigan, 14586–14587
New Mexico, 14587—14589
Oregon, 14589–14591

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Cascade West Sportswear, Inc., et al., 14674–14678
Hensel Phelps Construction Co., 14678–14680
Shearson Lehman Brothers, Inc., 14680–14684

Personnel Management Office
RULES
Commercial garnishment of Federal employees' pay, 14541–14545
NOTICES
Agency information collection activities under OMB review, 14689–14690
Meetings:
Federal Salary Council, 14690

Postal Service
NOTICES
Meetings; Sunshine Act, 14711

Presidential Documents
PROCLAMATIONS
Special observances:
Greek Independence Day: A National Day of Celebration of Greek and American Democracy (Proc. 6659), 14729–14730
Small Family Farm Week (Proc. 6660), 14731–14732
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Trade and Environment Policy Advisory Committee (EO 12905), 14733–14734

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Mandatory English-as-a-second-language program, 14724–14725

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration Operations and Management Office, 14666

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 14690–14691
Boston Stock Exchange, Inc., 14691–14693
Chicago Stock Exchange, Inc., 14693–14694
Depository Trust Co., 14696
New York Stock Exchange, Inc., 14694–14696
Pacific Stock Exchange, Inc., 14697–14698
Philadelphia Stock Exchange, Inc., 14698–14701
Applications, hearings, determinations, etc.:
AIM Convertible Securities, Inc., 14701–14702
AIM High Yield Securities, Inc., 14702
Allianz Life Insurance Co. of North America et al., 14702–14704
Metropolitan Life Insurance Co. et al., 14704–14707

Small Business Administration
NOTICES
Disaster loan areas:
Massachusetts, 14707
Interest rates; quarterly determinations, 14707

Southeastern Power Administration
NOTICES
Power rates:
Jim Woodruff Project, 14618–14619

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Utah, 14591–14593

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service

Veterans Affairs Department
RULES
Disabilities rating schedules:
Genitourinary system
Correction, 14566–14567
NOTICES
Meetings:
Women Veterans Advisory Committee, 14709–14710

Separate Parts In This Issue

Part II
Department of Commerce, National Oceanic and Atmospheric Administration, 14714–14722

Part III
Department of Justice, Bureau of Prisons, 14724–14725

Part IV
The President, 14727–14734

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

6659.....14729
6660.....14731

Executive Orders:

12905.....14733

5 CFR

582.....14541

14 CFR

39.....14545
71.....14547

Proposed Rules:

25.....14571
71 (5 documents).....14573, 14574, 14576, 14577, 14578,

19 CFR

175.....14548

Proposed Rules:

134.....14579
152.....14580
175.....14579

21 CFR

5.....14549
172.....14549
176.....14549
177.....14549
178.....14549
179.....14549
184.....14549

24 CFR

Proposed Rules:

221.....14581

27 CFR

4.....14551
9.....14551

28 CFR

544.....14724

29 CFR

1601.....14554
1952.....14554

Proposed Rules:

1952 (4 documents).....14584, 14586, 14587, 14589

30 CFR

218.....14557

Proposed Rules:

944.....14591

32 CFR

88.....14559
343.....14561
344.....14561
379.....14561
384.....14561

36 CFR

13.....14564

38 CFR

4.....14566

47 CFR

73 (2 documents).....14567
76.....14567

48 CFR

Proposed Rules:

927.....14593
952.....14593
970.....14593

49 CFR

571.....14569
1051.....14570
1053.....14570
1312.....14570

Rules and Regulations

Federal Register
Vol. 59, No. 60
Tuesday, March 29, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 582

RIN 3206–AF83

Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the commercial garnishment of Federal employees' pay. This part provides procedures and guidance for Executive Branch agencies of the Federal Government to process commercial garnishment orders, including tax levies from State and local governments.

DATES: *Effective date:* March 29, 1994. Comments should be received by April 28, 1994.

ADDRESSES: Send or deliver comments to Lorraine Lewis, General Counsel, Office of Personnel Management, room 7355, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1920.

SUPPLEMENTARY INFORMATION: On October 6, 1993, Congress enacted section 9 of Public Law 103–94 which waived the Federal Government's sovereign immunity to permit compliance with garnishment orders for commercial debts. On February 3, 1994, the President signed Executive Order Number 12897 which delegated responsibility to OPM to issue implementing regulations for most of the Executive Branch. These regulations are in accordance with this delegation of authority. OPM anticipates that in most instances, agents previously designated to receive garnishment orders based on obligations of child support and/or alimony will be similarly designated to receive commercial garnishment orders. OPM requests that in addition to providing comments concerning these proposed regulations, agencies advise OPM if they would prefer to designate different agents to receive commercial garnishment orders. Because the commercial garnishment provisions in Public Law 103–94, section 9, became effective on February 3, 1994, OPM believes that it is important to issue these regulations as an interim rule with an immediate effective date. OPM believes that the need for immediate implementing regulations to facilitate the processing of and compliance with commercial garnishment orders both justifies and necessitates publication without a Notice of Proposed Rulemaking as would ordinarily be provided pursuant to 5 U.S.C. 553(b)(A). For these same reasons, OPM believes that a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2). OPM will, however, consider any public comments before issuing a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited to Federal employees and their creditors.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 582

Claims.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is adding part 582 of title 5, Code of Federal Regulations as follows:

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

Subpart A—Purpose, Definitions, and Exclusions

Sec.

582.101 Purpose.
582.102 Definitions.
582.103 Exclusions

Subpart B—Service of Legal Process

582.201 Agent to receive process.
582.202 Service of legal process.
582.203 Information minimally required to accompany legal process.

Subpart C—Compliance with Process

582.301 Suspension of payment.
582.302 Notification of employee-obligor.
582.303 Response to legal process or interrogatories.
582.304 Nonliability for disclosure.
582.305 Honoring legal process.
582.306 Lack of entitlement by the employee-obligor to pay from the agency served with legal process.

Subpart D—Consumer Credit Protection Act Restrictions

582.401 Aggregate disposable earnings.
582.402 Maximum garnishment limitations.

Subpart E—Implementation by Agencies

582.501 Rules, regulations, and directives by agencies.

Authority: 5. U.S.C. 5520a; 15 U.S.C. 1673, E.O. 12897.

Appendix A to Part 582—List of Agents Designated To Accept Legal Process

Subpart A—Purpose, Definitions, and Exclusions

§ 582.101 Purpose.

Section 5520a of title 5 of the United States Code provides that with certain exceptions set forth in this part, pay from an agency to an employee is subject to legal process in the same manner and to the same extent as if the agency were a private person. The purpose of this part is to implement the objectives of section 5520a as they pertain to each executive agency of the United States Government, except with regard to employees of the United States Postal Service, the Postal Rate Commission, and the General Accounting Office.

§ 582.102 Definitions.

In this part—

(a) *Agency* means each agency of the executive branch of the Federal Government, excluding the United States Postal Service, the Postal Rate Commission, and the General Accounting Office; *agency* does not include the government of the District of Columbia or the territories and possessions of the United States.

(b) *Employee* or *employee-obligor* means an individual who is employed by an *agency* as defined in this section; except for reemployed annuitants and retired members of the uniformed

services who are employed by an agency, *employee* does not include a retired employee, member of the uniformed services, or a retired member of the uniformed services.

(c) *Legal process* means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, court ordered wage assignment, or tax levy from a State or local government, which—

(1) Is issued by: (i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia. As stated in section 582.101, pay is subject to legal process in the same manner and to the same extent as if the agency were a private person. There is, therefore, no requirement in this part that, for example, legal process be signed by a judge; or

(ii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or

(iii) A State agency authorized to issue income withholding notices pursuant to State or local law; and

(2) Orders an agency to withhold an amount from the pay of an employee-obligor and to make a payment of such withholding to a *person* for a specifically described satisfaction of a legal debt of the employee-obligor, or recovery of attorney fees, interest, or court costs;

(d) *Person* may include an individual, partnership, corporation, association, joint venture, or private organization, and includes the plural of that term; person may include a State or local Government as well as a foreign entity or a foreign governmental unit.

(e) In conformance with 5 U.S.C. 5520a, *pay* means basic pay; premium pay paid under chapter 55, subchapter V, of title 5 of the United States Code; any payment received under chapter 55, subchapters VI, VII, or VIII, of title 5 of the United States Code; severance pay and back pay under chapter 55, subchapter IX, of title 5 of the United States Code; sick pay, and any other paid leave; incentive pay; locality pay (including interim geographic adjustments, special pay adjustments for law enforcement officers, and locality-based comparability payments); and any other compensation paid or payable for personal services, whether such compensation is denominated as pay, wages, salary, lump-sum leave payments, commission, bonus, award, or otherwise; but does not include awards for making suggestions, reimbursement for expenses incurred by an individual in connection with employment, or allowances in lieu thereof.

§ 582.103 Exclusions.

In determining the amount of pay subject to garnishment under this part, there shall be excluded amounts which:

(a) Are owed by the employee-obligor to the United States;

(b) Are required by law to be deducted from the employee-obligor's pay, including, but not limited to: (1) Amounts withheld from benefits payable under title II of the Social Security Act;

(2) Federal employment taxes; and

(3) Amounts deducted for Medicare;

(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the employee-obligor claimed all dependents to which the employee-obligor were entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the employee-obligor presents evidence of a tax obligation which supports the additional withholding;

(d) Are deducted as health insurance premiums;

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary; or

(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Federal Employees' Group Life Insurance premiums for "Basic Life" coverage are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and any life insurance premiums paid for by allotment are considered to be supplementary.

Subpart B—Service of Legal Process

§ 582.201 Agent to receive process.

(a) Except as provided in appendix A to this part, appendix A to 5 CFR part 581 lists agents designated to accept service of process under part 581 and this part.

(b) United States Attorneys are not considered appropriate agents to accept service of process.

§ 582.202 Service of legal process.

(a) A party using this part shall serve legal process on the agent to receive process as explained in § 582.201. Where the legal process is directed to an agency, and the purpose of the legal process is to compel an agency to garnish an employee's pay, the legal process need not expressly name the agency as a garnishee.

(b) Service of legal process may be accomplished by certified or registered mail, return receipt requested, or by personal service upon the agent to receive process as explained in § 582.201, or if no agent has been designated, then upon the head of the employee-obligor's employing agency. The designated agent shall note the date and time of receipt on the legal process.

(c) Parties bringing garnishment actions shall comply with the service of process provisions in this section. Service will not be effective where parties fail to comply with the service of process provisions of this section, notwithstanding whether the party bringing the garnishment action has complied with the service of process requirements of the jurisdiction issuing the legal process.

§ 582.203 Information minimally required to accompany legal process.

(a) Sufficient identifying information must accompany the legal process in order to enable processing by the agency. Parties seeking garnishment actions are, therefore, asked to provide the following identifying information concerning the employee-obligor:

(1) Full name;

(2) Date of birth;

(3) Employment number or social security number;

(4) Component of the agency for which the employee-obligor works;

(5) the official duty station or worksite; and

(6) home address.

(b) If the information submitted is not sufficient to identify the employee-obligor, the legal process shall be returned directly to the court, or other authority, with an explanation of the deficiency. However, prior to returning the legal process, if there is sufficient time prior to the time limits imposed in § 582.303, an attempt should be made to inform the party who caused the legal process to be served, or the party's representative, that it will not be honored unless adequate identifying information is supplied.

Subpart C—Compliance With Legal Process

§ 582.301 Suspension of payment.

Upon proper service of legal process as specified in §§ 582.202 and 582.203, the agency shall suspend, i.e., withhold, payment of such moneys for the amount necessary to permit compliance with the legal process in accordance with this part.

§ 582.302 Notification of employee-obligor.

(a) As soon as possible, but not later than 15 calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the employee-obligor, at his or her duty station or last known home address, written notice that such process has been served, including a copy of the legal process;

(b) The agency may provide the employee-obligor with the following additional information: (1) Copies of any other documents submitted in support of or in addition to the legal process;

(2) Notice: That the United States does not represent the interests of the employee-obligor in the pending legal proceedings; and

(3) Advice: That the obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert.

§ 582.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is effectively served with legal process, the agent shall respond within 30 calendar days, or within such longer period as may be prescribed by applicable State or local law, after the date valid service is made. The agent shall also respond within this time period to interrogatories which accompany legal process.

(b) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to the interrogatories within 30 calendar days, or within such longer period as may be prescribed by applicable State or local law, after receipt.

§ 582.304 Nonliability for disclosure.

(a) No agency employee whose duties include responding to interrogatories pursuant to § 582.303(b), shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made in connection with the carrying out of any duties pertaining directly or indirectly to answering such interrogatories.

(b) However, an agency would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.

§ 582.305 Honoring legal process.

(a) The agency shall comply with legal process, except where the process cannot be complied with because: (1) It is not regular on its face;

(2) The legal process would require the withholding of funds not deemed pay as described in § 582.102(a)(5);

(3) It does not comply with section 5520a of title 5 of the United States Code or with the mandatory provisions of this part; or

(4) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the agency.

(b) While an agency will not comply with legal process which, on its face, indicates that it has expired or is otherwise no longer valid, legal process will be deemed valid notwithstanding the fact that the underlying debt and/or the underlying judgment arose prior to the effective date of section 5520a of title 5 of the United States Code.

(c) While the filing of an appeal by an employee-obligor will not generally delay the processing of a garnishment action, if the employee-obligor establishes that the law of the jurisdiction which issued the legal process provides that the processing of the garnishment action will be suspended during an appeal, and if the employee-obligor establishes that he or she has filed an appeal, the employing agency shall comply with the applicable law of the jurisdiction and delay or suspend the processing of the garnishment action.

(d) Under the circumstances set forth in § 582.305 (a) or (b), or where the agency is directed by the Justice Department not to comply with the legal process, the agency shall respond directly to the court, or other authority, setting forth its reasons for non-compliance with the legal process. In addition, the agency shall inform the party who caused the legal process to be served, or the party's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or appears imminent, the agency shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, agencies which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(e) In the event that an agency is served with more than one legal process or garnishment order with respect to the same payments due or payable to the same employee, the agency shall satisfy such processes in priority based on the time of service: *Provided,* That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 582.402. Provided further, That processes which are not limited in time shall preserve their priority based on time of service until fully discharged.

(f) Legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662) for the enforcement of the employee's legal obligation to provide child support or make alimony payments, shall have priority over any legal process to which an agency is subject under this section.

(g) Neither the United States, any disbursing officer, nor any executive agency shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part. Where an agency initially determines that legal process should not be honored, if it subsequently determines that its initial determination was erroneous, it may correct its initial determination and honor the legal process. If an agency corrects an error or is required to do so by a court or other authority, under no circumstances will the agency be required to pay more than it if had originally honored the legal process.

(h) Agencies affected by legal process served under this part shall not be required to vary their normal pay or disbursement cycles to comply with the legal process. However, legal process, valid at the time of service, which is received too late to be honored during the disbursement cycle in which it is received, shall be honored, to the extent that the legal process may be satisfied, during the next disbursement cycle within the limits set forth in § 582.402. The fact that the legal process may have expired during this period would not relieve the agency of its obligation to honor legal process which was valid at the time of service. If, in the next disbursement cycle, no further payment will be due from the agency to the employee-obligor, the agency shall follow the procedures set forth in § 582.306.

(i) Agencies need not establish escrow accounts in order to comply with legal process. Therefore, even if the amount garnished by an agency in one disbursement cycle is not sufficient to

satisfy the entire indebtedness, the agency need not retain those funds until the amount retained would satisfy the entire indebtedness. On the contrary, agencies will, in most instances, remit the garnished amount after each disbursement cycle. Agencies need not pro-rate payments for less than a full disbursement cycle.

(j) If any agency receives legal process which is regular on its face, the agency shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the employee-obligor.

(k) At the discretion of the executive agency, the agency's administrative costs in executing a garnishment may be added to the garnishment amount and the agency may retain costs recovered as offsetting collections. An administrative fee may be assessed for each legal process that is received and processed by an agency.

(l) Where an employee-obligor establishes that he or she has filed a bankruptcy petition under section 301, 302, or 303 of title 11 of the United States Code, the agency would be required to comply with the automatic stay provision of the Revised Bankruptcy Act, section 362(a) of title 11 of the United States Code, and cease any garnishment action affecting the employee-obligor petitioner.

§ 582.306 Lack of entitlement by the employee-obligor to pay from the agency served with legal process.

(a) When legal process is served on an agency and the individual identified in the legal process as the employee-obligor is found not to be entitled to pay from the agency, the agency shall follow the procedures set forth in the legal process for that contingency or, if no procedures are set forth therein, the agency shall return the legal process to the court, or other authority from which it was issued, and advise the court, or other authority, that the identified employee-obligor is not entitled to any pay from the agency.

(b) Where it appears that the employee-obligor is only temporarily not entitled to pay from the agency, the court, or other authority, shall be fully advised as to why, and for how long, the employee-obligor's pay will not be garnished, if that information is known by the agency and if disclosure of that information would not be prohibited.

(c) In instances where an employee-obligor separates from employment with an agency that had been honoring a continuing legal process, the agency shall inform the party who caused the legal process to be served, or the party's representative, and the issuing court, or other authority, that the garnishment action is being discontinued. In cases where the employee-obligor has been employed by either another agency or by a private employer, and where this information is known by the agency, the agency shall provide the party with the designated agent for the new employing agency or with the name and address of the private employer.

Subpart D—Consumer Credit Protection Act Restrictions

§ 582.401 Aggregate disposable earnings.

In accordance with the Consumer Credit Protection Act, the *aggregate disposable earnings* under this part are the employee-obligor's pay less those amounts excluded in accordance with § 582.103.

§ 582.402 Maximum garnishment limitations.

Pursuant to section 1673(a)(1) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended) and the Department of Labor regulations at title 29, Code of Federal Regulations, part 870, the following limitations are applicable: (a) Unless a lower maximum limitation is provided by applicable State or local law, the maximum part of an employee-obligor's aggregate disposable earnings subject to garnishment to enforce any legal debt other than an order for child support or alimony, shall not exceed 25 percent of the employee-obligor's aggregate disposable earnings for any workweek. Furthermore, the following dollar limitations, which are contained in title 29 of the Code of Federal Regulations, part 870, must be applied in determining the garnishable amount of the employee's aggregate disposable earnings: (1) If the employee-obligor's aggregate disposable earnings for the workweek are in excess of 40 times the Fair Labor Standards Act (FLSA) minimum hourly wage, 25% of the employee-obligor's aggregate disposable earnings may be garnished. For example, when the FLSA minimum wage rate is $4.25 per hour, this rate multiplied by 40 equals $170.00 and thus, if an employee-obligor's disposable earnings are in excess of $170.00 for a workweek, 25% of the employee-obligor's disposable earnings are subject to garnishment.

(2) If the employee-obligor's aggregate disposable earnings for a workweek are less than 40 times the FLSA minimum hourly wage, garnishment may not exceed the amount by which the employee-obligor's aggregate disposable earnings exceed 30 times the current minimum wage rate. For example, at an FLSA minimum wage rate of $4.25 per hour, the amount of aggregate disposable earnings which may not be garnished is $127.50 [$4.25×30]. Only the amount above $127.50 is garnishable.

(3) If the employee-obligor's aggregate disposable earnings in a workweek are equal to or less than 30 times the FLSA minimum hourly wage, the employee-obligor's earnings may not be garnished in any amount.

(b) There is no limit on the percentage of an employee-obligor's aggregate disposable earnings that may be garnished for a State or local tax obligation or for bankruptcy purposes.

Subpart E—Implementation by Agencies

§ 582.501 Rules, regulations, and directives by agencies.

Appropriate officials of all agencies shall, to the extent necessary, issue implementing rules, regulations, and/or directives that are consistent with this part.

Appendix A to Part 582—List of Agents Designated To Accept Legal Process

(The agents designated to accept legal process are listed in appendix A to part 581. Appendix A to part 582 provides listings only for those executive agencies where the designations differ from those found in appendix A to part 581.)

I. Departments

Department of Defense, Defense Finance and Accounting Service, Cleveland Center, Office of General Counsel, Attention: Code L, P.O. Box 998002, Cleveland, OH 44199–8002, (216) 522–5301.

Agents for receipt of all legal process for all Department of Defense civilian employees except where another agent has been designated as set forth below.

For requests that apply to employees of the Army and Air Force Exchange Service or to civilian employees of the Defense Contract Audit Agency (DCAA) and the Defense Logistics Agency (DLA) who are employed outside the United States: See appendix A to part 581.

For requests that apply to civilian employees of the Army Corps of Engineers, the National Security Agency, the Defense Intelligence Agency, and non-appropriated fund civilian employees of the Air Force, serve the following offices:

Army Corps of Engineers, U.S. Army Corps of Engineers, Omaha District, Central Payroll Office, Attn: Garnishments, P.O. Box 1439 DTS, Omaha, NE 68101–1439.

National Security Agency, General Counsel, National Security Agency/

Central Security Service, 9800 Savage Rd., Ft. G. Mead, MD 20755–6000.

Defense Intelligence Agency, Office of General Counsel, Defense Intelligence Agency, Pentagon, 2E238, Washington, DC 20340–1029.

Air Force non-appropriated fund employees, Office of General Counsel, Air Force Services Agency, 10100 Reunion Place, suite 503, San Antonio, TX 78216–4138

For civilian employees of the Army, Navy and Marine Corps who are employed outside the United States, serve the following offices:

Army Civilian Employees Europe, 266th Theater Finance Command, ATTN: AEUCF–CPF, APO New York 09007–1037.

Army Civilian Employees in Japan, US Army F&AO Japan, Unit 45005, Camp Zama, APO AP 96343–0087.

Army Civilian Employees in Korea, Commander, 175th TFC (Korea), APO AP 96301–007361.

Army Civilian Employees in Panama, DCSRM Finance & Accounting Office, Unit 7153, ATTN: SORM–FAP–C, APO AA 34004–5000.

Navy and Marine Corps Civilian Employees Overseas, Director of the Office of Civilian Personnel Management, Office of the General Counsel, Navy Department, 800 N. Quincy St., Arlington, VA 22203–1998.

[FR Doc. 94–7233 Filed 3–28–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–72–AD; Amendment 39–8866; AD 94–07–08]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that requires structural inspections of older airplanes. This amendment is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design service goal. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This proposal relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 727 series airplanes, which indicate that, to assure long term continued operational safety, various structural inspections should be accomplished.

DATES: Effective April 28, 1994.

The incorporation by reference of Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program - Model 727," Revision G, dated March 5, 1993, listed in the regulations was approved previously by the Director of the Federal Register as of April 21, 1994 (59 FR 13442, March 22, 1994).

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

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes was published in the **Federal Register** on August 31, 1993 (58 FR 45863). That action proposed to require structural inspections of older airplanes.

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

One commenter supports the proposed rule.

Two commenters note errors in the Discussion section of the proposal in the description of Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program - Model 727," Revision G, dated March 5, 1993. Although the Discussion section does not reappear in the preamble to the final rule, the FAA takes this opportunity to correct the number of service bulletins referenced by the Boeing Document. There is a total of 17 service bulletins referenced by the Boeing Document: five service bulletins that describe inspections of the wings, six service bulletins that describe inspections of the fuselage, one service bulletin that describes inspections of the main landing gear door support fitting, four service bulletins that describe inspections of the empennage, and one service bulletin that describes inspections of the attach fittings on the center engine inlet duct housing.

One commenter requests that the FAA issue one rulemaking action that would combine the requirements of this proposal, which proposes to require the structural inspections listed in the Boeing Document, with the proposal to require the structural modifications listed in that Boeing Document. That rulemaking action was proposed in AD Docket 93–NM–73–AD (58 FR 45861, August 31, 1993). This commenter requests that these two rulemaking actions be combined with AD 90–06–09, Amendment 39–6488 (55 FR 8370, March 7, 1990), which references Revision C of the Boeing Document, dated December 11, 1989. Combining all of these actions into one AD would ease the operators' burden in tracking compliance and recordkeeping.

The FAA does not concur. The FAA's normal policy in this regard is that when an AD requires a substantive change, such as a change in the existing AD's requirements, the existing AD (90–06–09) is superseded by being removed from the system and a new AD added. However, to supersede the existing AD and replace it with a new one having a new AD number would serve no purpose in terms of the ability of affected operators to track compliance with the AD and maintain accurate records of compliance. In consideration of the consequent workload associated with revising maintenance records to enter new AD numbers to demonstrate compliance with requirements accomplished previously, the FAA has determined that a less burdensome approach is to issue a separate AD. This final rule is issued as a separate AD action since combining these rulemaking actions would necessitate recordkeeping changes to reflect new AD numbers. Furthermore, the FAA's intent in keeping the requirement to accomplish the inspections listed in the Boeing Document separated from the requirement to accomplish the modifications listed in the Boeing Document was to minimize the recordkeeping burden to the operators; i.e., operators will not be required to make recordkeeping changes to their inspection entries whenever revisions

are made to modification requirements and vice versa.

One commenter requests that the proposed compliance time for the repetitive inspections in paragraph (a) be revised to be consistent with those recommended in the Boeing Document. The FAA does not concur that any change is necessary. From this comment, the FAA concludes that this commenter may have mistakenly assumed that the proposal would have required that the repetitive inspections must be accomplished at the times specified in the corresponding service bulletins. Consequently, paragraph (a) of the final rule remains unchanged and states that repetitive inspections are to be accomplished "thereafter at intervals not to exceed those specified in the Boeing Document for each inspection." Furthermore, since the corresponding service bulletins have been revised to be consistent with the Boeing Document, the compliance times for the repetitive inspections are consistently defined in the final rule, the Boeing Document, and the corresponding service bulletins.

Several commenters request that proposed paragraphs (a) and (b) be revised to clarify that only the structural inspections listed in section 4 and appendices A.4 and B.4 of the Boeing Document must be accomplished. Since the proposal stated that the inspections were specified in "section 4 and appendices A. and B." of the Boeing Document, these commenters contend that the possibility exists for misinterpretation. The FAA concurs. The FAA finds that these commenters' proposal to reference the specific appendices of the Boeing Document (rather than the generalization cited in the proposal) would avoid any possibility for misinterpretation. Therefore, paragraphs (a) and (b) of the final rule have been revised accordingly.

The Air Transport Association of America, on behalf of one of its member operators, requests that the note following proposed paragraph (b)(2) be clarified. The commenter states that the term "phase-in period" was not adequately defined in the proposal and that it was not used in the Boeing Document, which was referenced in the proposal. Since some of the service bulletins that are referenced by the Boeing Document specify a "phase-in" time, while others do not, the commenter further requests that issuance of the final rule be delayed until such time that the 727 Structures Working Group of the Airworthiness Assurance Task Force has reconvened to resolve this issue. The FAA concurs that clarification is warranted; however, the FAA does not concur that delaying issuance of the final rule is necessary, since the following discussion, as well as the revised final rule, adequately defines "phase-in period." The FAA's intent in using the term "phase-in period" was to grant a "grace period" of 15 months to operators having airplanes that will soon exceed or that have already exceeded the threshold specified in the Boeing Document.

In light of this comment, the FAA has revised paragraph (b) of the final rule to clarify that, in those instances when a "phase-in period" is specified in any of the service bulletins referenced by the Boeing Document, the maximum initial inspection time is to be calculated using the "phase-in period" specified in the service bulletin and adding a date 15 months after the effective date of the AD. An example of this, although not specifically referred to as a "phase-in period", can be found in the Accomplishment Instructions of Boeing Service Bulletin 727–53–0041, Revision 6, dated September 5, 1991, which states, in part, that "airplanes having accumulated more than 16,000 flight cycles should be inspected within 3,000 flight cycles . . ." The "phase-in period" in this example is "within 3,000 flight cycles." Therefore, for the purposes of this AD, the maximum initial inspection time in this instance is 3,000 flight cycles measured from a date 15 months after the effective date of this AD.

However, in those instances when a "phase-in period" is not specified in any of the service bulletins referenced by the Boeing Document, the FAA's intent is to allow operators 15 months for planning purposes. In these instances, the maximum initial inspection time is 15 months after the effective date of this AD.

One commenter requests that the proposal be revised to permit deviations to the corrective actions required by proposed paragraph (c), and suggests that these be permitted to be accomplished in accordance with other FAA-approved methods, e.g., Structural Repair Manuals; Statement of Compliance with the Federal Aviation Regulations, FAA Form 8110–3; etc. The commenter's intent for requesting this change is to gain authorization to make minor deviations, such as oversizing fasteners and substituting materials, without obtaining approval for an alternative method of compliance for each deviation. The commenter states that safety could be ensured with repetitive inspections until such time that the corrective action specified in the corresponding service bulletin referenced by the Boeing Document could be accomplished during regularly scheduled maintenance, so as to minimize the impact to operators' revenue bearing passenger service. The FAA does not concur. The FAA has determined that the Manager, Seattle Aircraft Certification Office, should approve any such deviations to the AD's requirements. Given that possible new relevant issues might be revealed during this process, it is imperative that the FAA, at this level, have such feedback. Only by reviewing deviation approvals can the FAA be assured of this feedback and of the adequacy of the repair methods. However, when the FAA has obtained an adequate sampling of the quality, type, and extent of repairs being made as a result of this AD, the FAA anticipates that it will, at some future date, authorize manufacturer's Designated Engineering Representatives to approve minor deviations to the modifications required by this final rule, as it has done in the past regarding the requirements of AD 90–06–09, and other aging fleet AD's. Furthermore, affected operators may request approval to use an alternative method of compliance to the corrective actions specified in the corresponding service bulletins, under the provisions of paragraph (e) of the final rule.

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

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 688 airplanes of U.S. registry will be affected by this AD, that it will take approximately 512 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,374,080, or $28,160 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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:

94–07–08 Boeing: Amendment 39–8866. Docket 93–NM–72–AD.

Applicability: Model 727 series airplanes, as listed in Boeing Document D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the airplane, accomplish the following:

(a) Accomplish the inspections specified in Section 4 and Appendices A.4 and B.4 of Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993, within the times specified in paragraph (b) of this AD, and thereafter at intervals not to exceed those specified in the Boeing Document for each inspection.

(b) The maximum initial inspection times for the inspections contained in Section 4 and Appendices A.4 and B.4 of Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993, shall be prior to the later of the times specified in either paragraph (b)(1) or (b)(2) of this AD:

(1) The maximum initial inspection time for the inspection shall be prior to the threshold for the inspection time specified in the Boeing Document, measured as a total (flight cycles or time-in-service, as appropriate) accumulated on the airplane; or

(2) The maximum initial inspection time shall be prior to the time specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) If a phase-in period has been specified in the service bulletin: The maximum initial inspection time shall be calculated by adding the phase-in period for the inspection specified in the Boeing Document to a date 15 months after the effective date of this AD.

(ii) If a phase-in period has not been specified in the service bulletin: The maximum initial inspection time shall be within 15 months after the effective date of this AD.

Note 1: For the purposes of this AD, the "phase-in period" is defined as the allowable period to accomplish the initial inspection when the required threshold specified in paragraph (b)(1) of this AD is imminent or has elapsed.

(c) If any discrepant condition identified in the service bulletins (that are specified in the Boeing Document) is found as a result of the inspections required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletins.

(d) The terminating action for each inspection required by paragraph (a) of this AD consists of the accomplishment of the modification specified in the corresponding service bulletin.

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

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

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

(g) The inspections shall be done in accordance with Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993. The incorporation by reference of this document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 21, 1994 (59 FR 13442, April 22, 1994). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 28, 1994.

Issued in Renton, Washington, on March 23, 1994.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–7319 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–AGL–24]

Establishment of Class E Airspace; St. James, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at St. James, Michigan. A nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Beaver Island Airport. Controlled Airspace extending from 700 to 1200 feet above ground level is needed to contain instrument flight rules (IFR) operations at the airport. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., April 28, 1994.

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

SUPPLEMENTARY INFORMATION:

History

On December 27, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at St. James, MI (58 FR 68329). An Automated Weather Observation System (AWOS) is installed at the Beaver Island Airport, St. James, Michigan that will continuously provide weather data, and a non-federal NDB SIAP has been established. Controlled airspace to the

surface is needed to contain IFR operations at the airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

A minor change has been made to the legal description to more accurately state the distances. Other than this editorial change, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E5 airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which are incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E5 airspace at St. James, MI, to provide controlled airspace to the surface for aircraft executing the NDB SIAP into the Beaver Island Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration 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 Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

AGL MI E5 St. James, MI [New]

Beaver Island Airport, MI
(lat. 45°41'35"N., long. 85°33'50"W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Beaver Island Airport and within 2.5 miles each side of the 090° bearing of the Beaver Island Airport extending from the 6.2-mile radius to 7 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94–7296 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 94–5]

Country of Origin Marking for Packaged Frozen Produce; Suspension of Date for Compliance

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of suspension of compliance date.

SUMMARY: This document gives notice that Customs is suspending the compliance date for T.D. 94–5, which was published in the **Federal Register** (58 FR 68743) on December 29, 1993. T.D. 94–5 was a final interpretive rule concerning the country of origin marking requirements for retail packages containing imported frozen produce. As numerous companies and trade organizations have objected that the compliance date set forth in that document is impracticable, Customs is suspending the compliance date, pending a determination based on comments received in response to another document published in today's **Federal Register**.

EFFECTIVE DATE: This suspension of the May 8, 1994 compliance date for T.D. 94–5 is effective March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Value and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–7010.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1993, pursuant to section 516 of the Tariff Act of 1930, as amended, Customs issued T.D. 94–5, a Decision and Final Interpretive Rule concerning the country of origin marking requirements for retail packages containing imported frozen produce. 58 FR 68743 (December 29, 1993). In T.D. 94–5, Customs reversed a previous determination and ruled that country of origin marking must appear on the front panel of such packages in specified type face and size. The legally effective date of the determination was February 11, 1994. However, parties adversely affected by the final interpretive rule were allowed until May 8, 1994, to bring their imported frozen packaging into compliance.

Numerous individual companies and several trade organizations objected that even this extended date for compliance is impracticable, and have requested suspension of the May 8, 1994, compliance date.

In accordance with these requests, Customs is suspending the May 8, 1994, effective date for parties adversely affected by compliance obligations under T.D. 94–5. In a companion document to be published today in the **Federal Register**, Customs is giving public notice of its intention to adopt a new compliance date of January 1, 1995. Public comment is being requested on both the date for compliance with the requirement to place country of origin marking on the front panels of produce packaging, and on the specifications regarding type size and style set forth in T.D. 94–5.

Authority

This notice is published in accordance with 19 U.S.C. 1516 and parts 134 and 175, Customs Regulations (19 CFR part 134; 19 CFR part 175).

Drafting Information

The principal drafter of this document was Robert Cascardo, Value and Marking Branch, U.S. Customs Service.

Personnel from other Customs offices participated in its development.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: March 21, 1994.

John P. Simpson.

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–7396 Filed 3–24–94; 4:33 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of the Commissioner

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the delegations of authority regulations that cover general redelegations of authority from the Commissioner of Food and Drugs to other officers of FDA. The amendment delegates the FDA Chief Mediator and Ombudsman authority to consider and decide requests under certain circumstances for waivers or reduction of user fees and the Deputy Commissioner for Operations is delegated authority to hear and decide appeals related to user fee waivers or reductions. This action sets forth the agency's procedures that govern requests for waivers or reductions as well as for reconsideration or appeals.

EFFECTIVE DATE: March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.20 *General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration* (21 CFR 5.20) in order to redelegate under § 5.20(h) the Commissioner's authorities under the Prescription Drug User Fee Act of 1992, as amended hereafter, under section 736(d) (21 U.S.C. 379h(d)) dealing with authority to waive or reduce user fees. The Chief Mediator and Ombudsman will serve as User Fee Waiver Officer to consider and decide requests under certain circumstances for waivers of or reductions in user fees. The User Fee Waiver Officer's authority may be redelegated to the Deputy, Chief Mediator and Ombudsman, without further redelegation. The Deputy Commissioner for Operations will serve as the User Fee Appeals Officer to hear and decide appeals under certain circumstances of the User Fee Waiver Officer's decisions.

FDA has established procedures governing requests for waivers or reductions as well as for reconsideration or appeal within the agency of an adverse decision relating to a waiver or reduction request. If the User Fee Waiver Officer fully or partially denies a request for a fee waiver or reduction, the requestor may ask the User Fee Waiver Officer to reconsider the decision. As an additional safeguard, if the request is denied again on reconsideration, the requestor may appeal the dehial to the User Fee Appeals Officer. The User Fee Appeals Officer's decision will constitute final agency action on that request.

Further redelegation of these authorities is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.20 is amended by redesignating paragraph (h) as paragraph (i) and by adding a new paragraph (h) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

* * * * *

(h) The Chief Mediator and Ombudsman is designated as User Fee Waiver Officer and is authorized to perform all of the functions of the Commissioner under the Prescription Drug User Fee Act of 1992 (21 U.S.C. 379h(d)), as amended hereafter, relating to waiver or reduction of user fees. The User Fee Waiver Officer's authority may be redelegated to the Deputy, Chief Mediator and Ombudsman, without further redelegation. The Deputy Commissioner for Operations is designated as User Fee Appeals Officer and authorized to hear and decide user fee waiver appeals. The decision of the User Fee Appeals Officer will constitute final agency action on such matters.

* * * * *

Dated: March 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–7343 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 172, 176, 177, 178, 179, and 184

[Docket No. 94F–0042]

Food Additives; Substances Generally Recognized as Safe; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive and generally recognized as safe (GRAS) regulations to correct certain typographical and other inadvertent errors. This action is being taken to improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: FDA has discovered that certain errors have become incorporated into the agency's codified regulations on food additives and direct food substances affirmed as GRAS. FDA is correcting these errors. These corrections are nonsubstantive,

and therefore no new rulemaking is necessary. This final rule addresses the following errors in the regulations:

1. In 21 CFR 172.320(b)(1), in the list of amino acids, the entry "L-Methionine" appears twice. The correct list should include one entry for "DL-Methionine" and one entry for "L-Methionine." This error was inadvertently introduced in the 1985 edition of title 21 of the Code of Federal Regulations (title 21). FDA is correcting this error.

2. In the table in 21 CFR 176.170(a)(5), the entry "*N,N*-Bis(2-hydroxyethyl)alkyl (C_{12}–C_{16})amide" is incorrect. The correct entry is "*N,N*-Bis(2-hydroxyethyl)alkyl (C_{12}–C_{18})amide." This error was inadvertently introduced in the 1977 edition (and recodification) of title 21. FDA is correcting this error.

3. In 21 CFR 177.1610(a), the second sentence reads "* * * as determined by the method in contact with all types of food, except that when used in contact with fatty food of Types III, IV–A, V, VII–A, and IX described in Table 1 of § 176.170(c) of this chapter, chlorinated polyethylene is limited to use only as a modifier admixed at levels not exceeding 15 weight percent in plastic articles prepared from polyvinyl chloride and/or from vinyl chloride copolymers complying with § 177.1980." The second sentence in paragraph (a) should read: "* * * as determined by the method described in § 177.1520(d)(3)(ii)." In addition, this sentence should be followed by paragraph (b), which reads:

Chlorinated polyethylene may be used in contact with all types of food, except that when used in contact with fatty food of Types III, IV–A, V, VII–A, and IX described in Table 1 of § 176.170(c) of this chapter, chlorinated polyethylene is limited to use only as a modifier admixed at levels not exceeding 15 weight percent in plastic articles prepared from polyvinyl chloride and/or from vinyl chloride copolymers complying with § 177.1980.

This error was inadvertently introduced in the 1979 edition of title 21. FDA is correcting this error.

4. In the table in 21 CFR 178.3570(a)(3), the entry for "Phosphoric acid, mono- and diisooctyl esters, reacted with *tert*-alkyl and (C_{11}–C_{14}) primary amines" is incorrect. The correct entry is "Phosphoric acid, mono- and diisooctyl esters, reacted with *tert*-alkyl (C_{12}–C_{14}) primary amines." This error was inadvertently introduced when an amendment to 21 CFR 178.3570, which was published in the **Federal Register** of December 11, 1985 (50 FR 50611 at 50612), and added this entry, was incorporated into the 1986 edition of title 21. FDA is correcting this error.

5. In 21 CFR 179.45(b)(4)(i), (b)(6)(i), and (d)(2)(ii) through (d)(2)(iv), the cross-reference to "paragraph (c)(2)(i) of this section" is incorrect. The correct cross-reference is "paragraph (d)(2)(i) of this section." This error was inadvertently introduced when an amendment to 21 CFR 179.45, which was published in the **Federal Register** of February 21, 1989 (54 FR 7404 at 7405), and redesignated paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and added a new paragraph (c), was incorporated into the 1990 edition of title 21. FDA is correcting this error.

6. In 21 CFR 184.1139, in the second sentence in paragraph (c)(2), the word "good" was inadvertently added between "water" and "additive" when FDA amended the agency's GRAS regulations by adding a new § 184.1139, which was published in the **Federal Register** of November 18, 1983 (48 FR 52438 at 52440). FDA is correcting this error.

Publication of this document constitutes final action on these changes. FDA has determined that notice and public comment under section 409 of the Federal Food, Drug, and Cosmetic Act are unnecessary because these amendments to the agency's regulations simply correct various inadvertent errors introduced during the publication or republication process. By correcting these inadvertent errors, those who rely on these regulations (including the regulated industry) will be better able to understand and adhere to the requirements of the regulations. Accordingly, FDA concludes that good cause exists for proceeding directly to final rules here.

List of Subjects

21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

21 CFR Parts 176, 177, and 178

Food additives, Food packaging.

21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 184

Food ingredients.

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 parts 172, 176, 177, 178, 179, and 184 are amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e)

§ 172.320 [Amended]

2. Section 172.320 *Amino acids* is amended in paragraph (b)(1) by removing the first entry for "L-Methionine" and adding in its place "DL-Methionine".

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

3. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

§ 176.170 [Amended]

4. Section 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* is amended in the table in paragraph (a)(5), under the heading "List of Substances," in the entry for "*N,N*-Bis(2-hydroxyethyl)alkyl (C_{12}–C_{16})amide" by removing the "C_{16}" and adding in its place "C_{18}".

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

5. The authority citation for 21 CFR part 177 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).

§ 177.1610 [Amended]

6. Section 177.1610 *Polyethylene, chlorinated* is amended in paragraph (a), in the second sentence, by removing the phrase "as determined by the method in contact with all types of food, except that when used in contact with fatty food of Types III, IV–A, V, VII–A, and IX described in Table 1 of § 176.170(c) of this chapter, chlorinated polyethylene is limited to use only as a modifier admixed at levels not exceeding 15 weight percent in plastic articles prepared from polyvinyl chloride and/or from vinyl chloride copolymers complying with § 177.1980." and adding in its place the phrase "as determined by the method described in § 177.1520(d)(3)(ii)."; and

by adding new paragraph (b) to read as follows:

§ 177.1610 Polyethylene, chlorinated.

* * * * *

(b) Chlorinated polyethylene may be used in contact with all types of food, except that when used in contact with fatty food of Types III, IV–A, V, VII–A, and IX described in Table 1 of § 176.170(c) of this chapter, chlorinated polyethylene is limited to use only as a modifier admixed at levels not exceeding 15 weight percent in plastic articles prepared from polyvinyl chloride and/or from vinyl chloride copolymers complying with § 177.1980.

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

7. 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).

§ 178.3570 [Amended]

8. Section 178.3570 *Lubricants with incidental food contact* is amended in the table in paragraph (a)(3), under the heading "Substances," in the entry for "Phosphoric acid, mono- and diisooctyl esters, reacted with *tert*-alkyl and (C_{11}–C_{14}) primary amines" by removing "and (C_{11}-C_{14})" and adding in its place "(C_{12}-C_{14})".

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

9. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: Secs. 201, 402, 403, 409, 703, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 373, 374).

§ 179.45 [Amended]

10. Section 179.45 *Packaging materials for use during the irradiation of prepackaged foods* is amended in paragraphs (b)(4)(i), (b)(6)(i), and (d)(2)(ii) through (d)(2)(iv) by removing "(c)(2)(i)" and adding in its place "(d)(2)(i)"wherever it appears.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

11. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

§ 184.1139 [Amended]

12. Section 184.1139 *Ammonium hydroxide* is amended in paragraph (c)(2), in the second sentence, by removing the word "good" the first time it appears.

Dated: March 22, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–7248 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 9

[T.D. ATF–355; Re: Notice No. 742 & 745]

RIN 1512–AA31

Wine Labeling Amendments (88F–221P)

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

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the wine labeling regulations to allow the use of multicounty or multistate appellations of origin for other than grape wine; allow the use of the designation "other than standard" on a wine label; allow the use of a vineyard, orchard, farm or ranch name on a wine label; allow more than three grape varieties on a wine label; and revise the mailing address for obtaining U.S.G.S. maps.

EFFECTIVE DATE: April 28, 1994.

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

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), parts 4 and 9. The last multiple issue revision of the wine labeling regulations was Treasury Decision ATF–53, 43 FR 37672 (August 23, 1978), which was effective September 22, 1978.

On June 19, 1992, ATF published Notice No. 742 (57 FR 27401) proposing wine labeling issues which were brought to our attention over a period of several years by industry members or other groups. The original 30 day comment period was extended an additional 30 days by the publication of Notice No. 745 (57 FR 33139).

Wine Labeling Amendments Proposed in Notice 742

1. Broadened Use of the "Estate Bottled" Designation

The proposed revision of 27 CFR 4.26 would (1) allow a bonded wine premises proprietor located outside of a viticultural area to use the "Estate bottled" designation for wine derived from primary winemaking material produced on land owned or controlled by the proprietor which is located contiguous to the proprietor's bonded wine premises, (2) allow proprietors producing wine from fruit and agricultural products other than grapes to use the "Estate bottled" designation on their wines, and (3) allow proprietors who have more than one bonded wine premises in the same viticultural area to use the "Estate bottled" designation for wine which prior to bottling was transferred in bond between their bonded wine premises located in the same viticultural area.

2. Harvest Year Designations for Fruit, Berry and Agricultural Wines

The proposed addition of 27 CFR 4.28 would allow a harvest year designation for citrus fruit wines, other fruit and berry wines, and agricultural wines made in accordance with the standards prescribed in classes 4, 5 and 6 of 27 CFR 4.21.

3. Expanded Use of a Viticultural Area Designation

The proposed amendment of section 4.25a(e)(3)(iv) would allow wine fully finished outside a viticultural area from where the grapes were grown to be labeled with a viticultural area designation as long as such wine was finished within the United States.

4. Multicounty or Multistate Appellations of Origin for Other Than Grape Wine

The proposed revision of 27 CFR 4.25a(c) and (d) would allow proprietors to use multicounty and multistate appellations on fruit or other agricultural product wine labels instead of just being allowed for grape wines

5. Designation "Other Than Standard Wine" on a Wine Label

The proposed amendment of 27 CFR 4.21 would allow either the label designation "Other than Standard" or "Substandard" on a wine label for wines with the current standard of identity for "substandard" wine.

6. Use of a Vineyard, Orchard, Farm or Ranch Name on a Wine Label

The proposed amendment to 27 CFR 4.39 would allow the use of a vineyard, orchard, farm or ranch name on a wine label if 95 percent of the primary winemaking material used to produce the wine came from such named place.

7. Brand Names With a Varietal (Grape Type) Name

The proposed revision of 27 CFR 4.23a. would allow a proprietor to use a grape variety name in a brand name if such wine meets the varietal (grape type) labeling requirements.

8. More Than Three Grape Varieties on a Wine Label

The proposed revision of 27 CFR 4.23(a) would allow for more than three grape variety names on a wine label.

9. Geographic Brand Names of Viticultural Area Significance

The proposed revision of 27 CFR 4.39 would provide that a brand name of viticultural area significance, which cannot meet the appellation of origin requirements for the geographic area named, may continue to be used if the brand name was approved by a certificate of label approval prior to the regulatory establishment of the viticultural area bearing that name.

10. Changing the Address of Where To Obtain U.S.G.S. Maps for Viticultural Areas

U.S.G.S. maps for describing the boundaries of viticultural areas are now obtained only from the Denver, Colorado office of the U.S. Geological Survey. Sections in 27 CFR parts 4 and 9 would be amended to reflect the change in where U.S.G.S. maps may be obtained.

Comments on Notice No. 742

ATF received 42 written comments on Notice No 742. Three of the comments were from wine industry trade associations; Wine Institute writing on behalf of 475 California winery members, Association of American Vintners writing on behalf of approximately 300 wineries located in 33 States, and Federation des Exportateurs de Vins et Spiritueux de France (FEVS), a French national trade association representing exporters of wine and spirits.

Estate Bottled Designation, Harvest Dates, Varietal Brand Names, Viticultural Area Designations, and Geographical Brand Names

The Wine Institute and FEVS, and a few other commenters, strongly opposed the five wine labeling amendments proposed in Notice No. 742 which would: (1) Broaden use of the "Estate bottled" designation, (2) allow the use of a harvest year designation for fruit, berry and agricultural wines, (3) allow the use of a brand name with a varietal (grape type) name, (4) expand the use of a viticultural area designation, and (5) address the use of a geographic brand name which has a viticultural area significance. The primary reason for the Wine Institute's opposition was the lack of information available for their members to fully consider the impact of these major proposals. They concluded that after more information on the complex proposals is obtained additional time and public hearings will be necessary to allow all interested parties to participate in the rulemaking process. The Wine Institute requested a public hearing on the proposed amendment on geographic brand names as well as ATF's procedures to revoke certificates of label approval. The question of ATF's procedures on revoking label approvals is the subject of a separate rulemaking project. The FEVS opposition centered on the impact the proposals might have on the European Community wine negotiations with the United States. Other than the Association of American Vintners general support, there were only a few favorable comments for the five major proposals.

While the comments indicate both pro and con views, ATF agrees that more information on the five wine labeling issues should be obtained and presented for comment before making any final decisions. Therefore, we have decided to include these issues along with the comments received concerning these issues and other issues raised in the comments in a forthcoming major project to review and revise all of the FAA Act labeling and advertising regulations.

Designation "Other Than Standard Wine" on a Wine Label

There were 30 comments received in favor of allowing the use of the designation "other than standard" as an alternative to the designation "substandard" on a wine label. There was one comment from a wine industry member opposed to the proposal. This proposal was in response to a petition from a winemaker in Michigan who produces quality wines from high acid fruit. Currently, the designation "other than standard wine" may be used on wine labels where such wine is sold intrastate only. Due to a very high acid level in the winemaking material used to produce some wines, ameliorating material in excess of limitations allowed for standard wine is sometimes necessary. Such wines are permitted in the Internal Revenue Code to be produced as other than standard wine, but these wines are required to be labeled as substandard wine under 27 CFR part 4. The commenter opposed to the proposal believed that the term "other than standard" would not convey to the consumer that the wine is below the quality level of a standard wine. The petitioner and others in favor of the proposal wanted the revision because "substandard" was too derogatory a designation for quality wines produced from high acid fruit. Additionally, the commenters in favor wanted the designation "substandard" to apply to wines that have a volatile acidity in excess of the maximum prescribed by regulation. ATF is not adopting this suggestion because we have not experienced any interest by the wine industry in producing a wine with an excess volatile acidity. ATF is adopting the use of "other than standard wine" on a wine label as proposed because we do not believe such a change will result in a jeopardy to the revenue or cause consumer deception or consumer confusion.

Vineyard, Orchard, Farm or Ranch Names

Section 4.39(m) proposed that the name of a vineyard, orchard, farm or ranch may be used on a wine label if at least 95 percent of the wine in the container was produced from primary winemaking material grown on the named vineyard, orchard, farm or ranch. While the Wine Institute commented in favor of this proposal, they were concerned about adequate safeguards to protect trademark rights to such brand names. They questioned the proposals effect on the requirements and conditions for the use of a brand name that contains a named vineyard, orchard, farm or ranch, particularly when the brand name has no known or approved geographical or viticultural area significance. They also asked about instances when a brand name that may start out with no "viticultural significance" may later acquire "viticultural significance" long after it has been a recognized brand name and trademark. Section 4.39(i)(3) provides

that a name has viticultural significance if the Director so finds. Thus a brand name containing the name of a vineyard, orchard, farm or ranch is subject to scrutiny under § 4.39(i)(1) only in cases where the Director determines that the particular name of the vineyard, orchard, farm or ranch has viticultural significance.

A clarifying phrase was added to the proposed § 4.39(m) to state that brand name requirements of sections §§ 4.33(b) and 4.39(i) apply if the name of a vineyard, orchard, farm or ranch is used in the brand name and not when such name is used as additional information.

Other Proposals

There were few comments concerning the other proposals, allowing the use of multicounty or multistate appellations of origin for other than grape wine, revising the mailing address for obtaining U.S.G.S. maps, and allowing more than three grape varieties on a wine label. ATF is adopting these 3 changes in 27 CFR Part 4 as proposed because we do not believe that the changes result in a jeopardy to the revenue or cause consumer deception or consumer confusion.

Executive Order 12866

It has been determined that this document is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this Treasury decision is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Any benefit derived by a small winemaker using the new options provided by this rule will be the result of the winemaker's own promotional efforts and consumer acceptance of the specific product. Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final rule was submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3504(h)).

The estimated average burden associated with this collection of information is 0 hours per respondent or recordkeeper because this requirement is usual and customary for wine producers.

Drafting Information

The author of this document is Coordinator James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Part 4—Labeling and Advertising of Wine and Part 9—American Viticultural Areas are amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The heading of § 4.21(h) is revised to read as set forth below and paragraph (h)(2) of the section is amended by adding the phrase "or 'Other than standard wine'" immediately after the phrase "'Substandard wine'":

§ 4.21 The standards of identity.

* * * * *

(h) *Class 8; imitation and substandard or other than standard wine.*

* * * * *

Par. 3. In the heading and the first sentence of § 4.23a(d) introductory text remove the word "three" and add, in its place, the word "more."

Par. 4. Section 4.25a is amended by revising paragraphs (c), (d)(1) and (e)(2)(v) as follows:

§ 4.25a Appellations of origin.

* * * * *

(c) *Multicounty appellations.* An appellation of origin comprising two or no more than three counties in the same State may be used if all of the fruit or other agricultural products were grown in the counties indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each county is shown on the label with a tolerance of plus or minus two percent.

(d) *Multistate appellations.* * * *

(1) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus two percent;

* * * * *

(e) *Viticultural area.* * * *

(2) *Establishment of American viticultural areas.* * * * (v) a copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked. (For U.S.G.S. maps, write the U.S. Geological Survey, Branch of Distribution, Box 25286, Federal Center, Denver, Colorado 80225. If the map name is not known, request a map index by State.)

* * * * *

Par. 5. Section 4.39 is amended by adding a new paragraph (m) to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(m) *Use of a vineyard, orchard, farm or ranch name.* When used in a brand name, a vineyard, orchard, farm or ranch name having geographical or viticultural significance is subject to the requirements of §§ 4.33(b) and 4.39(i) of this part. Additionally, the name of a vineyard, orchard, farm or ranch shall not be used on a wine label, unless 95 percent of the wine in the container was produced from primary winemaking material grown on the named vineyard, orchard, farm or ranch.

PART 9—[AMENDED]

Par. 6. The authority citation for 27 CFR part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 7. Section 9.3(b)(5) is revised to read as follows:

§ 9.3 Relation to Parts 4 and 71 of this chapter.

* * * * *

(b) * * *

* * * * *

(5) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked. (For U.S.G.S. maps, write the U.S. Geological Survey, Branch of Distribution, Box 25286, Federal Center, Denver, Colorado 80225. If the map

name is not known, request a map index by State.)

Signed: February 24, 1994.

Daniel R. Black,

Acting Director.

Approved: March 15, 1994.

John P. Simpson,

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

[FR Doc. 94–7275 Filed 3–28–94; 8:45 am]

BILLING CODE 4810–31–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Virginia Council on Human Rights

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges within their jurisdictions. Publication of this amendment effectuates the designation of the Virginia Council on Human Rights as a 706 Agency.

EFFECTIVE DATE: March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Boyce Nolan, Equal Employment Opportunity Commission, Office of Program Operations, Charge Resolution Review Program, 1801 L Street NW., Washington, DC 20507, Telephone (202) 663–4856.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

Accordingly, title 29, chapter XIV, part 1601 of the Code of Federal Regulations is amended as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

2. Section 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * *

Virginia Council on Human Rights

* * * * *

Signed at Washington, DC this 21st day of March 1994.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 94–7359 Filed 3–28–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of State Plan Supplements

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; Approval of State plan supplements.

SUMMARY: Section 18 of the Occupational Safety and Health Act of 1970 (the Act) requires States operating approved State occupational safety health programs to remain at least as effective as the Federal Occupational Safety and Health Administration's (OSHA) program. The Omnibus Budget Reconciliation Act of 1990, which was enacted on November 5, 1990, amended section 17 of the Act to provide for increased penalty levels for violations of the Act. (The revised penalty levels were implemented on March 1, 1991). As a result of this amendment to the Act. 29 CFR 1953.23 requires State plan States to effect the necessary statutory changes to their own occupational safety and health legislation to adopt new State penalty authority equivalent to the Federal seven-fold penalty increase. This document approves the adoption by 23 State plans of their own statutory authority equivalent to Federal OSHA's seven-fold penalty increase.

EFFECTIVE DATE: March 29, 1994.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8184.

SUPPLEMENTARY INFORMATION:

A. Background

Part 1953 of this chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

An amendment to section 17 of the Occupational Safety and Health Act providing for increased penalty levels for violations of the Act, was signed into law on November 5, 1990. Omnibus Budget Reconciliation Act of 1990, Public Law 101–552 section 3101 (1190). (The revised levels were implemented Federally on March 1, 1991.) As a result of this amendment to the Act, 29 CFR 1953.23 and OSHA Instruction STP 2–1.163, dated May 13, 1991, Revised Federal Penalty Levels, State plan States were required to effect the necessary statutory changes to their occupational safety and health legislation to reflect the new Federal penalty maximums of $7,000 for serious, other-than-serious, failure to abate, and posting violations, and $70,000 for willful and repeat violations; as well as the $5,000 floor for willful violations.

Twenty-three State plan States have revised their legislation to substantially reflect OSHA's new penalty system. Oregon's revised legislation includes all provisions, except, through a legislative drafting error, revision of the penalty for posting violations. Legislation to correct this omission will be introduced during the State's 1995 legislative session.

Therefore, this approval action does not extend to Oregon's posting violation penalty authority. The twenty-three States are:

State	Statutory citation No.	Effective date	Implementation date
Alaska	AS Section 18.60.095	09/20/92	09/20/92
Arizona	Labor Code Sec. R–13–602	09/28/92	09/29/92
California	Title 8, LC Sec. 6317–6434	10/05/91	06/01/92
Hawaii	HRS 396–10	06/01/92	06/01/92
Indiana	INOSHAct25.IC22–8–1.1–27.1	10/01/91	10/01/91
Iowa	IOSHAct CH88.14	04/17/92	04/17/92
Kentucky	Labor Laws 338.991	07/15/92	07/15/92

State	Statutory citation No.	Effective date	Implementation date
Maryland	MDOSH Law 5–810	01/01/92	01/22/92
Michigan	MIOSHAct 408.035	04/01/92	04/01/92
Minnesota	MNOSH 182.666	08/01/91	10/01/91
Nevada	NRS618.635–618.675	07/05/91	07/05/91
New Mexico	NM OHSAct Sec. 50–9–24	07/01/92	07/01/92
N. Carolina	Gen.Stat.95–138	01/01/92	01/01/92
Oregon	ORS Sec. 654.086	09/29/91	10/01/92
Puerto Rico	PROSHAct No. 16–Sec. 25	08/25/91	09/01/91
S. Carolina	Code of Laws 41–15–320	04/24/91	10/01/91
Tennessee	Codes Annotated 50–3–402	07/01/91	07/01/91
Utah	CH9, UOSH Act 35–9–21	04/29/91	04/29/91
Vermont	VTOSHAct,Title 21,CH3,Sec. 210	05/03/91	07/01/91
Virgin Is	VIAct,No.5819 Title 24, Sec.44	10/20/92	10/20/92
Virginia	VA Code 5–810	07/01/92	07/01/92
Washington	RCW Sec. 49.17.180	07/28/91	03/16/92
Wyoming	WYOSHAct 27–11–107	03/19/92	03/19/92

Under current law, State plan States may, but are not required to, have comparable monetary penalty provisions for their public (State and local government) sector programs. Two public employee only plan States (New York and Connecticut) have chosen not to incorporate the new higher penalty system into their occupational safety and health programs. Connecticut will continue to assess penalties for public sector violations at the lower levels. New York assesses penalties for failure to abate violations only and will continue to do so.

B. Issues for Determination

Having reviewed the States' plan change supplements in comparison to the Federal change, it has been determined that the States' supplemental changes to their respective statutes are identical to the comparable Federal legislative amendments and, accordingly, should be approved.

C. Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws for the following reasons:

1. The States' legislative changes are substantially equivalent to Federal statutory changes which were enacted by Congress on November 5, 1990.

2. The States' plan changes were adopted in accordance with the procedural requirements of State law and, therefore, no further public comment is required.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667): 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

Signed the 15th day of March, 1994, in Washington, DC.

Joseph A. Dear,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, for the reasons set forth in the preamble, 29 CFR Part 1952 (sections C through F, I through K, N through U, W, Y, Z, BB through FF) is hereby amended as follows:

1. The authority citation for part 1952 for the States mentioned below continues to read as follows:

Authority: Secs. 8,18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 1–90 (55 FR 9033), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. Subpart C, South Carolina, is amended by adding § 1952.97 to read as follows:

§ 1952.97 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved South Carolina's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

3. Subpart D, Oregon: § 1952.105 is amended by adding paragraph (e) to read as follows:

§ 1952.105 Changes to approved plans.

* * * * *

(e) *Legislation.* (1) On March 29, 1994, the Acting Assistant Secretary approved Oregon's revised statutory penalty levels as enacted subject to further action by the State in 1995 to correct the State's omission of revisions of the penalty for posting violations. Aside from posting penalties, Oregon's revised penalty levels are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

4. Subpart E, Utah: § 1952.117 is amended by adding paragraph (a)(3) to read as follows:

§ 1952.117 Changes to approved plans.

* * * * *

(a) *Legislation.*

* * * (3) On March 29, 1994, the Assistant Secretary approved Utah's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

* * * * *

5. Subpart F, Washington: § 1952.125 is amended by adding paragraph (c) to read as follows:

§ 1952.125 Changes to approved plans.

* * * * *

(c) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Washington's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

6. Subpart I, North Carolina, is amended by adding § 1952.157 to read as follows:

§ 1952.157 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved North Carolina's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

7. Subpart J, Iowa, is amended by adding § 1952.167 to read as follows:

§ 1952.167 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Iowa's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of

the Act as amended on November 5, 1990.

8. Subpart K, California: § 1952.175 is amended by adding paragraph (i) to read as follows:

§ 1952.175 Changes to approved plans.

* * * * *

(i) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved California's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

9. Subpart N, Minnesota, is amended by adding § 1952.207 to read as follows:

§ 1952.207 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Minnesota's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

10. Subpart O, Maryland, is amended by adding § 1952.217 to read as follows:

§ 1952.217 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Maryland's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

11. Subpart P, Tennessee, is amended by adding § 1952.227 to read as follows:

§ 1952.227 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Tennessee's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

12. Subpart Q, Kentucky, is amended by adding § 1952.237 to read as follows:

§ 1952.237 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Kentucky's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

13. Subpart R, Alaska: § 1952.246 is amended by adding paragraph (b) to read as follows:

§ 1952.246 Changes to approved plans.

* * * * *

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Alaska's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

14. Subpart S, Virgin Islands, is amended by adding § 1952.256 to read as follows:

§ 1952.256 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Virgin Islands' revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

15. Subpart T, Michigan, is amended by adding § 1952.265 to read as follows:

§ 1952.265 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Michigan's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

16. Subpart U, Vermont, is amended by adding § 1952.275 to read as follows:

§ 1952.275 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Vermont's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

17. Subpart W, Nevada, is amended by adding § 1952.297 to read as follows:

§ 1952.297 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Nevada's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

18. Subpart Y, Hawaii, is amended by adding § 1952.316 to read as follows:

§ 1952.316 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Hawaii's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

19. Subpart Z, Indiana, is amended by adding § 1952.327 to read as follows:

§ 1952.327 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Indiana's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

20. Subpart BB, Wyoming: § 1952.347 is amended by adding paragraph (a)(2) to read as follows:

§ 1952.347 Changes to approved plans.

* * * * *

(a) *Legislation.*

* * * (2) On March 29, 1994, the Assistant Secretary approved Wyoming's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

21. Subpart CC, Arizona, is amended by adding § 1952.357 to read as follows:

§ 1952.357 Changes to approved plans.

(b) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Arizona's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

22. Subpart DD, New Mexico, is amended by adding § 1952.365 to read as follows:

§ 1952.365 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved New Mexico's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

23. Subpart EE, Virginia: § 1952.377 is amended by adding paragraph (b) to read as follows:

§ 1952.377 Changes to approved plans.

* * * * *

(b) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Virginia's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

24. Subpart FF, Puerto Rico, § 1952.385 is amended by adding paragraph (b) to read as follows:

§ 1952.385 Changes to approved plans.

* * * * *

(b) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Puerto Rico's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

[FR Doc. 94–7256 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010–AB83

Interest Rate Applicable to Late Payment or Underpayment of Monies Due on Solid Minerals and Geothermal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the interest rate applicable to late payments or underpayments of royalties and other monies due under solid minerals and geothermal leases to require the same interest rates and calculation methodology used for oil and gas leases. The MMS believes consistency for late payment and underpayment charges for all mineral leases at the rate applicable under section 6621 of the Internal Revenue Code of 1954 is appropriate and serves as an effective deterrent to discourage late and underpayments.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165, telephone (303) 231–3432.

SUPPLEMENTARY INFORMATION: The proposed rulemaking published on June 17, 1993, 58 FR 33413, provided for a 60-day public comment period which ended August 16, 1993. All comments received during that time period are addressed in this section. The principal author of this rule is Dennis C. Whitcomb, Office of the Deputy Associate Director for Audit, Royalty Management Program, Minerals Management Service.

Comments were received from two coal companies, two industry associations as joint commenters, and the State and Tribal Royalty Audit Committee. In general, the comments were not in favor of increasing the interest rate.

(a) Two comments were critical of the lengthy administrative appeals process which results in the lessee owing more interest when the appellant posts a surety in lieu of payment and does not prevail in its appeal.

Response: This issue is beyond the scope of this rulemaking. However, currently the MMS is streamlining and improving its appeal procedures to shorten the time required for appeals to the MMS Director. The appeals streamlining includes a common tracking system, simplified review and surname of field reports, definitive time frames for appeal processing, standardized language and formats for field reports, and establishing appeals coordinators in each MMS division. When the MMS decision is appealed, the MMS has no control over the Interior Board of Land Appeals process.

(b) Two other commenters on the appeals process observed that MMS does not pay interest on monies refunded when an appellant prevails in its appeal.

Response: In the absence of a statute or contract, the United States cannot pay interest on overpayments. *United States* v. *Louisiana*, 446 U.S. 253 (1980). The MMS has not been given statutory authority to pay interest on any overpayments made by appellants. However, the MMS now accepts surety instruments for amounts under appeal which bear interest in the appellant's favor. For complete information refer to 57 FR 44991, September 30, 1992, codified at 30 CFR 243.2 (1993).

(c) Two commenters stated that the application of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) rate to solid minerals would be illegal. One comment stated the Debt Collection Act does not authorize MMS to charge the higher Internal Revenue Service (IRS) rate.

Response: As explained in the preamble to the proposed rule, this rule is not being promulgated under FOGRMA or the Debt Collection Act, but under the Secretary of the Interior's (Secretary) plenary authority to establish necessary and appropriate rules pursuant to the Mineral Leasing Act of 1920 (30 U.S.C. 189), Mineral Leasing Act for Acquired Lands (30 U.S.C. (359), the Geothermal Steam Act of 1970 (30 U.S.C. 1023), and the Indian mineral leasing laws (25 U.S.C. 396, and 25 U.S.C. 396 a-g). The rate proposed is the same as that authorized by FOGRMA, *i.e.*, the rate applicable under section 6621(a)(2) of the Internal Revenue Code of 1986 as amended. The MMS considers the increase in the interest rate to be justified to fairly compensate the Federal Government or Indian lessor for the lost time value of money. The MMS believes this rate is necessary to encourage the prompt and proper payment of royalties.

(d) Several commenters stated that the proposed rule is short-sighted, displays unreasonable punishment for trustworthy reporters, will unduly penalize marginal and temporary underpayments, does not demonstrate a higher rate will assure timely collection of royalty, and seeks merely to generate additional revenue.

Response: The MMS regulations that assess interest on late and underpayments are not punitive, but account for the lost time value of money. Late payments from payors cause States, Indian tribes and allottees, and other recipients to receive monies due to them later than they would be paid if the lessee had paid on time. Thus, these recipients also are compensated for the lost time value of money because late payment interest is shared with those recipients in the same manner as principal lease revenues.

(e) Two commenters suggested that MMS should offer discounts for prompt payment and should not charge interest if a payment is within 5 percent of a final amount due.

Response: The MMS is not authorized to offer discounts on royalty due for prompt payment nor allow any variation of gross proceeds accruing to the Government. The various mineral leasing laws and lease terms require that royalty shall not be less than a certain percentage of the value. If a discount were offered for prompt payment, MMS would receive royalties below the amount provided for by statute and lease term. Thus, MMS does not have authority to provide for such discounts.

The MMS also believes that waiving the interest charge for small underpayments would foster incorrect payment. Thus, this proposal has not been adopted. The MMS mission is to timely and properly collect and distribute all royalty, rent, and other payments due on Federal and Indian leases.

(f) One commenter stated that the MMS should follow IRS timetables if it charges IRS interest rates. The commenter pointed out the IRS deadlines for filing tax returns after the taxable year ends.

Response: The MMS will not accept this proposal because it is inconsistent with existing regulations and lease terms. If this comment were followed, the result would be a loss of millions of dollars in time value of money for the United States, States, and Indian tribes and allottees. The reporting and payment cycle for royalties established in the leases generally is monthly which also reflects industry accounting practice. In contrast to Federal income taxes, lease royalty payments and reports are due at the end of the month following the month of production unless the lease terms expressly provide otherwise.

(g) One commenter stated that no compelling governmental interest exists

that would justify charging the higher rate.

Response: The MMS is following the guidance found in the Federal Claims Collection Standards at 4 CFR 102.13(c) which states "An agency may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States." Congress believed that for late royalty payments for oil and gas leases, the IRS 6621(a)(2) rate was appropriate. There is no reason to establish any lower rate for solid minerals or geothermal leases.

(h) The same commenter stated MMS has not met its threshold burden of proving that assessing the higher rate is necessary to deter underpayments and assure the timely collection of royalties.

Response: Under the various mineral leasing laws the Secretary may prescribe rules and regulations necessary to carry out the requirements of accounting for and collecting royalty. The MMS believes the increased rate is neither arbitrary nor inconsistent with the statutes or statutory purposes.

(i) The same commenter stated MMS misidentifies the reasons for outstanding payments and its proposed solution is counterproductive to administrative efficiency.

Response: The MMS does not agree because experience indicates MMS's policies have proven effective. The rule provides for fair and consistent compensation for the lost time value of money.

(j) One commenter stated that MMS used excessive interpretation of the agency's general rulemaking authority that is contrary to law and existing constitutional principles. The commenter believes that FOGRMA expands the authorities and responsibilities of the Secretary only for Federal oil and gas management.

Response: The MMS may promulgate necessary and appropriate rules and regulations for royalty collection under 30 U.S.C. 189 and 1023 and other mineral leasing laws for all minerals to meet its responsibilities to disburse royalties timely to States and Indian tribes and allottees.

(k) One commenter stated that the interest rate is too high because MMS says that the revenue gains from a higher rate would be small.

Response: The rule is not intended to increase revenue but to encourage the prompt and proper payment of revenues and to provide compensation for the lost time value of money. In fact, under a perfect system, all royalties would be timely paid, and MMS would not receive any monies pursuant to the late payment charge regulations.

(l) Two commenters (based on an OIG report entitled "Assessments on Late and Underpaid Royalties for Solid Minerals and Geothermal Leases") stated that the OIG concludes that the present rules provide an incentive for companies to underpay and that the proposed rule is based on fallacious conclusions in the OIG report.

Response: The OIG's conclusions are consistent with this rulemaking, but the OIG's report is not the authority for the rule. However, the OIG's conclusion that the current interest rate for solid minerals royalty late payments made it more attractive not to pay in some circumstances appears to be reasonable, and nothing in the comments demonstrates otherwise.

(m) Two commenters stated that virtually all coal and solids royalties are paid timely and rarely are coal companies in an underpayment status with MMS.

Response: As of August 31, 1993, MMS had 249 outstanding Bills for Collection for solid mineral payors in the amount of $81,249,067.78. Therefore, the increase in the interest rate is justified to compensate for the lost time value of monies at a fair rate.

(n) The State and Tribal Royalty Audit Committee supports the rule as proposed. They endorsed the proposed rule as governmental action which will adequately protect the interests of all citizens and sustain the efficient conduct of private enterprise for the benefit of all concerned.

Response: The MMS is adopting the rule as proposed to increase the interest rate applicable to underpayments on solid mineral and geothermal leases. The rate will be the same as that applicable for underpayments on oil and gas leases—under section 6621(a)(2) of the Internal Revenue Code.

The effective date of April 1, 1994, is appropriate inasmuch as interest rates are normally updated at the beginning of calendar quarters by both the IRS and the U.S. Treasury.

Pursuant to 5 U.S.C. 553(d)(3), the United States Department of the Interior finds that there is good cause to make this rule effective April 1, 1994.

On all payments due MMS prior to March 31, 1994, interest will be calculated at the Current Value of Funds Rate (CVF) through March 31, 1994, and the IRS rate from April 1, 1994, through the date paid. The IRS rate is compounded daily, as contrasted to the CVF rate which is calculated as simple interest. For example, if a payment was due February 28, 1994, and was not paid until April 30, 1994, then late payment interest would be calculated on the principal for 31 days (March 1994) at the CVF rate and calculated on the principal plus accrued interest for 30 days (April 1994) at the IRS rate. The new rate is applicable to any and all outstanding amounts on the effective date.

Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The rule is necessary to provide consistency in the existing regulations in applying the same interest rate for late payment or underpayment of monies due on solid minerals, geothermal, and oil and gas mineral leases.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy,

Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—Mineral resources, Reporting and recordkeeping requirements.

Dated: February 18, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is amended as set forth below:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

Subpart E—Solid Minerals—General

2. Section 218.202 is amended by revising paragraphs (c) and (d) to read as follows:

§ 218.202 Late payment or underpayment charges.

* * * * *

(c) The interest charge on late payments shall be at the underpayment rate established by section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2).

(d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will be charged only for the number of days the payment is late.

* * * * *

Subpart F—Geothermal Resources

3. Section 218.302 is amended by revising paragraphs (c) and (d) to read as follows:

§ 218.302 Late payment or underpayment charges.

* * * * *

(c) The interest charge on late payments shall be at the underpayment rate established by section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2).

(d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will be charged only for the number of days the payment is late.

* * * * *

[FR Doc. 94–7302 Filed 3–28–94; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 88

[DoD Directive 1332.35]

Transition Assistance For Military Personnel

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule establishes guidelines for the operation of the Department of Defense (DoD) Transition Assistance Program (TAP) for military personnel who are being discharged, released from active duty or retired, and their families. The purpose of the TAP is to prepare separating Service members and their families with the skills, tools, and self-confidence necessary to ensure successful reentry into the Nation's civilian work force. The final rule is required to implement the program established in section 502 of the National Defense Authorization Act For Fiscal Year 1991, as amended. This rule provides general guidance on TAP, states eligibility criteria for Service members to participate in TAP, designates DoD offices to administer TAP, and briefly outlines the TAP services and benefits available.

EFFECTIVE DATE: This rule is effective December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Lt. Col. David F. Witkowski (703) 695–1636.

SUPPLEMENTARY INFORMATION: This rule is published in order to describe the organizational responsibilities within DoD for the TAP and to state the general policy of DoD with respect to the TAP.

It has been certified that 32 CFR part 88 is not a significant rule. The rule does not:

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a section of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

(e) Become subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it is not likely to have a significant economic impact on a substantial number of small entities. The primary effect of this rule will be the establishment of guidelines for operation of a transition assistance program for Service members affected by the drawdown of military personnel in the Department of Defense.

(f) Impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3250).

List of Subjects in 32 CFR Part 88

Employment, Military personnel.

Accordingly, title 32, chapter I, subchapter C, is amended to add part 88 to read as follows:

PART 88—TRANSITION ASSISTANCE FOR MILITARY PERSONNEL

Sec.

88.1 Purpose.
88.2 Applicability and scope.
88.3 Definitions.
88.4 Policy.
88.5 Responsibilities.
88.6 Information requirements.

Authority: 10 U.S.C. chapter 58.

§ 88.1 Purpose.

(a) This part supersedes the Assistant Secretary of Defense For Force Management and Personnel memorandum,[1] "Policy Changes For Transition Assistance Initiatives," June 7, 1991, establishes policy, and assigns responsibilities for transition assistance programs for active duty military personnel and their families.

(b) Implements transition assistance programs for DoD military personnel and their families as outlined in section 502, Public Law 101–510; section 661 and section 662, Public Law 102–190, and sections 4401–4501, Public Law 102–484.

§ 88.2 Applicability and scope.

This part applies to: (a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, and the Defense Agencies (hereafter referred to collectively as "the

[1] Copies may be obtained, at cost, from the Directorate of Transition Support and Services, Office of the Assistant Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000.

DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) All active duty Service members and their families.

§ 88.3 Definitions.

(a) *Involuntary separation.* A member of the Military Service shall be considered to be involuntarily separated if he or she was on active duty or full-time National Guard duty on September 30, 1990 and:

(1) In the case of a Regular officer (other than a retired officer), he or she was involuntarily discharged under other than adverse conditions, as characterized by the Secretary of the separating Service member's Military Department. Discharge under adverse conditions is determined by referring to the reason for separation as well as the officer's service, as outlined in Department of Defense Directive 1332.30.[2]

(2) In the case of a Reserve officer who is on the active duty list or, if not on the active duty list, is on full-time active duty (or in the case of a member of the National Guard, full time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the Reserve components, he or she is involuntarily discharged or released from active duty or full-time National Guard duty (other than a release from active duty or full-time National Guard duty incident to a transfer to retired status) under other than adverse conditions as characterized by the Secretary of the separating Service member's Military Department. Discharge under adverse conditions is determined by referring to the reason for separation as well as the officer's service, as outlined in Department of Defense Directive 1332.30.

(3) In the case of a Regular enlisted member serving on active duty, he or she is denied reenlistment or involuntarily discharged under other than adverse conditions, as characterized by the Secretary of the separating Service member's Military Department. Discharge under adverse conditions is determined by referring to the reason for separation as well as the enlisted member's service, as outlined in Department of Defense Directive 1332.14.[3]

(4) In the case of a Reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the Reserve components, he or she is denied reenlistment or is involuntarily discharged or released from active duty (or full-time National Guard duty) under other than adverse conditions as determined by referring to the reason for separation as well as the enlisted member's service, as outlined in Department of Defense Directive 1332.14.

(b) *Separation entitlements.* Benefits provided to Service members being involuntarily separated on or before September 30, 1995 as defined in paragraphs (a)(1) through (a)(4) of this section, and their families. Benefits provided to Service members being separated under the Special Separation Benefit or Voluntary Separation Incentive on or before September 30, 1995, as defined in paragraph (c) of this section and their families. These benefits include: Training opportunities under the Job Training Partnership Act as described in section 4465 of Public Law 102–484; priority affiliation with the National Guard and Reserve, as described in section 502(a)(1) of Public Law 101–510, as amended; enrolled in the All–Volunteer Force Educational Assistance Program ("Montgomery G.I. Bill"), as described in section 4404 of Public Law 102–484; extended medical and dental care, as described in section 502(a)(1) of Public Law 101–510, as amended, and sections 4407 and 4408 of Public Law 102–484; continued use of military family housing as described in section 502 (a)(1) of Public Law 101–510, as amended (subject to Status of Forces Agreements overseas); extended and commissary privileges as detailed in section 502(a)(1) of Public Law 101–510, as amended (subject to Status of Forces Agreements overseas); travel and transportation allowances, as detailed in section 503 of Public Law No. 101–510, as amended; continuation of enrollment in Department of Defense Dependents Schools as detailed in section 504 of Public Law 101–510, as amended (subject to Status of Forces Agreements overseas.)

(c) *Special separation benefit* and *voluntary separation incentive.* Voluntary separation programs established in section 661 and section 662 of Public Law 102–190, as amended. Service members separated under these programs are eligible for both transition services and separation entitlements outlined in paragraphs (b) and (d) of this section.

(d) *Transition services.* Preseparation counseling, individual transition planning, employment assistance, excess leave and permissive temporary duty, and relocation assistance for personnel overseas as described in section 502 (a)(1) of Public Law 101-510, as amended.

§ 88.4 Policy.

It is DoD policy that: (a) Transition assistance programs prepare separating Service members and their families with the skills, tools, and self-confidence necessary to ensure successful reentry into the Nation's civilian work force.

(b) Transition assistance programs be designed to complete the military personnel "life cycle." This cycle begins with the Service member's recruitment from the civilian sector, continues with training and sustainment throughout a Service members's active service in the Armed Forces, and ends when the Service member returns to the civilian sector.

(c) Transition assistance programs include: (1) Transition service as defined in)88.3 (d) to be provided to Service members and their families for up to 90 days after separation, space and work load permitting.

(2) Separation entitlements as defined in § 88.3 (b) for Service members who are involuntarily separating as defined in § 99.3 (a) or separating under the Voluntary Separation Incentive or Special Separation Benefit Programs as defined in § 88.3 (c).

(d) Service members from one Service shall not restricted from participating in another Service's transition assistance program unless workload or other unusual circumstances dictate. Every effort will be made to accommodate all eligible personnel, especially if referral to another transition site will require the Service member to travel a long distance and incur significant expense.

(f) When being discharged, released from active duty, or retiring (hereafter referred to as "separating Service members"), Service members and their families bear primary responsibility for their successful transition into the civilian sector.

(g) Spouses shall be encouraged to participate in transition planning and counseling to the maximum extent possible.

(h) Enhanced transition programs shall be established for Service members and their families who are overseas to help alleviate the special difficulties overseas personnel encounter when job and house hunting.

(i) Installations in the United States shall give priority transition assistance to personnel who recently returned from overseas.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 2 to section 88.3(a)(1).

§ 88.5 Responsibilities.

(a) The Assistant Secretary of Defense for Personnel and Readiness shall; (1) Issue guidance on transition assistance programs for Service members and their families, as necessary.

(2) Coordinate, as necessary, within the Department of Defense to ensure the availability of high quality, equitable, and cost-effective transition programs among the Military Services.

(3) Coordinate with and seek the assistance of the Departments of Labor and Veterans Affairs, and other Federal Agencies to facilitate delivery of high quality transition assistance programs to separating Service members.

(4) Evaluate the level of resources needed to deliver quality transition programs and facilitate efforts to obtain these resources.

(5) Monitor and evaluate the overall effectiveness of transition assistance programs.

(6) Coordinate with theater commanders, though the Chairman of the Joint Chiefs of Staff, on transition assistance programs (job fairs and training conferences, for example) impacting overseas Unified Combatant Commands.

(7) Establish the Department of Defense Service Member Transition Assistance Coordinating Committee, consisting of representatives from the Military Services and Assistant Secretary of Defense for Personnel and Readiness. The purpose of this committee is to provide DoD-level direction and coordination for transition assistance programs.

(8) Collect data to determine systematically the degree to which transition assistance programs satisfy the needs of transitioning Service members and their families.

(9) Review, modify, and reissue policy guidance, as required.

(b) The Assistant Secretary of Defense for Reserve Affairs shall establish and publish guidance on transition assistance programs for Reserve personnel and their families.

(c) The Assistant Secretary of Defense for Health Affairs shall establish guidance on transitional medical and dental care, including health insurance and preexisting conditions coverage, for Service members and their families.

(d) The Secretaries of the Military Departments shall ensure compliance with the criteria in Public Law 101–510, 102–190, and 102–484, as amended, and the following provisions:

(1) Preparation counseling shall be available no later than 90 days before separation to all separating Service members.

(2) High quality transition counseling and employment assistance programs are established on military facilities with more than 500 Service members permanently assigned or serving at that installation.

(3) The participation of separating Service members in transition assistance programs shall be coordinated with mission requirements.

(4) Transition assistance programs are allocated the resources necessary to delivery quality transition assistance programs.

(5) The Military Services are represented on the Department of Defense Service Member Transition Assistance Coordinating Committee. Each of the Military Services may invite an installations-level transition manager to participate.

(6) Quarterly reports on the status of transition programs are submitted to the Assistant Secretary of Defense for Personnel and Readiness beginning the second quarter after this publication is published, and continuing each quarter until cancellation of this part.

(7) The Inspector General of each Military Service shall review and report compliance with § 88.5(d)(1) through (d)(6) to the Service Secretary, on an annual basis, due no later than January 31 of the next calendar year.

§ 88.6 Information requirements.

The quarterly report requirement in § 88.5(d)(6) has been assigned Report Control Symbol DD–P&R(Q) 1927.

Dated: March 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–7354 Filed 3–28–94; 8:45 am]

BILLING CODE 5000–04–M

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32 CFR Parts 343, 344, 379, and 384

Organizational Charters

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This document establishes the office of Under Secretary of Defense for Personnel and Readiness (USD(P&R)). It incorporates the responsibilities, functions, relationships, and authorities previously assigned to the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), and adds responsibility for readiness matters and supervision over the Assistant Secretary of Defense for Health Affairs and the Assistant Secretary of Defense for Reserve Affairs. It updates the responsibilities, functions, relationships, and authorities of the ASD(RA). The principal change is to assign the Reserve Affairs functions under the Under Secretary of Defense for Personnel and Readiness consistent with the FY 1994 Defense Authorization Act. This document also removes 32 CFR parts 379 and 384 which established the ASD(RA) and ASD(FM&P).

EFFECTIVE DATE: March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Smith, telephone (703) 697–1143.

SUPPLEMENTARY INFORMATION

List of Subjects in 32 CFR Parts 343, 344, 379, and 384

Organization and functions (Government agencies).

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter R, is amended as follows:

PARTS 379 and 384—[REMOVED]

1. Under authority of 10 U.S.C. 136, 32 CFR parts 379 and 384 are removed.

2. Part 343 is added to read as follows:

PART 343—UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R))

Sec.

343.1 Purpose.
343.2 Applicability.
343.3 Definitions.
343.4 Responibilities and functions.
343.5 Relationships.
343.6 Authorities.

Appendix A to Part 343—Delegations of Authority

Authority: 10 U.S.C. 136.

§ 343.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of USD(P&R), with the responsibilities, functions, relationships, and authorities as prescribed herein. The functions previously assigned to the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) by DoD Directive 5124.2,[1] "Assistant Secretary of Defense (Force Management and Personnel)," January 26, 1990, are incorporated herein and the ASD(FM&P) is hereby disestablished.

§ 343.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint

[1] Copies of the canceled Directive may be obtained from the Directives Division, Attn: Room 2A286, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 343.3. Definitions.

(a) *Reserve components.* Refers collectively to the Army National Guard of the United States, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, when the Coast Guard is operating as a Service of the Department of the Navy.

(b) *Total force.* The organizations, units, and individuals that comprise the Defense Department's resources for meeting the national security strategy. It includes DoD Active and Reserve military personnel, military retired members, DoD civilian personnel (including foreign national direct- and indirect-hire, as well as non-appropriated fund employees), contractor staff, and host-nation support personnel.

§ 343.4 Responsibilities and functions.

The Under Secretary of Defense for Personnel and Readiness is the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for Total Force management as it relates to readiness; National Guard and Reserve component affairs; health affairs; training; and personnel requirements and management, including equal opportunity, morale, welfare, and quality of life matters. In this capacity, the USD(P&R) shall:

(a) Develop policies, plans, and programs for: (1) total force personnel and their allocation among DoD Components and between the active and reserve components to ensure efficient and effective support of wartime and peacetime operations, contingency planning, and preparedness.

(2) Reserve component affairs to promote the effective integration of Reserve component capabilities into a cohesive total force.

(3) Health and medical affairs sufficient to provide, and maintain readiness to provide, medical services and support to members of the Armed Forces during military operations, and to provide medical services and support to members of the Armed Forces, their dependents, and others entitled to DoD medical care.

(4) Recruitment, training, equal opportunity, compensation, recognition, discipline, and separation of all DoD personnel, to include both military (active, reserve, and retired) and civilian.

(5) The quality of life of DoD personnel and their dependents, including family support, allowances, transition assistance, community services, and dependent education.

(6) DoD morale, welfare, and recreation programs and supporting non-appropriated fund revenue-generating programs including commissaries and exchanges.

(7) Interagency and intergovernmental activities, special projects, or external requests that create a demand for DoD personnel resources.

(b) Serve as OSD focal point for readiness issues; develop policies, management structures, and administrative processes to ensure forces have sufficient readiness to execute the National Military Strategy; oversee Total Force personnel and medical readiness; and coordinate with other Principal Staff Assistants and cognizant officials in the Office of the Chairman of the Joint Chiefs of Staff and in the Services on other aspects of readiness.

(c) Analyze the total force structure as related to quantitative and qualitative military and civilian personnel requirements, utilization, readiness and support. Administer and implement controls on military and civilian personnel strengths for Military Departments, Defense Agencies, and other DoD Components.

(d) Review and evaluate the requirements of the Defense Acquisition Board's major defense acquisition programs and proposed weapon systems for personnel, training, and readiness implications, and the implications of weapon systems maintainability for qualitative and quantitative personnel requirements and for readiness.

(e) Formulate policy for and ensure coordination of DoD Noncombatant Evacuation Operations (NEO).

(f) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(g) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on personnel, readiness, Reserve component, health, and compensation matters outside of the Department.

(h) Perform such other functions as the Secretary of Defense may prescribe.

§ 343.5 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(P&R) shall: (1) Report directly to the Secretary and Deputy Secretary of Defense.

(2) Exercise authority, direction, and control over: (i) The Assistant Secretary of Defense for Health Affairs.

(ii) The Assistant Secretary of Defense for Reserve Affairs.

(iii) The Director, Defense Commissary Agency.

(iv) The Director, DoD Education Activity.

(v) The Director, Defense Manpower Data Center.

(vi) The Director, DoD Civilian Personnel Management Service.

(vii) The Director, Defense Institute for Training Resources Analysis.

(viii) The Commandant of the Defense Equal Opportunity Management Institute.

(ix) The Director, Defense Medical Programs Activity, through the Assistant Secretary of Defense for Health Affairs (ASD(HA)).

(x) The Director, Office of Civilian Health and Medical Programs of the Uniformed Services, through the ASD(HA).

(xi) The President, Uniformed Services University of the Health Sciences (USUHS), through the ASD(HA), pursuant to the authority vested in the Secretary of Defense by 10 U.S.C. chapter 104, except that the authority to appoint the President, USUHS, is reserved to the Secretary of Defense.

(xii) such other subordinate officials as may be assigned.

(3) Provide policy guidance and management supervision for the DoD Office of the Actuary, DoD Office of Special Events, U.S. Military Entrance Processing Command, Defense Activity for Non-Traditional Education Support, and the Armed Forces Professional Entertainment Program.

(4) Coordinate and exchange information with other OSD officials, Heads of the DoD Components, and Federal officials having collateral or related functions.

(5) Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and the Heads of the DoD Components shall coordinate with the USD(P&R) on all matters related to the responsibilities and functions cited in § 343.4.

§ 343.6 Authorities.

(a) The USD(P&R) is hereby delegated authority to:

(1) Establish and allocate civilian personnel authorizations of the DoD Components and review and approve

military and civilian personnel authorization changes during program execution.

(2) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M,[2] that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Department shall be issued through the Secretaries of those Departments. Instructions to Unified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(3) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1,[3] as necessary to carry out assigned functions.

(4) Communicate directly with the Heads of DoD Components. Communications to the Commanders of the Unified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(5) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

(b) Other authorities specifically delegated by the Secretary of Defense are in Appendix A to this part.

Appendix A to Part 343—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the authority, direction, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the USD(P&R) is hereby delegated authority to:

(a) Act for the Secretary of Defense in conducting a review of the military compensation system.

(b) Issue DoD issuances pertaining to the management of commissioned officers that are required to be issued by the Secretary of Defense under pertinent sections of 10 U.S.C., including those added by Public Law 96–513, "Defense Officer Personnel Management Act," December 12, 1980, as amended by Public Law 77–22, "Defense Office Personnel Management Act Technical Corrections Act," July 10, 1981, except when such delegation is specifically prohibited.

(c) Act for the Secretary of Defense to approve or disapprove recommendations for the Secretary of Defense Award for Productivity Excellence.

(d) Act for the Secretary of Defense to review and approve procedures established by the Secretaries of the Military Departments for the correction of military records under the authority of 10 U.S.C. 1552.

The USD(P&R) may redelegate these authorities, as appropriate, and in writing, except as otherwise provided by law or regulations. These delegations of authority are effective March 29, 1994.

3. Part 344 is added to read as follows:

PART 344—ASSISTANT SECRETARY OF DEFENSE FOR RESERVE AFFAIRS (ASD(RA))

Sec.

344.1 Purpose.
344.2 Applicability.
344.3 Definitions.
344.4 Responsibilities and functions.
344.5 Relationships.
344.6 Authorities.

Authority: 10 U.S.C. 136.

§ 344.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 138, this part updates the responsibilities, functions, relationships, and authorities of the ASD(RA), as prescribed herein.

§ 344.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 344.3 Definitions.

(a) *Reserve components.* Refers collectively to the Army National Guard of the United States, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, when the Coast is operating as a Service of the Department of the Navy.

(b) *Total force.* The organizations, units, and individuals that comprise the Defense Department's resources for meeting the national security strategy. It includes DoD Active and Reserve military personnel, military retired members, DoD civilian personnel (including foreign national direct- and indirect-hire, as well as non-appropriated fund employees), contractor staff, and host-nation support personnel.

344.4 Responsibilities and functions.

The Assistant Secretary of Defense for Reserve Affairs is the principal staff assistant and advisor to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the Secretary and Deputy Secretary of Defense for Reserve component matters in the Department of Defense. The ASD(RA) is responsible for overall supervision of all Reserve component affairs in the Department of Defense. In this capacity, the ASD(RA) shall:

(a) Develop policies, conduct analyses, provide advice, and make recommendations to the USD(P&R) and the Secretary of Defense, and issue guidance to the DoD Components on matters pertaining to the Reserve components.

(b) Develop systems and standards for the administration and management of approved DoD Reserve component plans and programs.

(c) Develop and promulgate plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives to promote the effective integration of Reserve component capabilities into a cohesive total force.

(d) Review and evaluate programs of the DoD Components that impact on the reserve components; monitor the activities of reserve component organizations, training facilities, and associations; and undertake other management oversight activities as may be required to ensure that policies, plans, programs, and actions pertaining to the reserve components:

(1) Adhere to approved DoD policies and standards.

(2) Are compatible and support total force objectives and requirements.

(3) Enhance the readiness and capabilities of reserve component units and personnel.

(4) Promote the integration of reserve components with active duty forces.

(5) Make the most effective use of reserve components within the total force.

(e) Participate in planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(f) Promote, with respect to the reserve components, coordination, cooperation, and mutual understanding within the Department of Defense and among the Department of Defense and other federal agencies, state and local governments, the civilian community at large, and the employers of Reserve component personnel.

(g) Promote family support plans, policies, and programs in line with the reserve component mission.

(h) Serve on boards, committees, and other groups pertaining to assigned functional areas and represent the Secretary of Defense on reserve component matters outside the Department.

(i) Consistent with 10 U.S.C. 675, coordinate issues and positions of the

[2] Copies may be obtained, at cost, from the National Technical Information Service (NTIS), US Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 1 to § 343.6(a)(2).

Reserve Force Policy Board (RFPB) and review reports of the RFPB prior to forwarding to the USD(P&R) and the Secretary of Defense. Provide administrative staff support to the RFPB.

(j) Serve as the vice chairman of the Conventional Forces Readiness Committee.

(k) Perform such other functions as the USD(P&R) and the Secretary of Defense may prescribe.

§ 344.5 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(RA) shall serve under the authority, direction, and control of the USD(P&R) and shall:

(1) Report directly to the USD(P&R).

(2) Exercise authority, direction, and control over the National Committee for Employer Support of the Guard and Reserve.

(3) Coordinate and exchange information with the OSD officials, Head of the DoD components, and Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and the Heads of the DoD components shall coordinate with the ASD(RA) on all matters related to the responsibilities and functions cited in § 344.4.

§ 344.6 Authorities.

The ASD(RA) is hereby delegated authority to:

(a) Act for the Secretary of Defense, in accordance with section 411 of Pub. L. 103–160 and future authorization acts that contain this provision, to increase the authorized end strength for Reserve personnel by not more than 2 percent of the prescribed Reserve personnel end strength, or such other percentage as shall be authorized by statute, when the increase is in the national interest.

(b) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M,[1] that implement policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to the Commanders of the Unified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(c) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1,[2] as necessary, to carry out assigned functions.

(d) Communicate directly with Heads of the DoD Components. Communications to the Unified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(e) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: March 23, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–7300 Filed 3–28–94; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may obtained, at cost, from the National Technical Information Service (NTIS), US Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 344.6(b).

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC22

Glacier Bay National Park, AK

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The National Park Service (NPS) is promulgating an interim rule to clarify a provision of the Code of Federal Regulations, general regulations that defines the scope and applicability of NPS regulations to navigable waters (i.e., waters subject to the jurisdiction of the United States), relative to Glacier Bay National Park. In order to protect the wildlife and other resources in NPS areas, including Glacier Bay National Park, the NPS developed general regulations intended to be applicable on navigable waters irrespective of ownership of submerged lands. However, a recent court case has revealed that a 1987 editorial correction to the applicability and scope section, aimed at clarifying a separate and distinct application of the regulations, had the unforseen and unintended effect at Glacier Bay National Park of linking title to submerged lands with the exercise of management authority over the reach of the navigable waters above them. This interim rule is being promulgated to insure the continued protection of park wildlife in Glacier Bay National Park, and to clearly inform the public that hunting continues to be prohibited in the park by general regulations as it has been for over 50 years. As such, this interim rule clarifies and interprets existing NPS regulatory intent, practices, and policies.

DATES: This rule is effective March 29, 1994 and will expire on January 1, 1996. However, written comments will be accepted until June 27, 1994.

ADDRESSES: Comments should be addressed to:

Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

FOR FURTHER INFORMATION CONTACT: Marvin O. Jensen, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826, Telephone: (907) 697–2230.

SUPPLEMENTARY INFORMATION:

Background

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925. 43 Stat. 1988. The monument was established to protect the dynamically changing glacial environment of mountains, tidewater glaciers, and associated movements and development of flora and fauna, and to promote the scientific study of such. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and marine waters off: All of Glacier Bay; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer in the south and Sea Otter Creek, north of Cape Fairweather. The inclusion of substantial tracts of marine waters within the boundaries of the monument, and present-day park, presents unique opportunities for the study and preservation of marine flora and fauna, in an unimpaired state.

Glacier Bay National Monument was redesignated as Glacier Bay National Park in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). The new park included all lands and waters of the previously existing monument, plus additional land areas. 94 Stat. 2382. The legislative history of ANILCA provides that certain

NPS units in Alaska including Glacier Bay National Park "are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." Sen. Rep. No. 96–413, 96th Cong., 1st Sess. 137 (1979).

The management of Glacier Bay National Park is governed by the original monument proclamations mentioned above, which provided that the flora and fauna of Glacier Bay were to be protected, and directed that the NPS manage the monument in accordance with the NPS Organic Act of 1916. The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1. The Organic Act also grants the Secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. 3. In addition, the Redwood National Park Act of 1978 states: "The authorization of activities shall be construed and the protection, management and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 16 U.S.C. 1a–1.

Under these authorities the NPS has managed and regulated activities occurring on and in the marine waters of Glacier Bay National Park since the establishment of the monument. In addition to regulations generally applicable in all national park areas, such as hunting prohibitions, special park specific regulations have been promulgated for, and enforced on and within, Glacier Bay waters.

Applicability and Scope Provisions

In addition to general regulatory authority (16 U.S.C. 3), the NPS has been delegated specific authority to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *" (16 U.S.C. 1a–2(h)). "Waters subject to the jurisdiction of the United States" are navigable waters. See, House Rep. 94–1569 pg. 4292. In 1983 the NPS revised existing regulations in 36 CFR that apply in virtually all NPS administered areas (48 FR 30252, June 30, 1983). The applicability and scope provisions adopted pursuant to that 1983 rulemaking included navigable waters. In that rulemaking, 36 CFR 1.2(a) provided that the regulations contained in 36 CFR chapter 1 would apply: (1) On federally owned waters, and (2) on waters "controlled, * * * administered or otherwise subject to the jurisdiction of the National Park Service * * *" (48 FR 30252, June 30, 1983, 36 CFR 1.2(a)). Like the United States Coast Guard, the NPS exercises authority on and within navigable waters irrespective of ownership of submerged lands.

The 1983 regulations also provided that—except in park areas under the legislative jurisdiction of the United States, where 10 specifically enumerated provisions were intended to apply regardless of ownership—the regulations were "not applicable on privately owned lands and waters * * *" (48 FR 30252, June 30, 1983; 36 CFR 1.2(b)). The 1983 promulgation of 36 CFR 1.2(b) was not intended to limit the applicability of park regulations on navigable waters.

As originally promulgated in 1983, 36 CFR 1.2(b) specifically applied the 10 enumerated provisions to privately owned lands. However, it was silent as to the applicability of these 10 regulations on lands and waters owned by a state or other government entity. In 1987, in order to clarify the original NPS intent—that the 10 specifically enumerated provisions were meant to apply on all lands and waters regardless of land ownership (in areas under the legislative jurisdiction of the United States)—the term "privately owned lands and waters" was replaced with the term "non-federally owned lands and waters". (52 FR 35238, September 18, 1987; See also, 52 FR 12037, April 14, 1987).

This editorial change cleared up one technical problem, but created another for the park, which the NPS seeks to rectify through this rulemaking. Although the 1987 rulemaking effort had nothing to do with navigable waters, it had the unforseen and unintended affect of rendering ambiguous the applicability of NPS regulations to navigable waters in Glacier Bay National Park.

The NPS recognizes that regulations must provide an ordinary person a reasonable opportunity to know what is prohibited. Therefore, this interim rule is adopted to clarify that NPS regulations otherwise applicable within the boundaries of Glacier Bay National Park apply in and within the reach of navigable park waters (up to the mean high water line in places subject to the ebb and flow of the tide, or up to the ordinary high water mark in other places that are navigable), irrespective of ownership of the submerged lands.

Interim Rulemaking

This rulemaking follows a recent incident in which a person was cited for the taking of a seal within the boundaries of Glacier Bay National Park. Because of the confusion that 36 CFR 1.2(b) lent to the case, the NPS asked that the case be dropped. The NPS has determined that 36 CFR 1.2(b), as currently written, is ambiguous as to whether the wildlife protection regulation under which the person was cited (36 CFR 2.2(a)) applies in the waters of Glacier Bay National Park. While the NPS asserts that based on the Proclamations creating Glacier Bay National Monument, and subsequent Congressional action, it owns the submerged lands of Glacier Bay National Park, this rulemaking will serve to clarify NPS jurisdiction and the applicability of NPS regulations to the waters of Glacier Bay National Park. The intended result of this action is the immediate and appropriate continuation of congressionally mandated protection of park resources and visitors, including the prohibition of hunting in the park by general regulations as it has been for over 50 years. See, *United States* v. *Brown*, 552 F.2d 817, 822 (1977).

The NPS is promulgating this interim rule under the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) from general notice and comment rulemaking. As discussed above, the NPS believes that this exception is warranted because the recent court case may cause confusion in leading the public to believe that the long standing prohibition of hunting in Glacier Bay National Park has now been revoked and that the NPS will no longer prohibit persons from such hunting. This confusion could result in other wildlife being hunted within the park due to a confusion over the enforcement authority of the NPS to carry out the protection mandates of federal statutes for park resources. Based upon this discussion, and because the general effect and the intent of such enforcement has been consistent in regulations for over 50 years, the NPS finds pursuant to 5 U.S.C. 553(b)(B) that it is unnecessary to publish a notice of proposed rulemaking. This interim rule

simply reaffirms the intent and regulatory history of the applicability of regulations within Glacier Bay National Park. The NPS is, however, soliciting comment as discussed below, and will review comments and consider making changes to the rule based upon an analysis of comments.

In accordance with the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the NPS has further determined that publishing this interim rule 30 days prior to the rule becoming effective could further confuse the public regarding the clear statutory authority of the NPS to protect park resources, and would be impracticable in that the due and required execution of the statutory functions of the NPS to protect park and public resources would be prevented by a delay in the effective date. This would be contrary to the public interest and the protection of park resources. As such, this interim rule clarifies and interprets existing NPS regulatory intent, practices and policies. Therefore, under the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), and as discussed above, it has been determined that this interim rulemaking is excepted from the 30-day delay in effective date, and shall therefore become effective on the date published in the **Federal Register**.

Because the NPS is soliciting comments as discussed above, the NPS plans to analyze comments received and prepare further rulemaking, as appropriate, that will speak to the general applicability of regulations in Glacier Bay National Park. Therefore, this interim rule will expire on January 1, 1996, unless amended or revised by future notice and comment rulemaking.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. However, in accordance with the above discussion, and because of the urgent need to ensure the protection of park resources and wildlife, it has been determined that it is impracticable to delay the effective date of this interim rule pending public comment. Nevertheless, interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to the address noted at the beginning of this rulemaking. Comments must be received on or before June 27, 1994. The NPS will review comments and consider making changes to the rule based upon an analysis of comments.

Drafting Information

This interim rule was written by Russel J. Wilson of the Alaska Regional Office, National Park Service.

Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which became effective January 1, 1981, the NPS has determined that this interim rule will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis.

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;
(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;
(c) Conflict with adjacent ownerships or land uses; or
(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 13

Alaska, National parks.

In consideration of the foregoing, 36 CFR part 13 is amended as follows:

PART 13—[AMENDED]

Subpart C—Special Regulations—Specific Park Areas In Alaska

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

Authority: 16 U.S. C. 1, 3, 462(k), 3101 *et seq.*; § 13.65 also issued under 16 U.S.C. 1a-2(h), 1361, 1531.

2. By adding a new paragraph (a) to § 13.65 to read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

(a) *Applicability and Scope.* (1) Notwithstanding § 1.2(b) and § 13.2(e) of this chapter, the regulations contained in parts 1 through 6 and 13 of this chapter that are applicable on federally owned lands and waters within the boundaries of Glacier Bay National Park shall also apply on and within the navigable waters located within the boundaries of Glacier Bay National Park.

(2) Paragraph (a) shall remain in effect until January 1, 1996.

* * * * *

Dated: February 26, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-7262 Filed 3-28-94; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AE11

Schedule for Rating Disabilities; Genitourinary System Disabilities; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the regulations of the Department of Veterans Affairs (VA) that govern the Schedule for Rating Disabilities of the genitourinary system. This correction is required to amend a percentage evaluation in the regulation. No substantive change to the content of the regulations is being made by this correcting amendment.

EFFECTIVE DATE: This correcting amendment is effective February 17, 1994.

FOR FURTHER INFORMATION CONTACT: John Roberts, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a final rule in the **Federal Register** on January 18, 1994 (See 59 FR 2523-29) to implement changes to the genitourinary section of the rating schedule. However, a percentage evaluation was inadvertantly assigned to a diagnostic code (diagnostic code 7501, kidney, abscess of) where no percentage evaluation was appropriate. This document corrects that error.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

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

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

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

§ 4.115b [Amended]

2. In § 4.115b, Ratings of the genitourinary system-diagnoses, under diagnostic code 7501, the rating of 30 percent is removed.

Approved: March 21, 1994.

B. Michael Berger,

Director, Records Management Service.

[FR Doc. 94–7259 Filed 3–28–94; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–277; RM–8324]

Radio Broadcasting Services; Warrior, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 254C3 for Channel 254A at Warrior, Alabama, and modifies the authorization for Station WLBI(FM) to specify operation on the higher powered channel, as requested by North Jefferson Broadcasting Company, Inc. See 58 FR 63152, published November 30, 1993. Coordinates for Channel 254C3 at Warrior, are 33–53–04 and 86–52–01. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–277, adopted March 14, 1994, and released March 24, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 254A and adding Channel 254C3 at Warrior.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–7332 Filed 3–28–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 73 and 76

[MM Docket No. 91–168; FCC 94–1]

Codification of Political Programming Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules to return to the original, broader definition of the term "use" for purposes of the political broadcasting rules that was in effect prior to the adoption of the Report and Order in this proceeding. The Commission concluded that the policy justifications that it had given to support its redefinition may not have been adequate in the circumstances. The intended effect of this amendment is to return to the previous definition until the Commission has had an opportunity to give further consideration to this issue.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Milton O. Gross or Robert L. Baker, Mass Media Bureau at (202) 632–7586

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: January 3, 1994.
Released: January 27, 1994.

By the Commission: Chairman Hundt Abstaining From Voting.

1. This proceeding was begun in 1991 to revise and clarify our rules governing political programming. A Report and Order was released in 1991, and petitions for reconsideration were addressed in a 1992 Memorandum Opinion and Order.[1] A petition for judicial review of that proceeding is currently pending in the United States Court of Appeals for the Ninth Circuit.[2] The petitioners in that case have limited their challenge to the Report and Order's modification of the interpretation of the term "use" under section 315 of the Communications Act. For the reasons set forth below, we have decided to return to the interpretation of "use" employed prior to the Report and Order.

2. Prior to the Report and Order in this proceeding, the Commission defined "use" by a "legally qualified candidate" under section 315(a) as any "positive" appearance of a candidate by voice or picture. We had held that a disparaging use of a candidate's voice or picture, for example by a candidate's opponents, would not be considered a "use," but that any positive appearance, for example as an endorsement, even if unauthorized by the candidate and deemed harmful by him because of the nature of the endorsers, had been considered a "use" that would trigger the equal opportunity provision. See NPRM, 6 FCC Rcd 5707, 5717 ¶¶22–23, 56 FR 30526; Report & Order, 7 FCC Rcd at 684 ¶30, 57 FR 195. We sought comment on whether we should continue this broad interpretation of a "use" for purposes of section 315.

3. Commenters suggested that the Commission modify the definition of "use" to include only programs and announcements that were paid for or authorized by the candidate or his campaign committee. In the Report and Order we adopted this suggestion and narrowed our definition of "use" under section 315 to include only non-exempt candidate appearances that are "controlled, approved, or sponsored by the candidate (or the candidate's authorized committee) after the candidate becomes legally qualified." 7

[1] Report and Order, 7 FCC Rcd 678 (1991), 57 FR 189, reconsid. granted in part and denied in part, 7 FCC Rcd 4611 (1992), 57 FR 27705. A petition for further reconsideration is currently pending. We also modified, in a separate order, certain of the rules relating to sponsorship identification in response to reconsideration petitions. See Memorandum Opinion and Order, 7 FCC Rcd 1616 (1992), 57 FR 5156. A petition for further reconsideration of that action is also presently pending. As a result of the pendency of those further reconsideration petitions, we continue to have jurisdiction of this matter. See *TeleSTAR, Inc* v. *FCC*, 888 F.2d 132, 133 (D.C. Cir. 1989).

[2] *Westen* v. *FCC*, No. 93–70041 (9th Cir., filed Jan. 22, 1993).

FCC Rcd at 685 ¶33, 57 FR 196. We concluded that both the language of the statute and the legislative history supported this narrower interpretation. *Id.* In addition, we believe that this narrower definition would simplify administration of section 315 for broadcasters and would give candidates greater control of their campaign. *Id.* at ¶37.

4. Tracy Westen and the National Association for Better Broadcasting have sought judicial review of our redefinition of the term "use." They have argued that the Commission has consistently interpreted "use" broadly to include "any appearance of a candidate, by voice or picture, that is identifiable to the audience" whether or not the "use" is authorized by the candidate. They claim that because "Congress ratified this definition of 'use' in a 1959 amendment" to section 315(a), the Commission is not free to modify it in any way. They also have argued that our modified interpretation frustrates Congress' purpose in adopting section 315(a) because it permits broadcasters to "afford one candidate valuable public exposure without triggering any obligation to grant opponents the same opportunity."

5. We continue to find no basis for petitioners' statutory arguments. The 1959 news exemptions, far from ratifying the Commission's existing definition of "use," were enacted solely to correct what Congress believed was an overly-broad interpretation of that term.[3] Further, the Commission's "broad" interpretation of "use" was itself a departure from prior interpretations.[4] Petitioners also do not recognize longstanding exceptions to the broader interpretation of "use," such as the "fleeting use" provision[5] and our interpretation that appearances in a disparaging manner are not "uses." It is, in addition, well established that the Commission has especially broad authority to interpret and apply the provisions of section 315.[6]

6. Nevertheless, upon further consideration, we now believe that the two policy justifications that supported our redefinition may not have been adequate in the circumstances. We indicated that narrowing the definition of "use" would simplify administration of Section 315 for broadcasters. See Report & Order, 7 FCC Rcd at 686 ¶37, 57 FR 197. We also indicated that we believed a narrowed definition of "use" would give candidates "greater control of their campaigns by attributing to them only those messages or associations they authorize or approve." *Id.* We continue to believe that these reasons are valid. However, in light of our obligation to explain fully the basis for changing a policy or statutory interpretation,[7] particularly one as established as our prior interpretation of "use," we now believe that the Commission should provide a more comprehensive examination of this issue. Typically, when the Commission has reevaluated its interpretation of Section 315, it has done so in a comprehensive manner. For example, in Aspen Institute, the Commission reversed its statutory interpretation of ten years' duration in order to permit a news exemption to the "use" definition for candidate debates.[8] Similarly, the Commission has engaged in more extensive analysis when it interpreted the "use" exemptions to include delayed broadcasts of news events and licensee-sponsored debates.[9] Until we have had an opportunity to give further consideration to this issue, and to seek further comment, we believe that the better course is to return to our previous interpretation.

7. Accordingly, it is ordered that pursuant to authority contained in sections 4(i), 303(r) and 315 of the Communications Act, 47 U.S.C. 154(i), 303(r), 315, the Commission's rules are amended as set forth below, effective thirty days after publication in the **Federal Register.**

8. Further information in this proceeding may be obtained by contacting Milton O. Gross or Robert L. Baker, Mass Media Bureau at (202) 632-7586.

[3] See S. Rep. No. 562, 86th Cong., 1st Sess. 5 (1959). Our rule change also expressly did not affect application of the equal opportunities requirement to news programs codified in the 1959 amendment. See Report & Order, 7 FCC Rcd at 685 n.51, 57 FR 196.

[4] Congress stated in 1959 that the Commission's "broad" interpretation of Section 315 in CBS, Inc. (Lar Daly), 26 F.C.C. 715 (1959) had overturned three decades of applying Section 315 and its predecessor in the Radio Act narrowly so as not to include candidate appearances where "the candidate had in no way directly or indirectly initiated either the filming or presentation of the event. . . ." S. Rep. No. 562 at 5, citing Alan H. Blondy, 40 F.C.C. 284 (1957).

[5] See The Law of Political Broadcasting and Cablecasting, 100 F.C.C.2d 1476, 1492 35 (1984).

[6] *Chisholm* v. *FCC*, 538 F.2d 349, 357 (DC Cir.), cert. denied, 429 U.S. 890 (1976).

[7] See, e.g., *Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (DC Cir. 1970), cert. denied, 403 U.S. 923 (1971).

[8] Aspen Institute, 55 F.C.C.2d 697 (1975), aff'd, *Chisholm* v. *FCC*, 538 F.2d 349 (DC Cir.), cert. denied, 429 U.S. 890 (1976).

[9] Delaware Broadcasting Co., 60 F.C.C.2d 1030 (1976), aff'd, *Office of Communication of the United Church of Christ* v. *FCC*, 590 F.2d 1063 (DC Cir. 1978); Henry Geller, 95 F.C.C.2d 1236 (1983), aff'd, *League of Women Voters Educ. Fund* v. *FCC*, 731 F.2d 995 (DC Cir. 1984).

List of Subjects

47 CFR Part 73

Radio broadcasting, Television broadcasting, Political candidates.

47 CFR Part 76

Political candidates.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 CFR parts 73 and 76 are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.1941(b) is revised to read as follows:

§ 73.1941 Equal opportunities.

* * * * *

(b) *Uses.* As used in this section and § 73.1942, the term "use" means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 73.1941 (a)(1) through (a)(4) of this section.

* * * * *

PART 76—CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

4. Section 76.205(b) is revised to read as follows:

§ 76.205 Origination cablecasts by legally qualified candidates for public office; equal opportunities.

* * * * *

(b) *Uses.* As used in this section and § 76.206, the term "use" means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 76.205 (a)(1) through (a)(4) of this section.

* * * * *

[FR Doc. 94-7333 Filed 3-28-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–08; Notice 10]

RIN 2127–AF27

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: The purpose of this notice is to announce the denial of two petitions for reconsideration of a final rule amending Standard No. 208, Occupant Crash Protection, to require "lap belts or the lap belt portion of lap/shoulder belts to be capable of tightly securing child safety seats." This requirement is referred to as the "lockability requirement." The first petition, from Jaguar, requested a one-year extension of the effective date of the final rule, or, in the alternative, a phase-in period. This petition is denied because NHTSA believes the petitioner's difficulty in complying with the lockability requirement is surmountable. Further, granting the petition would needlessly delay implementation of this requirement.

The second petition, from Toyota, requested a change in the test procedure to either employ a surrogate child restraint as a test device or to add an additional sentence about belt position before load application. This petition is denied because the petitioner's reported problem can be solved through a proper interpretation of the test procedure.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. Cohen, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4911.

SUPPLEMENTARY INFORMATION: On October 13, 1993, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection*, to require "lap belts or the lap belt portion of lap/shoulder belts to be capable of tightly securing child safety seats," referred to as the "lockability requirement" (58 FR 52922). The final rule was intended to ensure that safety belts are capable of tightly securing child safety seats. The requirement was adopted as a result of questions and concerns on the part of the public about the safety and effectiveness of child seats which can move during routine driving maneuvers when secured by safety belts that use an emergency locking retractor (ELR). NHTSA received petitions for reconsideration of this final rule from Jaguar and Toyota.

Jaguar Petition

Jaguar's petition requested a one-year extension of the effective date of the final rule, or, in the alternative, a phase-in period requiring 90 percent compliance for the 1996 model year and 100 percent compliance for the 1997 model year. This request was made because "the Jaguar XJS coupe will have less than 12 months of production remaining prior to the introduction of a new sports model" at the time of the current effective date (September 1, 1995). To support this request, Jaguar stated:

> The XJS coupe is a low volume 2+2 sport coupe with very limited rear seat accommodation. The rear seating area is more suitable for very small children or extra luggage. This model does not meet the requirements of * * * final rule regarding child seat lockability in those rear seating positions. The rear seat belt installation is unique to Jaguar in the XJS coupe and * * * (t)he expenditure of finite engineering resource and manpower to redesign, develop, retool, and recertify a new and unique seat belt system for a low volume model, with less than one year of production life results in operation difficulties.

No other automobile manufacturer has reported that it will have a problem in meeting the lockability requirement. In fact, many manufacturers have already brought many of their vehicles into compliance with the new requirement.

Since its petition contained very little detail about its attempts to comply with the lockability requirement, NHTSA contacted Jaguar for additional information. Jaguar provided confidential information about the various possible solutions it had explored and the anticipated cost of each solution. Jaguar noted that it had rejected one of the lower cost solutions because it believed that the belt design would be "adult user unfriendly." However, the Jaguar petition indicates that adults are unlikely users of the rear seating positions.

NHTSA believes that Jaguar can solve the engineering problem associated with the XJS coupe belt design before the effective date. Jaguar has not indicated that the XJS coupe belt design cannot be engineered to comply with the requirement, only that its preferred solution would have a high cost. Given Jaguar's statement that the rear seating area is best suited for small children, the very population targeted for the benefits of the requirement, NHTSA believes that it is very important for these seating positions to comply with the requirement. Since Jaguar's problem is one of cost minimization and not practicability, and in light of the ability of all other manufacturers to meet the effective date, NHTSA has determined that granting the Jaguar petition would needlessly delay the benefits of the final rule. Therefore, this petition is denied.

Toyota Petition

Toyota submitted a petition concerning a problem with testing a front passenger lap/shoulder belt. The inboard anchorage of Toyota's design is a ring attached to the emergency release buckle. The problem arises in part from the fact that the inboard anchorage is mounted on a flexible stalk. Depending on how the test procedure is conducted, the ring through which the belt webbing passes at that anchorage can move up or down the belt due to the flexibility of the stalk and the application of the test force to the lap belt portion. The movement of the ring up the webbing can affect the length of the lap belt portion and create an apparent noncompliance, even though little or no webbing has spooled off the retractor at the upper end of the shoulder belt portion of the belt assembly. Toyota explained that:

> The problem is caused by the slipping of the webbing at the buckle, which leads to changes in the measuring distance between points A and B. However, the measuring distance between point B and the retractor, and the belt path itself does not change appreciably.

The test procedure in the final rule specifies that lap/shoulder belts are to be tested as follows:

—Buckling the safety belt assembly,
—"Locking" the safety belt in accordance with the manufacturer's instructions in the vehicle owner's manual,
—Locating any point on the safety belt buckle or emergency release buckle (these buckles are located on the inboard side of the lap belt portion),
—Locating any point on the attachment hardware on the other end of the lap belt portion of the safety belt assembly (this hardware is located on the outboard side of the lap belt portion),
—Adjusting the lap belt portion of the safety belt assembly so that the length of webbing between these two points is the maximum possible with the belt system,
—Measuring that distance,
—Readjusting the lap belt portion of the safety belt assembly so that the length of the webbing between these two

points is at least 5 inches less than the previously measured distance,

—Pulling on the lap belt portion of the "locked" belt with a 10 pound pre-load using a webbing tension pull device,

—Again measuring the previously measured distance,

—Pulling on the lap belt portion of the "locked" belt with a 50 pound force using a webbing tension pull device, and

—With the force still pulling on the belt, measuring the distance between the two points again.

The difference between the third and fourth measurements shall not exceed two inches.

Toyota requested a change in the test procedure to either employ a surrogate child restraint as a test device or to add the following sentence to S7.1.1.5(c)(4):

> For belt webbing that is locked by a retractor ensure that the distance between points A and B is at the maximum length allowed by the belt system during application of the 10-lb pre-load.

In a February 18, 1994 letter to the agency, Toyota suggested a third possible solution, changing the direction of the pre-load application to 45 degrees.

NHTSA believes that Toyota's problem is caused by a misunderstanding of the test procedure. Section S7.1.1.5(c)(2) specifies that the belt should be adjusted "so that the webbing between points A (on the buckle) and B (on the attachment hardware at the other end of the lap belt portion) is at the maximum length allowed by the belt system." As demonstrated in a video supplied by Toyota in a meeting with NHTSA staff on November 29, 1993, this adjustment was made by adjusting the webbing so that the majority of it was within the lap belt portion and rotating the buckle upward along the webbing toward the shoulder belt portion.

Section S7.1.1.5(c)(3) then specifies readjusting "the belt system so that the webbing between points A and B is at any length that is 5 inches or more shorter than the maximum length." The Toyota video depicted two different ways in which Toyota made this readjustment. In the first variation, the buckle was allowed to rotate downward toward the lap belt portion as webbing was spooled back onto the retractor for S7.1.1.5(c)(3). Then, when the load was applied, the buckle rotated upward so that the ring on the buckle rode up along the webbing, increasing the length of the lap belt portion even though, as noted above, little or no webbing had spooled off the retractor. In the second variation, the buckle was not allowed to reposition itself as the webbing was spooled back onto the retractor for S7.1.1.5(c)(3). Thus, the buckle did not rotate when the load was applied. The only change, if any, in the length of the lap belt portion was due to webbing spooling off the retractor. As explained below, Toyota should not have allowed the buckle to reposition itself in the first variation.

The specification in S7.1.1.5(c)(3) that the webbing between points A and B be at any length that is 5 inches or more shorter than the maximum length was added to ensure that the test would not indicate compliance only because there was no webbing left to spool off the retractor. Thus, the adjustment in S7.1.1.5(c)(3) should only involve spooling webbing back onto the retractor. If any other adjustments to the orientation of any other portion of the belt system are made for S7.1.1.5(c)(2), the adjusted portions should not be further changed. Thus, Toyota should not allow the buckle to rotate downward, as it did in the first variation. As the video demonstrated, when the buckle was not allowed to rotate downward in the second variation, the apparent problem did not occur. Therefore, the agency is denying this petition also.

Issued on March 23, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–7351 Filed 3–24–94; 12:23 pm]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1051, 1053 and 1312

[Ex Parte No. MC–180 (Sub-No. 3)]

Regulations Implementing Section 7 of the Negotiated Rates Act of 1993 (Interpretive Decision)

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Interpretation of regulations.

SUMMARY: The ICC is issuing a decision interpreting new regulations addressing motor common and contract carrier discounts, allowances, or adjustments provided to nonpayers of charges. The regulations were issued under section 7 of the Negotiated Rates Act of 1993 (Pub. L. No. 103–180) and will take effect on April 2, 1994. The Commission may issue a further decision if the comments expose issues that require additional clarification.

DATES: Comments are due on April 18, 1994.

ADDRESSES: Send comments (an original and 10 copies), referring to Ex Parte No. MC–180 (Sub-No. 3), 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: The regulations that take effect on April 2, 1994, were published at 59 FR 2303 (January 14, 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 (5 U.S.C. 601 *et seq.*), we need not make the small business impact examination required by that Act. Nevertheless, we welcome any comments regarding the small entities considerations embodied in that Act.

Decided: March 22, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–7336 Filed 3–28–94; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 59, No. 60
Tuesday, March 29, 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 25

[Docket No. NM–93; Notice No. SC–94–1–NM]

Special Conditions: Cessna Aircraft Company, Model 750 (Citation X) Airplane, Lightning and High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company (Cessna), Model 750 (Citation X) airplane. This new airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before May 12, 1994.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–93, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–93. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–93." The postcard will be date stamped and returned to the commenter.

Background

On October 15, 1991, Cessna Aircraft Company (Cessna), 6030 Cessna Blvd., P.O. Box 7704, Wichita, KS 67277–7704, applied for a new type certificate in the transport airplane category for the Model 750 (Citation X) airplane. The Cessna Model 750 is a T-tail, low swept wing, medium-sized business jet powered by two GMA–3007C turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 6,000 pounds thrust. The flight controls will be powered and capable of manual reversion. The airplane has a seating capacity of up to twelve passengers, and a maximum takeoff weight of 31,000 pounds.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Cessna must show, except as provided in § 25.2, that the Model 750 (Citation X) meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–74. In addition, the proposed certification basis for the Model 750 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 750 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Model 750 incorporates new avionic/electronic installations, including a digital Electronic Flight Instrument System (EFIS), Air data System, Attitude and Heading Reference System (AHRS), Navigation and Communication System, Autopilot System, and a Full Authority Digital Engine Control (FADEC) system that controls critical engine parameters. These systems may be vulnerable to lightning and high-intensity radiated fields external to the airplane.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic and electronic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and

the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Cessna Model 750, which would require that new technology electrical and electronic systems, such as the EFIS, FADEC, AHRS, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these proposed special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment, which has been changed to agree with the latest recommendation from the Society of Automotive Engineers (SAE) AE4L lightning committee.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. The effect of these threats on the airplane and its systems depends upon several factors, including installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike-Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses that represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of repetitive Component H waveforms in 3 sets of 20 pulses each. The minimum time between individual Component H pulses within a burst is 50 microseconds, the maximum is 1,000 microseconds. The 3 bursts are distributed according to the following constraints: (1) The minimum period between bursts is 30ms, and (2) the maximum period between bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t)=I_o\,(e^{-at}-e^{-bt})$$

where:

t=time in seconds,

i=current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak}	= 200 KA	100 KA	50 KA	10 KA
and,				
$(di/dt)_{max}$(amp/sec)	= 1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	= 1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp² sec)	= 2.0×10^{6}	0.25×10^{6}	0.0625×10^{6}	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz ...	60	60
500 KHz–2000 KHz .	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz ..	150	33
200 MHz–400 MHz ..	70	70
400 MHz–700 MHz ..	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelop used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conlcusion

This action affects only certain design features on the Cessna Model 750 (Citation X) airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Model 750 (Citation X) series airplanes.

1. *Lightning protection:* (a) Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from unwanted effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

3. For the purpose of these special conditions, the following definitions apply:

Critical functions. Functions whose failure would whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential functions. Functions whose failure could contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on March 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 94–7290 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–4]

Proposed Modification of Class E Airspace; Freeport, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace near Freeport, IL, to accommodate a new Nondirectional Beacon (NDB) Runway 06 Standard Instrument Approach Procedure (SIAP) and a new Localizer (LOC) Runway 24 SIAP to Albertus Airport, Freeport, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

DATES: Comments must be received on or before April 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules

Docket No. 94–AGL–4 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–4." 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 the 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 modify the Class E airspace near Freeport, IL, to accommodate a new NDB Runway 06 SIAP and a new LOC Runway 24 SIAP to Albertus Airport, Freeport, IL. This modification would increase the Class E airspace area radius from 6.4 miles to 6.5 miles. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL IL E5 Freeport, IL [Revised]

Freeport, Albertus Airport, IL
(lat. 42°14′48″N., long. 89°34′55″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Albertus Airport.

* * * * *

Issued in Des Plaines, Illinois on February 22, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94–7295 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–3]

Proposed Modification of Class E Airspace; Warroad, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Warroad International-Swede Carlson Field, Warroad, NM, to accommodate Instrument Landing System (ILS) Runway 31, and Nondirectional Beacon (NDB) Runway 31 Standard Instrument Approach (SIAP). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is

to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before April 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–3." 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 the 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 modify Class E airspace at Warroad International-Swede Carlson Field, Warroad, MN, to accommodate Instrument Landing System (ILS) Runway 31, and Nondirectional Beacon (NDB) Runway 31 Standard Instrument Approach (SIAP). Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MN E5 Warroad, MN [Revised]

Warroad International-Swede Carlson Field
(lat. 48°56′12″N, long. 95°20′34″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Warroad International-Swede Carlson Field, excluding that area north of lat. 49°00′00″N (Canadian-U.S. boundary).

* * * * *

Issued in Des Plaines, Illinois on February 22, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94–7293 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–5]

Proposed Class E Airspace Modification; Sault Ste. Marie, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E2 airspace at Sault Ste. Marie, MI to change the controlled airspace operations from part-time to continuous operation. Controlled airspace to the surface is needed to contain instrument flight rules (IFR) operations at the Chippewa County International Airport. Currently, at least half of the operations at Chippewa County International Airport are scheduled during the times when the Class E2 airspace is inactive (uncontrolled). The intended effect of this proposal is to provide adequate Class E airspace for IFR operators at Chippewa County International Airport.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AGL–530, Federal Aviation Administration, Docket No. 94–AGL–5, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the office of the Assistant Chief Counsel, AGL–7 at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, System Management Branch, AGL–530, at the address above.

FOR FURTHER INFORMATION CONTACT: Robert Woodford, Manager, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7573.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, AGL–530, Air Traffic Division, at 2300 East Devon Avenue, Des Plaines, Illinois 60018, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AGL–530, Air Traffic Division, at 2300 East Devon Avenue, Des Plaines, Illinois 60018. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E2 airspace at Sault Ste. Marie, Michigan to change the operations from part-time to continuous to provide adequate controlled airspace for existing operations at Chippewa County International Airport. An Automated Weather Observation System (AWOS) is installed at the Chippewa County International Airport that continuously provides weather data, and a non-federal SIAP has been established. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993).

The Class E airspace designation listed in this document 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 Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AGL, MI E2 Sault Ste. Marie, MI [Revised]

Chippewa County International Airport
(lat. 46°14′52″N., long. 84°28′15″W.)

Within a 4.4-mile radius of the Chippewa County International Airport.

* * * * *

Issued in Des Plaines, Illinois on March 7, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94-7294 Filed 3-28-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ASW-54]

Proposed Modification of Class D Airspace: Dallas Redbird Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class D airspace at Dallas Redbird Airport, TX. Airspace reclassification, which became effective September 16, 1993, omitted a portion of the previous airport traffic area and this proposal would restore that airspace. The previous airport traffic area extended from the surface up to, but not including 3,000 feet Mean Sea Level (MSL). However, after airspace reclassification, effective September 16, 1993, the term "airport traffic area," was replaced with the designation "Class D airspace." The Class D airspace at Redbird Airport, TX, only extended up to 2500 feet MSL. The intended effect of this proposal is to provide adequate Class D airspace for instrument flight rules (IFR) operations and require two-way radio communications at Dallas Redbird Airport.

DATES: Comments must be received on or before May 6, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93-ASW-54, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 222-5595.

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 and be submitted in triplicate to the address listed under the caption "ADDRESSES." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93-ASW-54." The postcard will be date and time stamped and returned to the commenter. All communications received 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 the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Fort Worth, TX, 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 Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. 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 that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class D airspace at Dallas Redbird Airport, TX. This proposal would add additional Class D airspace so that the current Class D airspace will be equal to the previous airport traffic area, a portion of which was deleted when airspace reclassification became effective. Airspace Reclassification, effective September 16, 1993, has discontinued the use of the term "airport traffic area," replacing it with the designation "Class D airspace." The intended effect of this proposal is to provide adequate Class D airspace from the surface for IFR operations and require two-way radio communications at Dallas Redbird Airport, TX.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and

effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ASW TX D Dallas Redbird Airport, TX. [Modify]

Dallas, Redbird Airport, TX.
(lat. 32°40'51"N., long. 96°52'06"W.)
Redbird RBN
(lat. 32°40'37"N., long. 96°52'16"W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.2-mile radius of Redbird Airport and within 2.1 miles each side of the 165° bearing from the Redbird RBN extending from the 4.2-mile radius to 4.7 miles south of the airport excluding that airspace west of a line from lat. 32°37'40"N., long. 96°55'21"W.; to lat. 32°39'35"N., long. 96°54'16"W; to lat. 32°44'20"N., long. 96°53'59"W; excluding that airspace within the Dallas-Fort Worth, TX, Class B airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on March 15, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–7291 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–2]

Proposed Class E Airspace Establishment; Savanna, IL.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace near Savanna, IL, to accommodate a new Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A) instrument approach procedure to Tri-Township Airport, Savanna, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

DATES: Comments must be received on or before April 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–2, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–2." 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, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 the 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 Class E airspace near Savanna, IL, to accommodate a new VOR/DME–A instrument approach procedure to Tri-Township Airport, Savanna, IL. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

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

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

* * * * *

AGL IL E5 Savanna, IL [New]

Savanna, Tri-Township Airport, IL
(lat. 42°02'48"N., long. 90°06'34"W.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of the Tri-Township Airport.

* * * * *

Issued in Des Plaines, Illinois on February 22, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94–7297 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 134 and 175

Country of Origin Marking for Frozen Produce; Implementation of T.D. 94–5; Solicitation of Comments on New Effective Date and Size and Style of Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposal for new compliance date and adoption of specifications for type size and style of marking; Solicitation of Comments.

SUMMARY: In another document published in today's **Federal Register**, Customs has suspended the compliance date for T.D. 94–5, regarding country of origin marking requirements for retail packages containing frozen produce. In this document, Customs is proposing a new compliance date and is requesting comments on both the proposed compliance date and on the specifications regarding type size and style set forth in T.D. 94–5.

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Regulations Branch, Office of Regulations and Rulings (Franklin Court), 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Value and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–7010.

SUPPLEMENTARY INFORMATION

Background

On December 29, 1993, pursuant to section 516 of the Tariff Act of 1930, as amended, Customs issued T.D. 94–5, a Decision and Final Interpretive Rule concerning the country of origin marking requirements for retail packages containing imported frozen produce. 58 FR 68743 (December 29, 1993). Customs issued T.D. 94–5 after publishing a Notice of Domestic Interested Party Petition under section 516. Tariff Act of 1930, as amended (19 U.S.C. 1516) and part 175, Customs Regulations (19 CFR part 175) and after having reviewed the submitted public comments. The Notice solicited public comments on the issues raised by the domestic interested parties, i.e. whether the nature of frozen produce packaging required specified marking on the front panel to indicate the country of origin in a manner that would satisfy the requirements of conspicuousness and legibility. After consideration of the public comments received, Customs reversed a previous determination and ruled that country of origin marking must appear on the front panel of such packages in specified type size and style.

The Decision on the section 516 Petition essentially agreed with the prior opinion of the Court of International Trade in Norcal/Crosetti Foods, Inc., et al. v. U.S. Customs Service, 758 F. Supp. 729 (1991). In particular, Customs agreed with the Court that both the location and the legiblity of the country of origin marking on these products were deficient. The detailed specifications for type size and lettering of marking announced by Customs were intended as a definitive resolution of the legibility issue. These specifications were provided in part because the Court, in addition to requiring that marking appear on the front or most prominent panel of the package, also required that marking be placed on that panel in a conspicuous manner, keeping in mind the common meaning of that term. The determination became legally effective on February 11, 1994. However, parties adversely affected by the final interpretive rule were allowed until May 8, 1994, to bring their imported frozen packaging into compliance.

With the suspension by Customs of the effective date for compliance by another document published in today's **Federal Register**, there will now be opportunity for further consideration of type sizes and styles. The specifications set forth in the December 29, 1993, Decision and Final Interpretive Rule, at **Federal Register** page 68747, are to be considered for purposes of this Notice as proposed specifications which Customs will reconsider in light of the comments received.

Public comment is requested on both the date after which country of origin marking on the front panels of produce packaging will be required for all persons, and on the specifications regarding type size and style set forth in T.D. 94–5. Customs proposes to make the requirement of front panel marking effective on January 1, 1995.

Upon completion of the comment period and additional consideration, Customs plans to issue a determination setting forth final specifications on type size and style, and setting new dates for compliance with T.D. 94–5.

Comments

All comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4 p.m. at the Regulations Branch, Suite 4000, Franklin Court, 1099 14th Street, NW., Washington, DC.

Authority: This notice is published in accordance with 19 U.S.C. 1304(a), 19 U.S.C. 1516, and §§ 134.42 and 134.44, Customs Regulations (19 CFR 134.42; 19 CFR 134.44).

Drafting Information

The principal drafter of this document was Robert Cascardo, Value and Marking Branch, U.S. Customs Service. Personnel from other Customs offices participated in its development.

Approved: March 21, 1994.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–7395 Filed 3–24–94; 4:33 pm]

BILLING CODE 4820–02–P

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19 CFR Part 152

Notification to Importer of Increased Duties

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to amend the Customs Regulations to provide that the district director of Customs shall notify the importer on Customs Form (CF) 29, Notice of Action, when the estimated aggregate of the increase of duties on an entry exceeds $100. The regulations now provide that the importer shall be notified if the increase exceeds $15. Most of the commenters were opposed to the proposal and cited reasons why the proposed rule would not be in the best interests of importers, brokers or the Customs Service. Customs has concluded that the proposed rule would result in more time, effort and cost for the government, importers and brokers.

DATES: Withdrawal effective on March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Office of Regulations and Rulings, 202–482–7040.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1992, Customs published a notice in the **Federal Register** (57 FR 48347), proposing to amend § 152.2 of the Customs Regulations (19 CFR 152.2) to provide that the district director would notify the importer on Customs Form (CF) 29, Notice of Action, when the estimated aggregate of the increase of duties on an entry exceeded $100.

The notice proposed that in lieu of the current requirement of preparing a CF 29 when the increase in duties is $15 or more, the estimated increase which would trigger the sending of a CF 29 would be raised to $100.

The reasons given for the proposed change were that it would lessen the administrative burden and costs associated with notifying the importer of minimal increases while it would not result in a significant reduction of services provided to importers.

Discussion of Comments

Twelve comments were received in response to the notice of proposed rulemaking. Ten of the twelve commenters objected to the proposed amendment to § 152.2 of the Customs Regulations. All ten of these commenters believe that the proposed change would result in an increase rather than a decrease in the administrative burden and costs to Customs associated with notifying the importer of minimal increases in duties.

Specifically, they point out that it would increase the demand to review entry summaries after liquidation to determine the basis of the duty increase (*i.e.*, entered value, trade preference eligibility or tariff classification), rather than during the initial entry stage when the entry summary is processed by the import specialist. This change would place an added burden upon Customs to locate and produce the liquidated entry package and to research the reason for the increase, since the liquidation generally follows the change by a certain time period.

Most commenters thought it far more efficient to resolve a duty difference on the basis of one entry, at the initial stages of liquidation, rather than to wait several months until liquidation, by which time numerous entries of the same merchandise may have been made and by which time significant purchase orders may have been placed by the importer based on the initial false impression that lower duties would be due.

Moreover, they state that the absence of early notification of increased duties will deprive the broker or importer of the opportunity to receive valuable information from Customs necessary to modify future importations to avoid repeating the same error and causing additional increases. Two commenters stated that the size of the duty increase is not a measure of the severity or complexity of the issue which is causing the duty increase, and that a CF 29 involving one entry and a minor duty increase could be the means for resolving a potentially contentious matter involving many similarly entered entries and a much greater increase in aggregate duties due.

Another factor militating against the proposed regulation change which was mentioned by most commenters is that instead of seeking resolution of a dispute in the assessment of increased duties prior to liquidation through such methods as discussions with an import specialist, use of the internal advice procedure or obtaining a binding ruling, the number of protests filed under 19 U.S.C. 1514 would increase on many entries involving the same issue. If the proposed amendment to the regulations became effective, several areas of the Customs Service (*e.g.*, the import specialist teams, the protest section, the liquidation section and the National Finance Center) would have to expend considerable time and effort in processing more protests.

Several commenters are brokers along the northern border handling truck and rail shipments. These commenters said that the CF 29 is essential to their business, citing the fact that they are usually the importer of record on the entries for their clients, who import in high volume and low value, and that approximately 25 percent of increased duty bills are less than $100 per entry. The northern border brokers assert that the preponderance of their customers will not pay the increased duties without knowing why and how the duties are calculated.

These brokers reject the argument that by raising the $15 limit, the inquiries between Customs and brokers or importers would decrease. They observe that while many importers would not question an increase in duty for $12 without notification and explanation, most importers would challenge an increase of $50, $75 or $100 upon receipt of a Customs bill.

Some commenters suggested further automating the liquidation procedures so that comments or explanations pertinent to the duty increase could be incorporated in the liquidation information distributed via the Automated Commercial System to reduce the clerical burden on the Customs Service.

The two commenters who supported the adoption of the proposal stated—without elaboration—that it would reduce the overall cost of importing into the United States and that it would relieve Customs of repetitive minor administrative tasks. However, one did note that the importer would not have knowledge of a value or classification change causing a duty increase simply by viewing the liquidation notice.

The majority of the commenters point out that by using the CF 29 to provide a clear explanation of its action regarding an entry before it is liquidated, the Customs Service will avoid extra administrative costs and burdens after the entry is liquidated.

Conclusion

Taking all of the factors and comments mentioned above into consideration, Customs has determined that it should not proceed with the proposal at this time. After further

consideration and review of the comments, Customs now believes that the proposed change would not reduce cost, effort or time for Customs or for importers or brokers. Given the validity of the comments and the fact that the majority of the commenters were opposed to the changes, Customs believes that the current regulation is preferable to the proposed regulation.

Accordingly, Customs has concluded that the proposal be withdrawn at this time.

Approved: March 15, 1994.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

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

[FR Doc. 94–7261 Filed 3–28–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 221

[Docket No. R–94–1551; FR–3009–P–01]

RIN 2502–AF27

Auction of Section 221 Multifamily Mortgages

AGENCY: Office of the Assistant Secretary of Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise current regulations governing the assignment of mortgages insured under section 221 of the National Housing Act to conform with changes made by section 2201 of the Omnibus Budget Reconciliation Act of 1990) (approved November 5, 1990). (Section 336 of the National Affordable Housing Act, enacted later, contains identical provisions.) Section 2201 establishes a procedure whereby the Secretary of HUD, in lieu of accepting the assignment of a section 221 mortgage, shall arrange for the auction sale of the mortgage.

DATES: Comments due date: May 31, 1994.

ADDRESSES: Interested persons are invited to submit comments on the proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3555. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0460.

Section 2201 of the Omnibus Budget Reconciliation Act of 1990, approved November 5 1990, requires HUD to implement its provisions within thirty days from the date of enactment and provides that implementation shall not be subject to the requirement of the issuance of regulations. Through administrative action, the Department commenced implementation of section 2201 effective December 5, 1990.

Before its amendment by section 2201 of the Omnibus Budget Reconciliation Act of 1990, (Pub. L. 101–508, approved November 5, 1990), section 221(g)(4) of the National Housing Act (NHA) gave mortgagees holding current mortgages insured under a conditional or firm commitment issued before November 30, 1983 under section 221 of the NHA an option to assign the mortgage to HUD at the end of twenty years from the date of final endorsement. The statute further provided that, upon assignment, HUD would issue to the mortgagee ten-year debentures bearing interest at the "going Federal rate" with a face amount equal to the amount of the unpaid principal balance of the mortgage as of the date of the assignment.

Section 2201 provides for a new auction process to replace the prior section 221(g)(4) assignment option. It provides that when a mortgagee elects to assign a mortgage to HUD under section 221(g)(4), the Secretary will, in lieu of accepting the assignment, arrange an auction sale of the mortgage and pay the purchaser monthly interest enhancement payments that are equal to the difference between the mortgage note interest rate and the bid rate accepted by HUD applied to the declining principal balance.

Before enactment of section 2201, the Department took assignment of a mortgage under section 221(g)(4) and issued ten-year debentures as described above. HUD makes interest payments on the debentures semiannually, and the face amount of the debenture is paid at maturity or at redemption of the debenture by HUD. HUD holds the assigned mortgage and receives monthly mortgage payments for the remaining term of the mortgage (typically, about 20 years) or until prepayment, default, foreclosure or sale of the mortgage. Under the auction process authorized by section 2201, HUD does not take assignment of the mortgage or issue debentures; instead, HUD makes monthly interest enhancement payments to or receives interest sharing payments from the purchasing mortgagee, depending on whether the bid rate is higher or lower than the note rate. These payments would continue until maturity, prepayment, voluntary termination of insurance, default and full payment of insurance benefits, or initiation of foreclosure proceedings by the mortgagee in cases where the mortgagee does not intend to file a claim for insurance benefits.

Section 2201 required HUD to implement the auction procedure within 30 days of enactment, i.e., by December 5, 1990. It further provided that early implementation need not be subject to the requirement of prior issuance of regulations in the Federal Register. The Department has held several auctions and anticipates that additional auctions will be held before the effective date of this rule. All notices of election to assign made after December 5, 1990, are subject to the provisions of section 2201.

Only mortgages that are current as of the twentieth anniversary after final endorsement, and for which the mortgagee makes its election to assign within the one-year "window" set forth in 24 CFR 221.775, are eligible for inclusion in the auction. In addition, mortgages previously sold by the Government National Mortgage Association (GNMA) or the Federal Housing Administration (FHA) with the assignment option deleted are not eligible for inclusion in the auction sale. The selling mortgagee must certify that the mortgage submitted for inclusion in the auction is eligible and that the assignment option has not been deleted.

All mortgagees participating in the auction sale must be HUD-approved mortgagees. There is nothing in section 2201 to preclude the mortgagee of record from participating in the auction of the mortgages. An approved mortgagee may assign, transfer or pledge

a purchased mortgage or a partial interest in a purchased mortgage by way of a participation certificate or other mortgage-backed obligations in a form acceptable to the Commissioner, under the terms and conditions prescribed in 24 CFR section 207.261.

Section 2201 provides that HUD shall encourage participation in the auction by state housing finance agencies, nonprofit organizations, tenant organizations, and qualified mortgagees participating in a plan of action under the Emergency Low Income Housing Preservation and Resident Homeownership Act of 1987, as amended by the Low-Income Housing and Resident Homeownership Act of 1990. The proposed rule provides that any of these entities that are HUD-approved mortgagees may participate in the auction. Otherwise, they may participate by purchasing participation certificates or mortgage-backed securities from purchasing mortgagees. The Department invites comments on other ways to encourage the participation of these types of organizations.

Finally, it should be noted that, in January of each year, the Department will be submitting to the Congress a report which will include statements of the number of mortgages auctioned and sold and their value, the amount of subsidies committed to the program, the ability of the Department to coordinate the program with the incentives provided under the Emergency Low Income Housing Preservation and Resident Homeownership Act of 1987 as amended or any subsequent Act, and the costs and benefits derived from the program for the federal government.

Procedural Matters

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. This new auction procedure provides selling mortgagees essentially the same amount of benefits provided under the earlier section 221(g)(4) assignment procedure. Participation by purchasing mortgagees is completely voluntary.

Regulatory Agenda

This proposed rule was listed as sequence number 1515 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56425) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have federalism implications when implemented and, thus, are not subject to review under the Order. The proposed rule does not change in any way existing relationships between HUD, the states, or local governments.

Environment

An environmental assessment is unnecessary, since internal administrative procedures whose content does not constitute a development decision affecting the physical condition of specific project areas or building sites is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(k).

The Catalog of Federal Domestic Assistance program number is 14.135.

List of Subjects in 24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 221 would be amended to read as follows:

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 221 would continue to read as follows:

Authority: 12 U.S.C. 1715b and 1715*l*; 42 U.S.C. 3535(d); sec. 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

2. Section 221.770 would be revised to read as follows:

§ 221.770 Assignment option.

Subject to the provisions of §§ 221.791 through 221.797, a mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983 (or in the Direct Endorsement Program, a property appraisal report signed by the mortgagee's approval underwriter on or before November 30, 1983) has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided that the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer, and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon assignment, transfer, and delivery either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to receive insurance benefits in accordance with § 221.780.

3. Part 221, subpart D, would be amended by adding a new undesignated center heading following § 221.790; and by adding new §§ 221.791 through 221.797, to read as follows:

Subpart D—Contract Rights and Obligations—Moderate Income Projects

* * * * *

Auction of Part 221 Moderate Income Project Mortgages

§ 221.791 Auction of mortgages eligible for assignment under section 221(g)(4).

All notices by a mortgagee of its election to exercise its assignment option under §§ 221.770 through 221.790 made after December 5, 1990 shall be subject to this section and to §§ 221.792 through 221.797. For mortgages for which such election was made on or before December 5, 1990, the Commissioner will continue processing the claim unless the mortgagee requests that the mortgage be subject to §§ 221.792 through 221.797.

§ 221.792 Auction sale in lieu of assignment.

(a)(1) With reference to any mortgage for which an election to assign under § 221.770 was transmitted to the Commissioner after December 5, 1990, and which is eligible for assignment under that section, the Commissioner, in lieu of accepting the assignment, will arrange for a public auction and sale of the beneficial interests in the mortgage loan through an auction and sale of:

(i) The mortgage loan, or;

(ii) Participation certificates or other mortgage-backed obligations in a form acceptable to the Commissioner.

(2) The Commissioner may structure the beneficial interests of any or all of the mortgages to be sold in the auction. The Commissioner will arrange the

auction and sale at a price, to be paid to the selling mortgagee, consisting of the unpaid principal balance of the mortgage as of the date of sale plus accrued mortgage interest to the date of sale.

(b) The auction sale procedure set forth in §§ 221.791 through 221.797 shall not affect any low-income affordability restrictions applicable to a project under:

(1) The original regulatory agreement;

(2) A use agreement entered into under the provisions of part 248 of this chapter; or

(3) Any other agreements providing federal assistance to the housing or its tenants.

(c) Once a mortgage has been sold in accordance with the procedures set forth in §§ 221.791 through 221.797, the mortgage will continue to be insured under this part, but the mortgage will be ineligible for assignment under § 221.770.

§ 221.793 Eligible mortgagees.

All mortgagees participating in the auction sale as bidders must be HUD-approved mortgagees in good standing, i.e., not under a temporary denial of participation, not the subject of a charge issued following a reasonable cause determination under the Fair Housing Act, not on probation, or suspended from doing business with HUD. A mortgagee of record may bid on a mortgage that it holds. State housing finance agencies, mortgagees participating in a plan of action under part 248 of this chapter, non-profit organizations and tenant associations may (if they are HUD-approved mortgagees in good standing) participate by submitting bids, or may, regardless of whether they are HUD-approved mortgagees, participate by such means as the purchase of participation certificates or mortgage-backed securities from a participating mortgagee.

§ 221.794 Project information.

(a) A mortgagee electing to assign its mortgage shall provide the Commissioner and persons bidding at the auction sale with the following information:

(1) Project name, address and HUD project number;

(2) The principal mortgage balance and current interest rate as of the date of the election to assign;

(3) Interest rate on the original mortgage, maturity date, amortization type, and monthly payment to principal and interest;

(4) Annual fee for servicing mortgage expressed in basis points (percentage);

(5) Description of the characteristics of the original credit instrument;

(6) The level and duration of applicable federal or other subsidies;

(7) Copies of physical inspection reports completed within the past year but not yet submitted to the Commissioner;

(8) A statement of fiscal status of the mortgage at the time of election, including a certification that, as of the date of the election to assign the mortgage, the mortgage is current (that is, that no payment due under the mortgage or mortgage note is more than 30 days late and the mortgagee has not declared a default based on the mortgagor's failure to perform any other covenant under the provisions of the mortgage); and

(9) Any other information the Commissioner determines to be necessary and sets forth in administrative instructions.

(b) The mortgagee of record shall provide to the purchasing mortgagee all documents necessary to assume liability for the payment of mortgage insurance premiums to the Commissioner with respect to the mortgage, including a certification that mortgage insurance premiums payable to HUD are current.

(c) The Commissioner shall provide information to persons bidding at the auction regarding the status of the property with reference to the provisions of part 248 of this chapter (Prepayment of Low-income Housing Mortgages), including:

(1) Information on eligibility to prepay the mortgage;

(2) A statement whether the owner has filed a notice of intent to prepay or a plan of action;

(3) Details with respect to any incentives that have been provided in lieu of the exercise of prepayment rights; and

(4) Types of subsidy provided to the project owner under a plan of action, excluding non-project-based certificates or vouchers under part 882 or 887 of this title.

(Approved by the Office of Management and Budget under control number 2502–0460)

§ 221.795 Terms and conditions of auction-sale.

(a) After receiving the information described in § 221.794(a), the Commissioner will advertise for an auction sale of the mortgage. The auction sale announcement will include the date, time and place of the auction, and requirements governing warranties, handling of escrows, assignment of winning bids, and other matters.

(b) The auction will be held at any time during the six-month period after receiving the information described in § 221.794(a), but not before two months after receiving the mortgagee's written notice of its intent to assign its mortgage to the Commissioner.

(c) In any auction sale, the Commissioner will accept the lowest interest rate bid by an eligible bidder that the Commissioner determines to be acceptable. Where there are identical bids, the earlier bid will be accepted. Notice of the accepted bid will be published in the **Federal Register**.

(d) Closing of the sale will take place between the seller and the purchaser. Except in extraordinary circumstances, as determined by the Commissioner (who may allow for an extension of no more than 60 calendar days), the sale of the mortgage shall be closed no later than 30 business days after the winning bid has been accepted by the Commissioner.

(e) At closing, the purchaser shall pay the seller the unpaid principal balance of the mortgage, as of the date of closing, plus accrued interest at the mortgage rate to that date. In addition, the purchaser will pay the seller an amount (to be reimbursed by the Commissioner) equal to the difference between the "debenture rate" in effect as of the date of the seller's election to assign the mortgage and the mortgage note rate, applied to the declining unpaid principal balance of the mortgage for the period beginning 60 days after the date of its election and ending on the closing date.

(f) (1) If any one of the following conditions occurs:

(i) No bids are received;

(ii) Bids received are not acceptable to the Commissioner; or

(iii) The sale is not closed within the time prescribed in paragraph (d) of this section, the mortgagee shall retain the right to assign the mortgage to the Commissioner under the provisions of §§ 221.770 through 221.780.

(2) At HUD's discretion, a mortgage may be included in one additional auction. Under these circumstances, the insurance benefits shall include an amount equal to the difference between the "debenture rate" in effect on the date of the mortgagee's election to assign the mortgage and the mortgage note rate, applied to the declining unpaid principal balance of the mortgage for the period beginning 60 days after the date of election until the date of the closing of the mortgage sale, if any, resulting from the second auction or the date of recordation.

(g) (1) The purchasing mortgagee may purchase all mortgage loans, participation certificates, or mortgage-backed securities with either:

(i) Servicing rights released to the purchasing mortgagee, or;

(ii) Servicing rights retained by the current servicer.

(2) Regardless of whether the bidder elects to have the servicing rights retained or released by the seller, HUD's interest enhancement payments (or the purchasing mortgagee's interest sharing payments) will be based on the difference between the stated interest on the mortgage and the bid rate accepted by the Commissioner. In cases where the winning bidder elects to have servicing retained by the seller, the seller would be obligated to pass through to the purchaser the cash flow on the mortgage, minus the servicing fee.

§ 221.796 Interest enhancement payments.

(a) Where the bid rate accepted by the Commissioner under § 221.795(c) is more than the stated interest rate on the mortgage, the Commissioner will provide to the purchaser, and any subsequent holder that is a HUD-approved mortgagee, monthly interest enhancement payments based on the difference between the bid rate accepted by the Commissioner and the stated interest rate on the mortgage. Where the bid rate accepted by the Commissioner under § 221.795(c) is less than the stated interest rate on the mortgage, the purchaser, and any subsequent holder, will provide the Commissioner monthly interest sharing payments based on the difference between the stated interest rate on the mortgage and the bid rate accepted by the Commissioner.

(b) The interest enhancement or interest sharing payments will be paid in accordance with the scheduled amount in an amortization schedule provided by the Commissioner, and will not take into account prepayments or delinquencies by the mortgagor, except as provided by the Commissioner in the Fiscal Instructions. Interest enhancement or interest sharing payments will be paid on the first day of each month following timely receipt of a properly completed billing form in accordance with the time period stipulated by the Commissioner. Interest enhancement or interest sharing payments will be made by a method to be determined by the Commissioner. Interest enhancement or interest sharing payments will not be subject to the Prompt Payment Act and will not accrue interest on late payments.

(c) Interest enhancement or sharing payments will be provided until the earlier of:

(1) The maturity date of the loan;

(2) Prepayment of the loan in full;

(3) Default and full payment of insurance benefits by the Commissioner;

(4) Voluntary termination of mortgage insurance; or

(5) Initiation of foreclosure proceedings by the mortgagee in cases where the mortgagee does not give the Commissioner written notice of its election to acquire and convey title to the Commissioner.

(d) Interest enhancement payments will be treated by the mortgagee as interest paid on the mortgage.

§ 221.797 Termination.

Section 221(g)(4)(C)(viii) of the National Housing Act (12 U.S.C. 17151) provides that section 221(g)(4)(C), which authorizes the auction of mortgages in lieu of assignment to the Commissioner, shall not apply after September 30, 1995. Consequently, §§ 221.791 through 221.797 will be terminated or revised in the future on the basis of the expiration or amendment of section 221(g)(4)(C) of the Act.

Dated: March 17, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–7265 Filed 3–28–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–028]

California State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Proposed revision to State compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance staffing benchmarks applicable to the California State plan. California's benchmarks were originally established in April 1980 in response to the U.S. Court of Appeals decision in *AFL–CLO* v. *Marshall*, 570 F. 2d 1030 (D.C. Cir. 1978). The State of California has reconsidered the information utilized in the development of its 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant revision of its benchmarks. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the revised benchmarks for California should be approved.

DATES: Written comments must be received by May 3, 1994.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–028, U.S. Department of Labor, room N–2625, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148..

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 et seq.) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval, and among these criteria is the requirement that the State's plan provide satisfactory assurances that the state agency or agencies responsible for implementing the plan have "* * * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the resultant implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan. In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring California to allocate 334 safety and 471 health compliance personnel to conduct inspections under the plan.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific

information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. A complete discussion of both the 1980 benchmarks and the present revision system process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.

The California plan, which was granted initial State plan approval on May 1, 1973 (38 FR 10717), is administered by the California Department of Industrial Relations. Concurrent Federal enforcement jurisdiction was suspended in California with the publication of an Operational Status Agreement on January 13, 1976 (41 FR 1904). The plan was certified as having satisfactorily completed all of its developmental commitments on August 19, 1977 (42 FR 161).

Proposed Revision of Benchmarks

In June 1993, the California Department of Industrial Relations (the designated agency or "designee" in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for California in 1980. In accord with the formula and general principles established by the joint Federal/State task group for the revision of the 1980 benchmarks, California reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal, contained in supporting documents, of revised staffing benchmarks of 118 safety and 80 health compliance officers.

The proposed revised safety benchmark contemplates biennial general schedule inspection of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the July 1991 Dun and Bradstreet listing of manufacturers for California) in Standard Industrial Classifications whose Lost Workday Case Injury Rate is higher than the overall State private sector rate (as determined by the Bureau of Labor Statistics' (BLS) Annual Occupational Injury and Illness Survey). Data indicate that the State is spending an average of 14 hours on such inspections, and each State safety inspector is able to devote 1,440 hours annually to actual inspection activity based on State personnel practices. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based upon recent historical experience and an assessment of proper safety coverage in the State of California.

The proposed revised health benchmark contemplates general schedule inspection coverage once every three years of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the July 1991 Dun and Bradstreet listing of manufacturing establishments for California) in the 150 Standard Industrial Classifications (SICs) in the State having the highest likelihood of exposure to health hazards. These SICs are determined by a health ranking system utilizing data from the National Occupational Hazards Survey (NOHS), as published in 1977, which assesses the potency and toxicity of substances in use in the State. The State has historically spent an average 30.5 hours on such inspections, and each health compliance officer is able to devote 1,440 hours annually to actual inspection activity, based upon State personnel practices. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based on recent historical experience and an assessment of proper health coverage in the State of California.

OSHA has reviewed the State's proposed revised benchmarks and supporting documentation, prepared a narrative describing the State's submission, and determined that the proposed compliance staffing levels appear to meet the requirements of the Court in *AFL–CIO* v. *Marshall* and provide staff sufficient to ensure a "fully effective enforcement program."

Effect of Benchmark Revision

Consistent with the 1978 Court Order in *AFL–CIO* v. *Marshall* and the procedures for implementation of benchmarks described by OSHA in the 1980 Report to the Court, if the proposed revised benchmarks are approved by OSHA, the State must allocate a sufficient number of safety and health enforcement staff to meet the revised benchmarks in order to be eligible for final approval under section 18(e) of the Act. Approval of the revised benchmarks would be accompanied by an amendment to 29 CFR part 1952, subpart DD, which generally describes the California plan and sets forth the State's revised safety and health benchmark levels. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for final State plan approval consideration under section 18(e) of the Act.

Documents of Record

A comprehensive document containing the proposed revision to California's benchmarks, including a narrative of the State's submission and supporting statistical data has been made a part of the record in this proceeding and is available for public inspection and copying at the following locations:

Docket Office, Docket No. T–028, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Regional Administrator—Region IX, U.S. Department of Labor—OSHA, 71 Stevenson Street, San Francisco, California 94105.

California Department of Industrial Relations, 455 Golden Gate Avenue, 4th Floor, San Francisco, California 94102.

In addition, to facilitate informed public comment, an informational record has been established in a separate docket (No. T–018) containing background information relevant to the benchmark issue in general and the current benchmark revision process. This information docket includes, among other material, the 1978 Court of Appeals decision in *AFL–CIO* v. *Marshall*, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983–1984 benchmark revision process. It is also available for public inspection and copying at the following location:

Docket Office, Docket No. T–018, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised California benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for California in accordance with the Court Order in *AFL–CIO* v. *Marshall*. Comments must be received on or before May 3, 1994, and be submitted in quadruplicate to the Docket Office, Docket No. T–028, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Written submission must be directed to the specific benchmarks

proposed for California and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, DC, this 18th day of March 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–7252 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–26–M

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29 CFR Part 1952

[Docket No. T–026]

Michigan State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Proposed revision to State compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance staffing benchmarks applicable to the Michigan State plan. Michigan's benchmarks were originally established in April 1980 in response to the U.S. Court of Appeals decision in *AFL–CIO* v. *Marshall*, 570 F. 2d 1030 (D.C. Cir. 1978). The State of Michigan has reconsidered the information utilized in the development of its 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant revision of its benchmarks. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the revised benchmarks for Michigan should be approved.

DATES: Written comments must be received by May 3, 1994.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–026, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 et seq.) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval, and among these criteria is the requirement that the State's plan provide satisfactory assurances that the state agency or agencies responsible for implementing the plan have "* * * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the resultant implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring Michigan to allocate 141 safety and 225 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. A complete discussion of both the 1980 benchmarks and the present revision system process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.

The Michigan plan, which was granted initial State plan approval on September 24, 1973 (38 FR 2739), is administered by the Michigan Department of Labor and the Michigan Department of Public Health. Concurrent Federal enforcement jurisdiction was suspended in Michigan with the publication of an Operational Status Agreement on March 22, 1977 (42 FR 15411). The plan was certified as having satisfactorily completed all of its developmental commitments on January 16, 1981 (46 FR 3865).

Proposed Revision of Benchmarks

In 1992, the Michigan Department of Labor (the designated agency or "designee" for safety enforcement in the State) and the Michigan Department of Public Health (the designated agency or "designee" for health enforcement in the State) reviewed, in conjunction with OSHA, the compliance staffing benchmarks approved for Michigan in 1980. In accordance with the formula and general principles established by the joint Federal/State task group for the revision of the 1980 benchmarks, Michigan reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal, contained in supporting documents submitted in April 1992 and March 1993, of revised staffing benchmarks of 56 safety and 45 health compliance officers.

The proposed revised safety benchmark contemplates biennial general schedule inspection of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the July 1991 Dun and Bradstreet listing of manufacturing establishments and the January 1990 Dun and Bradstreet listing of non-manufacturing establishments in Michigan) in Standard Industrial Classifications whose Lost Workday Case Injury Rate is higher than the overall State private sector rate (as determined by the Bureau of Labor Statistics' (BLS) Annual Occupational Injury and Illness Survey). Data indicate that the State is spending an average of 7.7 hours on such inspections, and each State safety inspector is able to devote 1,305 hours annually to actual inspection activity based on State personnel practices. Establishments

have been added to this initial general inspection universe based on the State's analysis of past injury and inspection experience to identify those employers or groups of employers most likely to have hazards that could be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based upon recent historical experience and an assessment of proper safety coverage in the State of Michigan.

The proposed revised health benchmark contemplates general schedule inspection coverage once every three years of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the July 1991 Dun and Bradstreet listing of manufacturing establishments and January 1990 Dun and Bradstreet listing of non-manufacturing establishments in Michigan) in the 150 Standard Industrial Classifications (SICs) in the State having the highest likelihood of exposure to health hazards. These SICs are determined by a health ranking system utilizing data from the National Occupational Hazards Survey (NOHS), as published in 1977, which assesses the potency and toxicity of substances in use in the State. The State has historically spent an average 27.8 hours on such inspections, and each health compliance officer is able to devote 1,462 hours annually to actual inspection activity, based upon State personnel practices. Establishments have been added to this initial general schedule universe based on the State's knowledge gained from inspection experience and other data on the extent of employee exposure to and use of toxic substances and harmful physical agents by individual employers or groups of employers, and the extent to which hazardous exposures can be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based on recent historical experience and an assessment of proper health coverage in the State of Michigan.

OSHA has reviewed the State's proposed revised benchmarks and supporting documentation, prepared a narrative describing the State's submission, and determined that the proposed compliance staffing levels appear to meet the requirements of the Court in *AFL–CIO* v. *Marshall* and provide staff sufficient to ensure a "fully effective enforcement program."

Effect of Benchmark Revision

Consistent with the 1978 Court Order in *AFL–CIO* v. *Marshall* and the procedures for implementation of benchmarks described by OSHA in the 1980 Report to the Court, if the proposed revised benchmarks are approved by OSHA, the State must allocate a sufficient number of safety and health enforcement staff to meet the revised benchmarks in order to be eligible for final approval under section 18(e) of the Act. Approval of the revised benchmarks would be accompanied by an amendment to 29 CFR part 1952, subpart T, which generally describes the Michigan plan and sets forth the State's revised safety and health benchmark levels.

Documents of Record

A comprehensive document containing the proposed revision to Michigan's benchmarks, including a narrative of the State's submission and supporting statistical data has been made a part of the record in this proceeding and is available for public inspection and copying at the following locations:

Docket Office, Docket No. T–026, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Regional Administrator—Region V, U.S. Department of Labor—OSHA, room 3244, 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Labor, Victor Office Center, 201 North Washington Square, Lansing, Michigan 48933.

Michigan Department of Public Health, 3423 North Logan Street, Lansing, Michigan 48909.

In addition, to facilitate informed public comment, an informational record has been established in a separate docket (No. T–018) containing background information relevant to the benchmark issue in general and the current benchmark revision process.This information docket includes, among other material, the 1978 Court of Appeals decision in *AFL–CIO* v. *Marshall*, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983–1984 benchmark revision process. It is also available for public inspection and copying at the following location:

Docket Office, Docket No. T–026, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC. 20210.

Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised Michigan benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for Michigan in accordance with the Court Order in *AFL–CIO* v. *Marshall*. Comments must be received on or before May 3, 1994, and be submitted in quadruplicate to the Docket Office, Docket No. T–026, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must be directed to the specific benchmarks proposed for Michigan and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, DC, this 18th day of March 1994.

Joseph A. Dear,

Secretary of Labor.

[FR Doc. 94–7253 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–26–M

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29 CFR Part 1952

[Docket No. T–025]

New Mexico State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Proposed revision to State compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance

staffing benchmarks applicable to the New Mexico State plan. New Mexico's benchmarks were originally established in April 1980 in response to the U.S. Court of Appeals decision in *AFL–CIO* v. *Marshall*, 570 F. 2d 1030 (D.C. Cir. 1978). The State of New Mexico has reconsidered the information utilized in the development of its 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant revision of its benchmarks. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the revised benchmarks for New Mexico should be approved.

DATES: Written comments must be received by May 3, 1994.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–025, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 et seq.) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval, and among these criteria is the requirement that the State's plan provide satisfactory assurances that the state agency or agencies responsible for implementing the plan have "* * * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the resultant implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring New Mexico to allocate 11 safety and 17 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. A complete discussion of both the 1980 benchmarks and the present revision system process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.

The New Mexico plan, which was granted initial State plan approval on December 10, 1975 (40 FR 57456), is administered by the Occupational Health and Safety Bureau of the New Mexico Environment Department. Concurrent Federal enforcement jurisdiction was suspended in New Mexico with the publication of an Operational Status Agreement on June 11, 1982 (47 FR 25326). The plan was certified has having satisfactorily completed all of its developmental commitments on December 17, 1984 (49 FR 48918).

Proposed Revision of Benchmarks

In May 1992, the New Mexico Environment Department (the designated agency or "designee" in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for New Mexico in 1980. In accord with the formula and general principles established by the joint Federal/State task group for the revision of the 1980 benchmarks, New Mexico reassessed the staffing necessary for a "fully effective" occupationsl safety and health program in the State. This reassessment resulted in a proposal, contained in supporting documents, of revised staffing benchmarks of 7 safety and 3 health compliance officers.

The proposed revised safety benchmark contemplates biennial general schedule inspection of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the 1981 Unemployment Insurance Listing of Employers for New Mexico) in Standard Industrial Classifications whose Lost Workday Case Injury Rate is higher than the overall State private sector rate (as determined by the Bureau of Labor Statistics' (BLS) Annual Occupational Injury and Illness Survey). Data indicate that the State is spending an average of 12 hours on such inspections, and each State safety inspector is able to devote 1,656 hours annually to actual inspection activity based on State personnel practices. Establishments have been added to this initial general inspection universe based on the State's analysis of past injury and inspection experience to identify those employers or groups of employers most likely to have hazards that could be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based upon recent historical experience and an assessment of proper safety coverage in the State of New Mexico.

The proposed revised health benchmark contemplates general schedule inspection coverage once every three years of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the 1981 Unemployment Insurance Listing of Employers for New Mexico) in the 150 Standard Industrial Classifications (SICs) in the State having the highest likelihood of exposure to health hazards. These SICs are determined by a health ranking system utilizing data from the National Occupational Hazards Survey (NOHS), as published in 1977, which assesses the potency and toxicity of substances in use in the State. The State has historically spent an average 25 hours on such inspections, and each health compliance officer is able to devote 1,656 hours annually to actual inspection activity, based upon State personnel practices. Establishments have been added to this initial general schedule universe based on the State's knowledge gained from inspection experience and other data on the extent of employee exposure to and use of toxic substances and harmful physical agents by individual employers or groups of employers, and the extent to which hazardous exposures can be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile and public employee

(State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based on recent historical experience and an assessment of proper health coverage in the State of New Mexico.

OSHA has reviewed the State's proposed revised benchmarks and supporting documentation, prepared a narrative describing the State's submission, and determined that the proposed compliance staffing levels appear to meet the requirements of the Court in *AFL–CIO* v. *Marshall* and provide staff sufficient to ensure a "fully effective enforcement program."

Effect of Benchmark Revision

Consistent with the 1978 Court Order in *AFL–CIO* v. *Marshall* and the procedures for implementation of benchmarks described by OSHA in the 1980 Report to the Court, if the proposed revised benchmarks are approved by OSHA, the State must allocate a sufficient number of safety and health enforcement staff to meet the revised benchmarks in order to be eligible for final approval under section 18(e) of the Act. Approval of the revised benchmarks would be accompanied by an amendment to 29 CFR part 1952, subpart DD, which generally describes the New Mexico plan and sets forth the State's revised safety and health benchmark levels.

Documents of Record

A comprehensive document containing the proposed revision to New Mexico's benchmarks, including a narrative of the State's submission and supporting statistical data has been made a part of the record in this proceeding and is available for public inspection and copying at the following locations:

Docket Office, Docket No. T–25, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Regional Administrator—Region VI, U.S. Department of Labor—OSHA, room 602, 525 Griffin Street, Dallas, Texas 75202.

New Mexico Environment Department, Occupational Safety and Health Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

In addition, to facilitate informed public comment, an informational record has been established in a separate docket (No. T–018) containing background information relevant to the benchmark issue in general and the current benchmark revision process. This information docket includes, among other material, the 1978 Court of Appeals decision in *AFL–CIO* v. *Marshall*, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983–1984 benchmark revision process. It is also available for public inspection and copying at the following location:

Docket Office, Docket No. T–018, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised New Mexico benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for New Mexico in accordance with the Court Order in *AFL–CIO* v. *Marshall*. Comments must be received on or before May 3, 1994, and be submitted in quadruplicate to the Docket Office, Docket No. T–025, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must be directed to the specific benchmarks proposed for New Mexico and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, DC, this 18th day of March 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–7254 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–26–M

29 CFR Part 1952

[Docket No. T–027]

Oregon State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Proposed revision to State health compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance staffing benchmarks applicable to the Oregon State plan. Oregon's benchmarks were originally established in April 1980 in response to the U.S. Court of Appeals decision in *AFL–CIO* v. *Marshall*, 570 F. 2d 1030 (D.C. Cir. 1978). The State of Oregon has reconsidered the information utilized in the development of its 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant revision of its health compliance staffing benchmarks. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the revised benchmarks for Oregon should be approved.

DATES: Written comments must be received by May 3, 1994.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–027, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 et seq.) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval, and among these criteria is the requirement that the State's plan provide satisfactory assurances that the State agency or agencies responsible for implementing the plan have "* * * the

qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the resultant implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan. In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring Oregon to allocate 47 safety and 60 health compliance personnel to conduct inspections under the plan.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. A complete discussion of both the 1980 benchmarks and the present revision system process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.

The Oregon plan, which was granted initial State plan approval on December 28, 1972 (37 FR 28628), is administered by the Occupational Safety and Health Division of the Oregon Department of Consumer and Business Services. Concurrent Federal enforcement jurisdiction was suspended in Oregon with the publication of an Operational Status Agreement on April 28, 1975 (40 FR 18427). The plan was certified as having satisfactorily completed all of its developmental commitments on September 24, 1982 (47 FR 42105).

Proposed Revision of Benchmarks

In October 1992, the Oregon Occupational Safety and Health Division (the designated agency or "designee" in the State) completed, in conjunction with OSHA, a review of the Health compliance staffing benchmarks approved for Oregon in 1980. In accordance with the formula and general principles established by the joint Federal/State task group for the revision of the 1980 benchmarks, Oregon reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal, contained in supporting documents, of revised health staffing benchmarks of 28 health compliance officers. The State determined that there was no compelling reason to revise the existing 1980 safety benchmark level of 47 safety compliance officers.

The proposed revised health benchmark contemplated general schedule inspection coverage once every three years of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the 1981 Unemployment Insurance Listing of Employers for Oregon) in the 150 Standard Industrial Classifications (SICs) in the State having the highest likelihood of exposure to health hazards. These SICs are determined by a health ranking system utilizing data from the National Occupational Hazards Survey (NOHS), as published in 1977, which assesses the potency and toxicity of substances in use in the State. The State has historically spent an average 33.4 hours on such inspections, and each health compliance officer is able to devote 1,525 hours annually to actual inspection activity, based upon State personnel practices. Establishments have been added to this initial general schedule universe based on the State's knowledge gained from inspection experience and other data on the extent of employee exposure to and use of toxic substances and harmful physical agents by individual employers or groups of employers, and the extent to which hazardous exposure can be eliminated by inspection. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based on recent historical experience and an assessment of proper health coverage in the State of Oregon.

OSHA has reviewed the State's proposed revised benchmarks and supporting documentation, prepared a narrative describing the State's submission, and determined that the proposed compliance staffing levels appear to meet the requirements of the Court in *AFL–CIO* v. *Marshall* and provide staff sufficient to ensure a "fully effective enforcement program."

Effect of Benchmark Revision

Consistent with the 1978 Court Order in *AFL–CIO* v. *Marshall* and the procedures for implementation of benchmarks described by OSHA in the 1980 Report to the Court, if the proposed revised benchmarks are approved by OSHA, the State must allocate a sufficient number of safety and health enforcement staff to meet the revised benchmarks in order to be eligible for final approval under section 18(e) of the Act. Approval of the revised benchmarks would be accompanied by an amendment to 29 CFR part 1952, subpart D, which generally describes the Oregon plan and sets forth the State's safety and health benchmark levels. Attainment of the 1980 benchmark levels of subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Documents of Record

A comprehensive document containing the proposed revision to Oregon's benchmarks, including a narrative of the State's submission and supporting statistical data, has been made a part of the record in this proceeding and is available for public inspection and copying at the following locations:

Docket Office, Docket No. T–027, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC. 20210.

Regional Administrator—Region X, U.S. Department of Labor—OSHA, suite 715, 1111 Third Avenue, Seattle, Washington 98101–3212.

Oregon Occupational Safety and Health Division, room 430, Labor and Industries Building, 350 Winter Street NE, Salem, Oregon 97310.

In addition, to facilitate informed public comment, an informational record has been established in a separate docket (No. T–018) containing background information relevant to the benchmark issue in general and the current benchmark revision process. This information docket includes, among other material, the 1978 Court of Appeals decision in *AFL–CIO* v. *Marshall*, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983–1984 benchmark revision process. It is also available for public inspection and copying at the following location:

Docket Office, Docket No. T–018, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised Oregon benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written

comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for Oregon in accordance with the Court Order in *AFL–CIO* v. *Marshall*. Comments must be received on or before May 3, 1994, and be submitted in quadruplicate to the Docket Office, Docket No. T–027, U.S. Department of Labor, room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must be directed to the specific health staffing benchmarks proposed for Oregon and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, DC, this 18th day of March 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–7255 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program and Abandoned Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah permanent regulatory program and abandoned mine plan (hereinafter, the "Utah program" and "Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Utah Coal Mining and Reclamation Act pertaining to appeals by an applicant or any person with an interest which is or may be adversely affected from the final judgment, order, or decree of the district court in relation to a permit for surface coal mining and reclamation operations; civil penalties, informal conferences, public hearings, contests of violation or amount of penalty, collections, criminal penalties, and civil penalties for failure to correct a violation; recovery of reclamation costs and liens against reclaimed land; and certification of completion of coal reclamation. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, as amended, and improve operational efficiency.

This document sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the dates and times of the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. on April 28, 1994. If requested, a public hearing on the proposed amendment will be held on April 25, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on April 13, 1994. Any disabled individual who has a need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below:

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated March 7, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–900). Utah submitted the proposed amendment at its own initiative. The sections of the Utah Coal Mining and Reclamation Act, which are a part of the Utah program, that Utah proposes to amend are: (1) Utah Code Annotated (UCA) 40–10–14, appeals to district court of decisions by the Board of Oil, Gas and Mining (Board) and (2) UCA 40–10–20, civil penalties for violations of permit conditions, informal conferences before the Division of Oil, Gas and Mining (Division), public hearings before the Board, contests of violation or amount of penalty, collections, criminal penalties, and civil penalties for failure to correct a violation. The sections of the Utah Coal Mining and Reclamation Act, which are a part of the Utah plan, that Utah proposes to amend are: (1) UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land and (2) UCA 40–10–28.1, certification of completion of coal reclamation.

Specifically, Utah proposes to revise its statutory language pertaining to appeals to district court of a decision by the Board granting or denying a permit to conduct surface coal mining and reclamation operations at UCA 40–10–14(6) by: (1) Deleting the provision that review of the adjudication of the district court is by the Supreme Court and (2) adding new language to provide that any party to the action in district court may appeal from the final judgment, order or decree of the district court.

Utah proposes to revise its statutory language pertaining to civil penalties for

violations of permit conditions at UCA 40–10–20(1) by making limited editorial changes, recodifying each preexisting requirement in this section, revising the language to indicate that a civil penalty for a violation "may," rather than "shall," not exceed $5,000 for each violation, and adding new language to provide that civil penalties are assessed by the Division rather than by the Board.

Utah proposes to revise its statutory language pertaining to informal conferences before the Division at UCA 40–10–20(2) (a) through (e) by adding new language to provide that: (1) Within 30 days after issuance of a notice or order that a violation has occurred, the Division will inform the permittee of the proposed assessment, (2) the person charged with a violation has 30 days to pay the proposed assessment in full or request an informal conference before the Division, (3) the informal conference may address the amount of the proposed assessment, or the fact of the violation, or both, (4) within 30 days of receipt of the Division's informal conference decision, the permittee may request a hearings before the Board on the informal conference decision, (5) if the permittee requests a Board hearing, the permittee will, within 30 days of receipt of the Division's informal conference decision, forward to the Division the amount of the proposed assessment, and the Division will place the proposed assessment in an escrow account prior to review by the Board, and (6) the Division will within 30 days remit monies with accumulated interest to the operator if, through administrative or judicial review, it is determined no violation occurred or the amount of the penalty should be reduced.

Utah proposes to recodify existing UCA 40–10–20(2) as 40–10–20(3) and revise the statutory language there pertaining to public hearings before the Board by making limited editorial changes, adding new language at UCA 40–10–20(2)(e) to provide that if the person charged with a violation fails to avail himself of the opportunity for a public hearing, the Division will assess a civil penalty after the Division has determined that a violation did occur, the amount of the penalty that is warranted, and an order requiring that the penalty be paid has been issued by the Division.

Utah proposes to delete existing UCA 40–10–20(3) in its entirety and incorporate the provisions of paragraph (3) in proposed UCA 40–10–20(2), except that the provision requiring waiver of all legal rights to contest the violation or the penalty amount when the operator fails to forward the penalty money to the Board within 30 days is not proposed to be incorporated elsewhere in the proposed amendment.

Utah proposes editorial revisions at UCA 40–10–20 (5) and (6) to reflect the recodification of existing UCA 40–10–20(2) as UCA 40–10–20(3) in the proposed amendment.

Utah proposes to revise its statutory language pertaining to civil penalties for failure to correct a violation at UCA 40–10–20(8) by recodifying UCA 40–10–20(8) as UCA 40–10–20(8) (a), (b), (b)(i) and (b)(ii), revising existing 40–10–20(8) to require that the operator who fails to correct a violation within the period permitted will be assessed a civil penalty of not less than $750 for each day during which the failure or violation continues, and providing, at UCA 40–10–20(8)(b), that the period for correction of a violation for which a notice of cessation order has been issued under UCA 40–10–22(1) may not end until either of the conditions provided at UCA 40–10–20(8)(b) (i) or (ii) occurs.

Utah proposes limited editorial revisions to its statutory language pertaining to recovery of reclamation costs and liens against reclaimed land at UCA 40–10–28 to improve clarity and provide that the Division rather than the Board may waive the requirement of a lien.

Utah proposes to revise its statutory language pertaining to certification of completion of coal reclamation at UCA 40–10–28.1(6) to clarify that the Division may use annual grant monies to carry out activities or construction of specific public facilities related to the coal or minerals industry in "an area" impacted by coal or minerals developed rather than in "a state" so impacted.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program and plan.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on April 13, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by

OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C.1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–7334 Filed 3–28–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF ENERGY

48 CFR Parts 927, 952, and 970

RIN 1991–AA23

Acquisition Regulation; Updating of Patent Regulations

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rule.

SUMMARY: The Department proposes to amend the Department of Energy Acquisition Regulation (DEAR) to base the DOE patent regulations on the Federal Acquisition Regulation (FAR) patent regulations and associated FAR patent clauses to the extent that the FAR coverage is consistent with the DOE statutory patent requirements.

DATES: Written comments must be received by May 31, 1994.

ADDRESSES: Comments should be addressed to: Robert M. Webb, Procurement Policy Division (PR–12), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, Procurement Policy Division (PR–121), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8264

Sue Hagarman, Office of the Assistant General Counsel for Intellectual Property (GC–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2802

SUPPLEMENTARY INFORMATION:

I. Background.
- A. Discussion.
- B. Section-by-Section Analysis.

II. Procedural Requirements.
- A. Regulatory Review.
- B. Review Under the Regulatory Flexibility Act.
- C. Review Under the Paperwork Reduction Act.
- D. Review Under the National Environmental Policy Act.
- E. Review Under Executive Order 12612.
- F. Review Under Executive Order 12778.

III. Public Comments.

I. Background

A. Discussion

Under the Atomic Energy Act (AEA) of 1954, as amended, 42 U.S.C. 2011 *et seq.*, title to inventions conceived or first actually reduced to practice in the course of or under Department of Energy (DOE) contracts vests in DOE. By vesting title in DOE, the AEA helped ensure that no one company gained a market advantage from a taxpayer-funded invention. The AEA also gave DOE the discretion to waive title to such inventions.

In 1974, Congress enacted the Federal Non-Nuclear Energy Research and Development Act (Act), 42 U.S.C. 5901 *et seq.* This Act provided for a similar disposition of title to inventions. In addition, the Act provided explicit criteria which must be considered in waiver determinations.

These statutory requirements were reflected in the DOE patent regulations, which were last published in 1979 as part of the DOE Procurement Regulations. In March of 1984, DOE published the Department of Energy Acquisition Regulations (DEAR). The DEAR required that the patent provisions of the DOE Procurement Regulations be used in all contracts. The patent coverage for the uniform Federal procurement regulation, the Federal Acquisition Regulation (FAR), was promulgated in 1984 and underwent one major amendment, in 1989. Therefore, all DOE contracts were additionally subject to the FAR.

Since publication of the DEAR patent regulations in 1979, Congress has enacted two significant pieces of legislation affecting DOE patent policy. Congress first enacted the Bayh-Dole Act in 1980 (35 U.S.C. 200 *et seq.*), which specifically overrode DOE previous statutory patent policy legislation with respect to small business firms and non-profit organizations by allowing them to elect title to any subject invention arising under a funding agreement with the Government.

The second piece of legislation, the Trademark Clarification Act of 1984, amended the Bayh-Dole Act to extend its coverage to nonprofit organizations managing and operating DOE research and development facilities. These amendments set very precise limits on the Department's ability to obtain title to inventions of the nonprofit managing and operating contractors. The circumstances in which DOE could take title to such inventions were limited to certain categories of inventions, *e.g.*, those involving nuclear weapons and naval nuclear propulsion. These amendments gave the implementation authority to the Department of Commerce.

The following proposed rule amends the DEAR to reflect the changes necessitated by the intervening legislation. The rule is based on FAR patent provisions, varying only to the extent necessary to fulfill DOE statutory and programmatic duties.

B. Section-by-Section Analysis

A new section 927.200 is proposed to be added to reflect that the DOE mission with regard to energy includes "demonstration" along with "research and development" or "R&D" as those terms are used in FAR Subpart 27.200.

At 927.201–1 a paragraph is proposed to be added on authorization and consent to allow modification of the clause for research and development to deal with situations in which a contract may be affected by a third party patent holder.

A new section 927.206 is proposed to be added to discuss the use of the refund of royalties clause and to prescribe its use. Section 927.207–1 has been proposed to recognize the DOE authorities rising from the Atomic Energy Act of 1954, as amended.

Paragraphs at 927.300 are proposed to be added to reflect the research, development, demonstration, weapons, and environmental missions of the Department, along with the system of patent waivers.

At 927.302 DOE statutory patent policy is proposed to be explained. Also, there is proposed to be added a discussion on DOE need for licenses to background patents. A new section 927.303 is proposed to be added to direct the use of the appropriate patent rights clause.

A new section 927.304 is proposed to be added to provide for retention of rights by the inventor where the contractor, under the terms of the clause at 952.227–11, has elected not to retain title to a subject invention.

At 952.227–9, a Refund of Royalties clause, is proposed to be added. The clause is produced in full text; however, it consists of the clause at FAR 52.227 with sentences added at the end of paragraphs (b) and (d), respectively, to ensure that any royalties related to technical data and copyrighted material are identified and to include a disclaimer. Also, at 952.227–11 the patent clause for contracts with small businesses and nonprofit organizations, formerly at 952.227–71, is proposed. It would consist of the clause at FAR 52.227–11 with changes made to tailor the clause to DOE, including the completion of paragraph (l) and a minor change to paragraph (g)(2) affecting flowdown of the clause.

At 952.227–13 the patent clause for use in all other contracts is proposed. It would consist of the clause at FAR 52.227–13 by tailoring it to DOE and replacing paragraph (d)(4) to recognize the DOE waiver application process and the license required by sec. 9(h) of Pub. L. 93–577 (42 U.S.C. 5908(h)) in instances in which the Department has waived title. An associated additions are proposed to be made at (g)(1)(i) and (h)(5). A replacement subcontracting provision is proposed for paragraph (h)(1). Also, proposed for addition are paragraphs (j) dealing with atomic energy, (k) dealing with background patents, (l) dealing with publication limitations, and (m) forfeiture of rights in unreported inventions.

The coverage of patent rights for management and operating contracts is proposed to be changed. Currently, the coverage consists of a reference back to the Department of Energy Procurement Regulations, the predecessor regulation to the DEAR. Current portions of the DEAR at 970.2701 and 970.2702, dealing essentially with rights in technical data under management and operating contracts, are proposed to be redesignated as 970.2705 and 927.2706. There are no changes to the text dealing with rights in technical data. Portions of this material require updating and will be the subject of a subsequent rulemaking.

At 970.2701 through 970.2704 regulatory discussion of patent rights under DOE management and operating contracts is proposed to be added. The treatment of Exceptional Circumstances Determinations and weapons related and naval nuclear propulsion inventions when the contractor is a nonprofit organization and the relationship of technology transfer activities of the contractor to the patent rights clause are discussed there.

The coverage at 970.5204–XX is proposed to be altered to prescribe the patent clause for small businesses and nonprofit organizations of the proposed 952.227–11 with the replacement of paragraph (e)(1) to provide that a nonprofit managment and operating contractor must request a license from DOE in instances in which it chooses not to elect to take title originally. Also, paragraphs (m) and (n) are proposed to be added to reflect the nature of all intellectual property rights under management and operating contracts, *i.e.*, that they exist for the benefit of the laboratory as an institution, not the contractor, by providing for assignment of patent rights and obligations to a successor contractor and for a facilities license to DOE. There is likewise proposed to be added a patent rights clause for all other management and operating contracts at 970.5204–YY, which would consist of the proposed clause at 952.227–13 with the addition of a paragraph (j) requiring the assignment of patent related rights to a successor contractor and paragraph (k) providing for a facilities license to DOE.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under NEPA

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), or the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, and in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all

decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This proposed rule would, when adopted as a final rule, have no preemptive effect, will not have any effect on existing Federal laws, and would only clarify the existing regulations on this subject. The revised clauses would apply only to contracts which would be awarded after the effective date of the final rule, and, thus, would have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information will be fully considered by DOE before taking final. Comments received after that date will be considered to the extent that time allows. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determinations.

DOE has concluded that this proposed rule does not involve a substantial issue of fact or law, and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 48 CFR Parts 927, 952, 970

Government procurement, Patents.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

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

G.L. Allen

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation continues to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, sec. 9, (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, sec. 152, (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, sec. 3131(a), (42 U.S.C. 7261a.)

2. Subpart 927.2 is added to read as follows:

Subpart 927.2—Patents

Sec.

927.200 Scope of subpart.
927.201 Authorization and consent.
927.201–1 General.
927.206 Refund of royalties.
927.206–1 General.
927.206–2 Clause for refund of royalties.
927.207 Classified contracts.
927.207–1 General.

Subpart 927.2—Patents

927.200 Scope of subpart.

When consulting subpart 27.2 of the FAR, consider "research, development, and demonstration" to replace the phrase "research and development" or "R&D," for the purposes of DOE actions.

927.201 Authorization and consent.

927.201–1 General.

In certain contracting situations, such as those involving research, development, or demonstration projects, consideration should be given to the impact of third party-owned patents covering technology that may be incorporated in the project which patents may ultimately affect widespread commercial use of the project results. In such situations, Patent Counsel shall be consulted to determine what modifications, if any, are to be made to the utilization of the Authorization and Consent and Patent Indemnity provisions or what other action might be deemed appropriate.

927.206 Refund of Royalties.

927.206–1 General.

The clause at 952.227–9, Refund of Royalties, obligates the contractor to inform DOE of the payment of royalties pertaining to the use of intellectual property, either patent or data related, in the performance of the contract. This information may result in identification of instances in which the Government already has a license for itself or others acting in its behalf or the right to sublicense others. Also, there may be pending anti-trust actions or challenges to the validity of a patent or the proprietary nature of the data, or the contractor may be able to gain unrestricted access to the same data through other sources. In such situations the contractor may avoid the payment of a royalty in its entirety or may be charged a reduced royalty.

927.206–2 Clause for refund of royalties.

The contracting officer shall insert the clause at 952.227–9, Refund of Royalties, in solicitations and contracts for experimental, research, developmental, or demonstration work or other solicitations and contracts in which the contracting officer believes royalties will have to be paid by the contractor or a subcontractor of any tier.

927.207 Classified contracts.

927.207–1 General.

Unauthorized disclosure of classified subject matter, whether in a patent application or resulting from the issuance of a patent, may be a violation of the Atomic Energy Act of 1954, as amended, other laws relating to espionage and national security, and provisions of the proposed contract pertaining to disclosure of information.

3. Section 927.300 is revised to read as follows:

927.300 General.

(a) One of the primary missions of the Department of Energy is the use of its procurement process to ensure the conduct of research, development, and demonstration leading to the ultimate commercialization of efficient sources of energy. Accordingly, DOE mission is not generally oriented toward procurement for Government use, except where procurements are involved with special classified programs or the construction, improvement, or the environmental restoration and waste management aspects of Government-owned facilities. To accomplish its mission, DOE must work in cooperation with industry in the development of new energy sources and in achieving the ultimate goal of widespread commercial use of those energy sources. To this end, Congress has provided DOE with the authority to invoke an array of incentives to secure the commercialization of new technologies developed for DOE. One such important incentive is provided by the patent system.

(b) Pursuant to 42 U.S.C. 2182 and 42 U.S.C. 5908, DOE takes title to all inventions conceived or first actually reduced to practice in the course of or under contracts with large, for-profit companies, foreign organizations, and others not beneficiaries of Pub. L. 96–517. As set forth in regulations in this subpart, DOE may waive the Government's patent rights in appropriate situations at the time of contracting to encourage industrial participation, foster commercial utilization and competition, and make the benefits of DOE activities widely available to the public. In addition to considering the waiver of patent rights at the time of contracting, DOE will also consider the incentive of a waiver of patent rights upon the reporting of an identified invention when requested by such entities or by the employee-inventor with the permission of the contractor. These requests can be made whether or not a waiver request was made at the time of contracting. Waivers for identified inventions will be granted where it is determined that the patent waiver will be a meaningful incentive to achieving the development and ultimate commercial utilization of inventions. Where DOE grants a waiver of the Government's patent rights, either at the time of contracting or after an invention is made, certain minimum rights and obligations will be required by DOE to protect the public interest.

(c) Another major DOE mission is to manage the nation's nuclear weapons and other classified programs, where research and development procurements are directed toward processes and equipment not available to the public. To accomplish DOE programs for bringing private industry into these and other special programs to the maximum extent permitted by national security and policy considerations, it is desirable that the technology developed in these programs be made available on a selected basis for use in the particular fields of interest and under controlled conditions by properly cleared industrial and scientific research institutions. To ensure such availability and control, the grant of waivers in these programs may necessarily be more limited, either by the imposition of field of use restrictions or national security measures, than in other DOE programs.

4. Section 927.302 is added to read as follows:

927.302 Policy.

(a) In contracts having as a purpose the conduct of research, development, or demonstration work and in other special contracts with large, for-profit companies, foreign organizations, and others not beneficiaries of Public Law 96–517, DOE shall normally acquire title in and to any invention or discovery conceived or first actually reduced to practice in the course of or under the contract, allowing the contractor to retain a nonexclusive, revocable, paid-up license in the invention and the right to request permission to file an application for a patent and retain title to any ensuing patent in any foreign country in which DOE does not elect to secure patent rights. DOE may approve the request if it determines that such approval would be in the national interest. The contractor's nonexclusive license may be revoked or modified by DOE only to the extent necessary to achieve expeditious practical application of the invention pursuant to any application for and the grant of an exclusive license in the invention to another party.

(b) In contracts having as a purpose the conduct of research, development, or demonstration work and in certain other contracts, DOE may need to require those contractors that are not the beneficiaries of Public Law 96–517 to license background patents to ensure reasonable public availability and accessibility necessary to practice the subject of the contract in the fields of technology specifically contemplated in the contract effort. That need may arise where the contractor is not attempting to take the technology resulting from the contract to the commercial marketplace or is not meeting market demands. The need for background patent rights and the particular rights that should be obtained for either the Government or the public will depend upon the type, purpose, and scope of the contract effort, impact on the DOE program, and the cost to the Government of obtaining such rights.

(c) Provisions to deal specifically with DOE background patent rights are contained in paragraph (k) of the clause at 952.227–13. That paragraph may be modified with the concurrence of Patent Counsel in order to reflect the equities of the parties in particular contracting situations. Paragraph (k) should normally be deleted for contracts with an estimated cost and fee or price of $250,000 or less and may not be appropriate for certain types of study contracts, planning contracts, contracts with educational institutions, or contracts for specialized equipment for in-house Government use, for use by the public, or for contracts where the contract work product will not be the subject of future procurements by the Government or its contractors.

5. Section 927.303 is added to read as follows:

927.303 Contract clauses.

(a) In solicitations and contracts for experimental, research, developmental, or demonstration work (but see (FAR) 48 CFR 27.304–3 regarding contracts for construction work or architect-engineer services), the contracting officer shall include the clause: (1) At 952.227–13, Patent Rights Acquisition by the Government, in all such contracts other than those described in paragraphs (a) (2) and (3) of this section;

(2) At 952.227–11, Patent Rights by the Contractor (Short Form), in contracts in which the contractor is a domestic small business or nonprofit organization as defined at (FAR) 48 CFR 27.301, except where the work of the contract is subject to an Exceptional Circumstances Determination by DOE; and

(3) Discussed in 970.27, Patent, Data, and Copyrights, in contracts for the management and operation of DOE laboratories and production facilities.

(b) DOE shall not use the clause at (FAR) 48 CFR 52.227–12. In instances in which DOE grants an advance waiver or waives its rights in an identified invention, contracting officers shall consult with patent counsel for the appropriate modifications to the clause at 952.227–13.

6. Section 927.304 is added to read as follows:

927.304 Procedures.

Where the contract contains the clause at 952.227–11 and the contractor does not elect to retain title to a subject invention, DOE may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor subject to the provisions of 35 U.S.C. 200 *et seq.* This statement is in lieu of (FAR) 48 CFR 27.304–1(c).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

8. Subsection 952.227–9 is added to read as follows:

952.227–9 Refund of royalties.

As prescribed in 927.206–2, insert the following clause:

Refund of Royalties (XXX 199X)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) above, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause)

9. Subsection 952.227–11 is added to read as follows:

952.227–11 Patent rights-retention by the contractor (short form).

As prescribed in 927.303(a), insert the following clause:

Patent Rights-Retention by the Contractor (Short Form) (XXX 19XX)

(a) *Definitions.* (1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) *Made* when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) *Subject invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) *Agency licensing regulations* and *agency regulations concerning the licensing of Government-owned inventions* mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Contractor.* (1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to that agency. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; *provided,* That DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; *provided, however,* That if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file. (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing there on covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) *Subcontracts.* (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227–13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) *Communications.* (1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except paragraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) A report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) A report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

(End of clause)

10. Subsection 952.227–13 is added to read as follows: 952.227–13 Patent Rights-Acquisition by the Government. As prescribed at 927.303(c), insert the following clause:

Patent Rights-Acquisition by the Government (XXX 199X)

(a) *Definitions. Invention,* as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Head of the Contracting Agency means the Secretary of Energy.

Agency licensing regulations and *applicable agency licensing regulations* mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) *Allocations of principal rights*—(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) below.

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) below, in accordance with the procedures of paragraph 27.304–1(a) of the Federal Acquisition Regulation (FAR). A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Secretary of Energy or designee at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) below, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) below, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.* (1) With respect to each subject invention to which the Contractor retains principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in (FAR) 48 CFR 27.304–1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subdivision (ii) above. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subdivision (i) above in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subdivision (ii) above, and for the reporting of utilization information as required by subdivision (iii) above, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to retain patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in paragraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by paragraph (e)(2) of this clause, with a copy to the DOE contracting officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to paragraph (d)(2) of this contract upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in paragraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this paragraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in paragraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this paragraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing: (A) If the Secretary or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d)(1) of this clause, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in paragraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in accordance with paragraph (d)(3) of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall

establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following: (i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) above have been followed.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (2) above.

(5) The Contractor agrees subject to (FAR) 48 CFR 27.302(i) that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment* (this paragraph does not apply to subcontracts). (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) above;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) above;

(iv) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) above; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) below.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) above, and acceptable final report pursuant to subdivision (e)(3)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) The contractor shall include the clause at 48 CFR 952.227–11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) *Preference United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention

and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *Atomic energy.* (1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of paragraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) *Background patents.* (1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract: (i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the contractor.

(4) Notwithstanding paragraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that: (i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) *Publication.* It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) *Forfeiture of rights in unreported subject inventions.* (1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel (with notification by Patent Counsel to the Contracting Officer) within six months after the time the Contractor: (i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified, in paragraph (m)(1)(i) or (m)(1)(ii) of this clause, the Contractor: (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

11. Remove and reserve 952.227–71.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

Subpart 970.27—Patents, Data, and Copyrights

12. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

13. Revise section 970.2701 to read as follows:

970.2701 General.

This subpart applies to negotiation of patent rights and rights in technical data provisions for the Department of Energy contracts for the management and operation of its research and development and production facilities.

14. Revise 970.2702 to read as follows:

970.2702 Patent rights.

(a) Whenever a contract has as a purpose, the design, construction, or operation of a Government-owned research, development, demonstration or production facility, it is necessary that the Government be accorded certain rights with respect to further use of the facility by or on behalf of the Government upon termination of the contract, including the right to make, use, transfer, or otherwise dispose of all articles, materials, products, or processes embodying inventions or discoveries used or embodied in the facility regardless of whether or not conceived or first actually reduced to practice under or in the course of such a contract. Thus, both versions of the patent rights clause for managment and operating contracts contain a facilities license.

(b) In the case of contractors operating and managing DOE research and development or production facilities, that are not the beneficiaries of Public Law 96–517, the Department is statutorily obligated to take title to inventions conceived or first actually reduced to practice in the performance of the contracts. Here, as in all other circumstances, the contractors may request a waiver at the time of contracting for a class of inventions or during contract performance for identified inventions. DOE includes the considerations at 927.300 in its determination as to whether to approve the request.

(c) While no contractor that manages and operates a DOE research and development or production facility is a small business, several have historically been nonprofit organizations. As such, they are the beneficiaries of Bayh-Dole Act (35 U.S.C. 200 *et seq.*, as amended) and, therefore, receive the right to acquire title to inventions conceived or first actually reduced to practice in the performance of their contracts with the Department, except in areas of technology covered by Exceptional Circumstances Determinations made by DOE or of nuclear weapons and naval nuclear propulsion. In these latter two areas, the contractor may request that the Department waive its title and, therefore, subject to the exceptions identified below, receive the right to acquire title to inventions conceived or first actually reduced to practice in the performance of its contract with the Department.

(d) DOE has exercised statutory authority granted under 35 U.S.C. 202(a)(ii) and 202(a)(iv). In accordance with 35 U.S.C. 202(a)(ii), DOE has issued several Exceptional Circumstances Determinations pursuant to which DOE nonprofit management and operating contractors have no right to elect title to inventions within areas of technology described therein, conceived or first actually reduced to practice in the course of or under their contracts. However, those contractors may be given some lesser property right in an invention within limits set by DOE in a particular Exceptional Circumstances Determination so that the contractor can effectively assist with a mission of DOE, such as technology transfer. As new technologies evolve, DOE will issue additional Exceptional Circumstances Determinations, as appropriate.

(e) In accordance with 35 U.S.C. 202(a)(iv), the Department of Energy has exempted its weapons related and naval nuclear propulsion programs from the broad Bayh-Dole right of its management and operating contractors to elect title to inventions conceived or first actually reduced to practice in the course of or under their contracts. The effect of this exemption is that the contractors' right of election is subject to a case-by-case determination by DOE that the contractor has met all procedural requirements unilaterally set by DOE to insure that all national security concerns of DOE relating to the contractor's use of an invention in either of these two areas for commercialization have been met.

15. Section 970.2703 is added to read as follows:

970.2703 Technology transfer.

The National Competitiveness Technology Transfer Act of 1989 (NCTTA) (Pub. L. 101–189) established technology transfer as a mission for Government-owned, contractor-operated laboratories and authorizes those laboratories to negotiate and award cooperative research and development agreements with public and private entities for purposes of conducting research and development and transferring technology beyond the assignments made by this Department. In implementing the NCTTA, DOE has negotiated technology transfer clauses with the contractors managing and operating its laboratories. Those technology transfer clauses must be read in concert with the patent rights clause required by this subpart. Thus, each management and operating contractor holds title to subject inventions for the benefit of the laboratory or facility being managed and operated by that contractor.

16. Section 970.2704 is added to read as follows:

970.2704 Patent clauses.

(a) Contracting officers shall insert the clause at 970.5204–XX in all management and operating contracts with nonprofit organizations.

(b) Contracting officers shall insert the clause at 970.5204–YY in all management and operating contracts with profit-making entities.

17. Add section 970.2705, Rights in Technical Data—General, and section 970.2706, Rights in Technical Data—Procedures, as follows:

970.2705 Rights in technical data—general.

(a) A management and operating contractor's obligations for protection of information and data received from DOE and other contractors or subcontractors, and for the contractor's private use of contract data first produced in the performance of the contract, are set forth in paragraph (b)(2) of each Rights in Technical Data clause in 952.227. This subparagraph provides that the contractor may, subject to patent, security, or other provisions of the contract, use for its private purposes, contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in the form of progress or status reports specified to be delivered) as of the date of private use of such data. It is not necessary that a "Final Report" be submitted in order to privately use data if all required progress and interim reports and other technical data then due have been delivered. Paragraph (b)(2) further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(b) Contractors should be aware that technical information which is reported to DOE by DOE contractors may be disseminated by DOE to others, subject to the restrictions included in the "Rights to Technical Data" clause.

(c) Employees of contractors operating DOE facilities may not be used to assist in the preparation of a proposal or bid for the performance of private commercial services similar or related to those being performed under the DOE contract unless such employee has been separated, with DOE approval, from performance of work under the DOE contract for such period as the Head of the Contracting Activity or designee shall direct consistent with the purpose of this section.

(d) Contractors operating DOE facilities and performing services as a part of their contract work for other Government agencies or private organizations should not be permitted to utilize information which is furnished by such customers for their own private activities unless it is generally available to others, or unless the customer authorizes such use.

970.2706 Rights in technical data—procedures.

(a) *General.* It is essential that DOE maintain continuity in its programs which are implemented by contracts for the operation of Government-owned facilities. Contract data first produced or specifically used in the performance of such contracts must be considered as integral to and remaining with the facility or plant after termination of such contracts and thus available to DOE and its future contractors for the continued use of the facility or plant. However, it is recognized that these contracts by their nature cannot always be subject to one set of prescribed contract provisions which will always apply. Accordingly, the Rights in Technical Data—Facility clause set forth in 952.227–78 is to be used as a basic or minimal clause which may be modified or expanded with the concurrence of patent counsel to meet particular contract situations.

(b) Whenever a contract has as a purpose the operation of a Government-owned research or production facility, the clause set forth at 952.227–78 shall normally be included in the contract. Inasmuch as this clause secures to the Government ownership, access to, and,

if requested, delivery of all technical data first produced in the performance of the contract and access to and delivery of technical data which are specifically used in the performance of the contract, there is no need to include the Additional Technical Data Requirements Clause of 952.227–73.

(c) *Subcontracting.* Unless otherwise directed by the contracting officer, the contractor shall be required to follow the policy and procedures of 927.402–1, 927.402–2, and 927.402–3 and shall employ the provisions of the Additional Technical Data Requirements clause of 952.227–73 and the Rights in Technical Data (Long Form) clause of 952.227–75, where appropriate, except in subcontracts for the design of special production plants or facilities or specially designed equipment for facilities or plants, in which instances contractors shall include the provisions of the Rights in Technical Data—Facility clause of 952.227–78.

(d) *Optional clause—Limited rights in proprietary data.* In contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data clause of this section shall be supplemented by the additional paragraph (e), set forth in 952.227–79. Paragraph (e) provides that technical data may be specified in the contract as being excluded from the delivery requirements thereof. Alternatively, paragraph (e) may be limited or made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, paragraphs (a), (b) and (c) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, paragraph (a) of the limited rights legend shall be used, and paragraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, paragraph (b) of the limited rights legend shall be used, and paragraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude contractors or evaluators from paragraph (a) or (b). If the data is required solely for emergency repair or overhaul, paragraph (c) of the limited rights legend shall be retained, and paragraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event that it is determined that all of the paragraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon (:).

(e) For contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR part 725, see 927.402–1(h).

18. Subsection 970.5204–XX is added to read as follows:

970.5204–XX Patent Rights—Nonprofit Management and Operating Contractors

As prescribed at 970.2703, insert the clause at 952.227–11, Patent Rights-Retention by the Contractor (Short Form) with the following changes:

Patent Rights—Nonprofit Management and Operating Contractors (XXX 199X)

1. Replace paragraph (e)(1) with the following:

(e)(1) The contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. When DOE approves such reservation, the contractor's license will extend to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

2. Add the following paragraphs (m) and (n):

(m) *Transfer to successor contractor.* (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(n) *Facilities license.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

19. Subsection 970.5204–YY is added to read as follows:

970.5204–YY Patent Rights—Profit-Making Management and Operating Contractors

As prescribed at 970.2703, insert the clause at 952.227–13, Patent Rights—Retention by the Government, with the following changes:

Patent Rights—Profit-Making Management and Operating Contractors (XXX 199X)

1. Add the following paragraphs (j) and (k):

(j) *Transfer to successor contractor.*

(1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(k) *Facilities license.*

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to

practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

[FR Doc. 94–7112 Filed 3–28–94; 8:45 am]
BILLING CODE 6450–01–P

Notices

Federal Register
Vol. 59, No. 60
Tuesday, March 29, 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 COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Request for Reexport Authorization.

Agency Form Number: BXA 699–P, EAR 774.3(b).

OMB Approval Number: 0694–0010.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 304 hours.

Number of Respondents: 700.

Avg Hours Per Response: 25 minutes per response, 1 minute for recordkeeping per response.

Needs and Uses: When certain goods or technology have been exported from the U.S. on an approved export license, the items may not be reexported without the authority of BXA. U.S. exporters or the foreign firms intending to reexport commodities must provide information on the new destination and intended use. BXA needs the information to determine whether or not the new consignee is reliable.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion, recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: Bureau of Export Administration (BXA).

Title: Statement by Ultimate Consignee and Purchaser.

Agency Form Number: BXA 629–P, EAR 775.2.

OMB Approval Number: 0694-0021.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 4,289 hours.

Number of Respondents: 8,300.

Avg Hours Per Response: 30 minutes per response, 1 minute for recordkeeping per response.

Needs and Uses: Most export license application requests must be accompanied by supporting documents designed to elicit information concerning the intended end–use and end–user of the goods abroad. In order to verify what the U.S. exporter has told the Bureau of Export Administration about the shipment, the ultimate consignee and purchaser are also required to provide information on the use of the item. The information is used by licensing officers in determining the validity of the end–use.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion, recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Economic Survey of Commercial Reef Fishermen in the Gulf of Mexico.

Agency Form Number: No number assigned.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 413 hours.

Number of Respondents: 265.

Avg Hours Per Response: Response time varies but on average will be about 90 minutes.

Needs and Uses: This is a survey of fishermen with commercial permits for reef fishing in the Gulf of Mexico. The survey is designed to collect economic information about commercial fishing activities for reef fish and other species, including catch, revenue and cost data. The information provided will be used to determine the current economic status of commercial fishermen and to estimate the economic effects of regulatory alternatives under consideration.

Affected Public: Individuals, businesses or other for–profit institutions, small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: The U.S. Geostationary Operational Environmental Satellite (GOES) Data Collection Systems (DCS).

Agency Form Number: None.

OMB Approval Number: 0648–0157.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 27 hours.

Number of Respondents: 9.

Avg Hours Per Response: 3 hours.

Needs and Uses: The GOES DCS is a system for collecting and transmitting data from remote locations via a government–owned geostationary satellite. GOES collects meteorological, hydrological and oceanic data. The entire capacity of GOES is not presently being used. Therefore, it is possible for NOAA to allow others involved in environmental data collection to use GOES. Before admitting a user to GOES, NOAA requests information on the project to determine if it meets program requirements. Without this information, NOAA could not make a determination on the application.

Affected Public: Individuals, state or local governments, businesses or other for–profit institutions, federal agencies, non–profit institutions, small businesses or organizations.

Frequency: On occasion — information is provided one time when initially making application.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Federal Fisheries Permits.

Agency Form Number: NOAA 88–155.

OMB Approval Number: 0648–0206.

Type of Request: Revision of a currently approved collection.

Burden: 906 hours.

Number of Respondents: 2,296.

Avg Hours Per Response: 20 minutes for permits, 30 hours for experimental fishing permits.

Needs and Uses: Fishermen wanting to fish in regulated fisheries in the Alaska Region must apply for vessel permits. Fishermen who wish to experiment with fishing techniques must apply for an experimental permit. The information is used in developing management controls on fishing effort, as well as to enforce the measures once they are in effect.

Affected Public: Individuals, businesses or other for–profit institutions, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Logbook Family of Forms.

Agency Form Number: None.

OMB Approval Number: 0648–0214.

Type of Request: Revision of a currently approved collection.

Burden: 1,293 hours.

Number of Respondents: 215 (65 responses per respondent).

Avg Hours Per Response: Ranges between 5 minutes and 4 hours depending on reporting requirement — most requirements are 5 minutes.

Needs and Uses: The Western Pacific Fishery Management Council has prepared four Fishery Management Plans for crustaceans, precious corals, bottomfish and seamount groudfish, and pelagic species. This request covers logbooks and other reporting requirements (transshipment, sales, notifications, experimental fishing reports, etc.). The information is used in developing management measures to control fishing effort, as well as to enforce the measures once they are in effect.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 22, 1994

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–7386 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket 4–94]

Foreign-Trade Subzone 59A—Lincoln, NE; Request for Expanded Manufacturing Authority, Kawasaki Motors Manufacturing Corporation U.S.A. Plant (Utility Work Trucks), Extension of Public Comment Period

The comment period for the above case, requesting authority to manufacture utility work trucks under zone procedures within Subzone 59A (59 FR 2592, 1/18/94), is extended to April 22, 1994, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: March 23, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–7388 Filed 3–28–94; 8:45 am]

BILLING CODE: 3510–DS–P

International Trade Administration

[A–122–605]

Color Picture Tubes From Canada; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On February 24, 1994 the Electronic Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, the AFL–CIO, and the Industrial Union Department AFL–CIO, petitioners in the original less-than-fair-value investigation, withdrew their request for an administrative review of the antidumping duty order on color picture tubes from Canada for the period January 1, 1993 through December 31, 1993. The Department is now terminating this review.

EFFECTIVE DATE: March 29, 1994.

FOR FURTHER INFORMATION CONTACT:

Valerie Turoscy or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1994, the Department of Commerce (the Department received a request from the Electronic Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, the AFL–CIO, and the Industrial Union Department AFL–CIO, petitioners in the original less-than-fair-value investigation, to conduct an administrative review of the antidumping duty order on color picture tubes from Canada for the period January 1, 1993 through December 31, 1993, pursuant to 19 CFR 353.22(a)(1) of the Department's regulations. Petitioners specifically requested an administrative review of Mitsubishi Electric Corporation, Mitsubishi Electronics America, Inc., and any related companies. We received no other requests for an administrative review of the order.

On February 17, 1994 the Department published in the **Federal Register** a notice of initiation of this review (59 FR 7979).

On February 24, 1994, petitioners withdrew their request for administrative review. Accordingly, the Department has determined to terminate this administrative review.

Dated: March 22, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–7389 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–DS–M

Intent To Revoke Antidumping Duty Orders and Findings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty orders and findings.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty orders and findings listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than March 29, 1994.

EFFECTIVE DATE: March 29, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping duty proceeding	Date of finding/order
Australia:	
Canned Bartlett Pears (A–602–039) Contact: David Levy/Michael Rill, (202) 482–4733.	38 FR 7566, 3/23/73
People's Republic of China:	
Chloropicrin (A–570–002) Contact: David Levy/Michael Rill, (202) 482–4733.	49 FR 10691, 3/22/84
Ecuador:	
Fresh Cut flowers (A–331–602) Contact: Joseph Fargo/Richard Rimlinger (202) 482–4733.	52 FR 8494, 3/18/87
France:	
Brass Sheet and Strip (A–427–602) Contact: Kim Moore/Tom Futtner, (202) 482–5254.	52 FR 1217, 3/6/87
Finland:	
Rayon Staple Fiber, (A–405–071) Contact: Kim Moore/Tom Futtner, (202) 482–5254.	44 FR 17156, 3/21/79

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or domestic interested parties do not object to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping duty orders and findings are no longer of interest to interested parties and shall proceed with the revocation.

Opportunity to Object

No later than 30 days from the publication date of this notice, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: March 22, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–7390 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–25–M

Determination Not To Revoke Antidumping Duty Orders

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of determination not to revoke antidumping duty orders.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders listed below.

EFFECTIVE DATE: March 29, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) may revoke an antidumping duty order or finding, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct administrative reviews of the following antidumping duty orders for the last four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on December 8, 1993, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and served written notice of the intent to each interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders. Therefore, because domestic interested parties objected to the revocations, we no longer intend to revoke these antidumping duty orders.

Antidumping duty proceeding	Date of finding/order
Singapore:	
Light-Walled Rectangular Pipes and Tubes (A–559–502)	
Contact: Maureen Shields/John Kugelman, (202) 482–5253, Objections: December 28, 1993, Hannibal Industries, Inc.	51 FR 41142, 11/13/86.
Argentina:	
Barbed Wire and Barbless Fencing Wire (A–357–405)	
Contact: Maureen Shields/John Kugelman, (202) 482–5253, Objections: January 4, 1994, Keystone consolidated Industries, Inc., Insteel Industries, Inc., and Oklahoma Steel & Wire Co.	50 FR 46808, 11/13/85.

Dated: March 15, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–7268 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–542–401]

Certain Apparel From Sri Lanka; Proposed Amended Conversion

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Certain Apparel from Sri Lanka: Notice of Proposed Amendment to the Existing Conversion of the Scope of the Order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty order on certain apparel from Sri Lanka. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2786.

Background

In 1985, the Department issued a countervailing duty order on Certain Apparel from Sri Lanka (C–542–401) (50 FR 9826; March 12, 1985). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced apparel order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department has determined that the 1989 Conversion did not accurately reflect the scope of the Certain Apparel from Sri Lanka order and, therefore, that the conversion should be amended.

To rectify the problems in the 1989 Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the Certain Apparel from Sri Lanka countervailing duty order. A new proposed amended conversion is found in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, IA Central Record Unit, room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 22, 1994.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

Appendix: Proposed Amended HTS List for Certain Apparel From Sri Lanka (C–542–401)

6101.3020	6105.1000*
6102.3020	6105.2020
6104.1200*	6106.1000
6104.2200*	6106.2020
6104.2300*	6109.1000
6104.2910*	6109.9010
6104.4320	6110.1020
6104.4420	6110.2020
6104.5200	6110.3015
6104.6220	6110.3030
6104.6320	6113.0000
6104.6920	6116.9264
6116.9364	6204.4230
6116.9374	6204.4340
6116.9388	6204.4440
6116.9394	6204.5220
6116.9948	6204.5330
6116.9954	6204.5930
6201.1220	6204.6220
6201.1340	6204.6240
6201.9215	6204.6335
6201.9220	6204.6925
6201.9330	6205.2020
6201.9335	6205.3020
6202.1220	6206.3030
6202.1340	6206.4030
6202.9220	6208.9110
6202.9345	6208.9200
6202.9350	6209.2010
6203.1910*	6209.2020
6203.2230	6209.2030
6203.2300	6209.2050
6203.2920	6210.2010
6203.4240	6210.2020
6203.4340	6210.3010
6203.4920	6210.4010
6204.1200*	6210.5010
6204.1320	6211.2015
6204.1920	6211.2020
6204.2210*	6211.2030
6204.2230*	6211.2050
6204.2300*	6211.2060
6204.2920*	6211.4200
6204.3220	6212.1010
6204.3350	6212.1020
6204.3930	6216.0038

* Coverage limited to garments that would be covered by this order if separately entered.

† Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.

[FR Doc. 94–7264 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–542–401]

Certain Textile Mill Products From Sri Lanka; Proposed Amended Conversion

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Certain textile mill products from Sri Lanka: Notice of proposed amendment to the existing conversion of the scope of the order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the

1989 Conversion governing the countervailing duty order on certain textile mill products from Sri Lanka. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2786.

Background

In 1985, the Department issued a countervailing duty order on Certain Textile Mill Products from Sri Lanka (C–542–401) (50 FR 9826; March 12, 1985). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced textile order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department has determined that the 1989 Conversion did not accurately reflect the scope of the Certain Textile Mill Products from Sri Lanka order and, therefore, that the conversion should be amended.

To rectify the problems in the 1989 Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the Certain Textile Mill Products from Sri Lanka countervailing duty order.

A new proposed amended conversion is found in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, IA Central Record Unit, room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 22, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix: Proposed Amended HTS List for Certain Textile Mill Products From Sri Lanka (C–542–401)

4202.2245	6305.3100	6305.3900
6306.1100	6306.2100	6307.1020

[FR Doc. 94–7267 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–DS–P

University of California, Los Alamos, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–153. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* VG Instruments, Inc., United Kingdom. *Intended Use:* See notice at 59 FR 2825, January 19, 1994. *Advice received from:* National Institute of Standards and Technology, October 25, 1993 (comparable case).

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) sensitivities of at least 30 MHz/ppm for Co, In, Pb, Bi and V and (2) a proven glovebox compatible design for containment of radioactive sample materials. The National Institute of Standards and Technology advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–7392 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–DS–F

The University of North Carolina, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–155. *Applicant:* The University of North Carolina at Chapel Hill, Chapel hill, North Carolina 27599-3300. *Instrument:* Mass Spectrometer with Automated Gas and Gas Chromatograph/Combustion Inlet Systems, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 5178, February 3, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) an internal precision of 0.005 for bar μl samples of CO_2, (2) simultaneous collection of 3 separate ion beams and (3) an autosampling carbonate combustion/preparation line.

These capabilities are pertinent to the applicant's intended purpose and we know of no other instrument or apparatus of equivalent scientific value

to the foreign instrument which is being manufactured in the United States.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94-7391 Filed 3-28-94; 8:45 am]

BILLING CODE 3510-DS-F

National Oceanic and Atmospheric Administration

[I.D. 031694A]

Information Relating to Bowhead Whales; Proposed U.S. Position at 1994 Annual Meeting of International Whaling Commission

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

ACTION: Notice of information and request for public comment.

SUMMARY: Information is published by NMFS for use in the development of the U.S. position before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales. NMFS is soliciting public comment on the proposed U.S. position at the 1994 Annual Meeting of the IWC (May 23–27, 1994) for a quota of bowhead whales for aboriginal subsistence use by U.S. natives for the years 1995 to 1997.

DATES: Comments must be submitted on or before April 28, 1994.

ADDRESSES: Written comments may be mailed to the Office of International Affairs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A list of documents reviewed for this action may be obtained upon request, and the documents examined during business hours (9 a.m. to 5 p.m.) during the 30-day public comment period at this address.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, (301) 713–2276.

SUPPLEMENTARY INFORMATION: NOAA is responsible for implementation and enforcement of relevant portions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407), the Endangered Species Act (16 U.S.C 1531–1543) and the Whaling Convention Act (16 U.S.C. 916–916*l*). NMFS provides staff support to the U.S. Commissioner to the IWC and to the IWC Interagency Committee, and it is charged with developing preliminary positions for the annual meetings of the IWC. Consistent with these responsibilities, NMFS has developed a preliminary U.S. position for the 1994 annual meeting of the IWC on an aboriginal subsistence quota of bowhead whales for the years 1995 to 1997, to be implemented under Paragraph 13 of the Schedule to the International Convention on the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849 (entered into force, November 10, 1948).

To provide for the public to review and comment on the data upon which the U.S. position is based, the following information is provided: (1) A summary of available bowhead scientific information, including estimates of current population level and annual recruitment rates; (2) a summary of information on the nature and extent of aboriginal/subsistence need; (3) updated estimates of need for the nine whaling villages that have been reviewed by the IWC, based on the 1990 census data; (4) information about the need for the island village of Little Diomede to land one bowhead whale per year; and (5) the NMFS preliminary position regarding bowhead whales at the 1994 annual meeting of the IWC. NMFS is soliciting public comment on the proposed position regarding bowhead whales at the 1994 Annual Meeting of the IWC.

1. Scientific Information

At the 1991 IWC meeting, the Scientific Committee agreed that the Bering-Chukchi-Beaufort Sea population of bowhead whales was between 6,400 and 9,200 animals, with a most likely estimate of 7,500 whales. A minimum estimate of the replacement yield was calculated to be 92 whales per year, and the most likely replacement yield for the population size of 7,500 is 254 whales per year. The replacement yield defines the number of whales annually joining the adult population, and it is assumed that, all other things being constant, up to this number could be taken from the population without causing it to decline.

The Scientific Committee will review the status of this stock before the 1994 annual meeting, including additional scientific information gathered since the 1991 review. A preliminary analysis of the additional data is not yet available.

2. Aboriginal/Subsistence Need

The Department of the Interior (DOI) conducted its analysis of the nature and extent of aboriginal/subsistence need for bowhead whales and whaling in 1983, and the IWC adopted the DOI method for quantifying need in 1986. DOI contracted for a new study on the quantification of subsistence and cultural need for bowhead whales in 1987, which was presented at the 1988 meeting. The new study presented the subsistence and cultural need of nine Alaskan Eskimo whaling villages to take 41 landed bowhead whales. This quantification of need used the same method of calculation accepted by the IWC in 1986. This method derives the mean annual number of bowhead whales landed per capita during a specified historical period and multiplies this mean by the current Eskimo population of nine whaling villages. The result of this calculation is the total number of bowhead whales these Eskimo whaling villages need to land each year to meet their cultural and subsistence need.

Based on the 1988 DOI study, the aboriginal subsistence and cultural need for the nine whaling villages in the original DOI study were calculated to be:

Village	Need (landed)
Gambell	3
Savoonga	3
Wales	1
Kivalina	1
Point Hope	9
Wainwright	5
Barrow	16
Niuqsut	2
Kaktovik	1
Total	41

At the 43rd annual meeting of the IWC, Reykjavik, Iceland, May 27–31, 1991, the IWC accepted this need calculation, and the following catch limit was established for aboriginal/subsistence whaling:

> The taking of bowhead whales from the Bering-Chukchi-Beaufort Seas stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that: For each of the years 1992, 1993, and 1994 combined, the total number of whales struck shall not exceed 141, except that: (A) any unused strikes up to ten percent of the total strikes allowed in the years 1989, 1990, and 1991 combined shall be carried forward from those years and added to the combined total of strikes for the years 1992, 1993, and 1994; and (B) in any one year no more than 54 whales shall be struck and no more than 41 shall be landed. (Schedule to the Convention, Paragraph 13(b)(1)(i).)

Since this quota expires in 1994, the U.S. intends to seek an additional 3-year quota at this year's annual meeting of the IWC.

3. 1990 U.S. Census Data

The 1988 DOI study relied on human population data for various years from 1983 to 1987 for nine whaling communities and was conducted before the 1990 census data were available. In 1992, the Alaska Eskimo Whaling

Commission (AEWC) recalculated the aboriginal subsistence and cultural need using the identical formula accepted by the IWC for calculating aboriginal subsistence and cultural need, updated with the 1990 census data.

Using the 1990 census data, the revised aboriginal subsistence and cultural need is calculated to be:

Village	Need (landed)
Gambell	3
Savoonga	3
Wales	1
Kivalina	1
Point Hope	10
Wainwright	5
Barrow	19
Niuqsut	3
Kaktovik	2
Total	47

NMFS is informed that the AEWC has asked the individuals who conducted the original DOI study to further update the human population data through 1992 and that it has offered to provide this information to NMFS.

4. Request for Little Diomede

The island of Little Diomede is remote and accessible only a few months of the year. As a result, complete historic data for Little Diomede were not combined with the data from any of the nine whaling villages listed above, nor was Little Diomede included in the 1988 analysis of subsistence and cultural need. While some historical whaling data for Little Diomede were collected, they were not complete.

References to whaling by the village of Little Diomede date back at least to the 18th century. The tradition of whaling continued into the 20th century. The most recent known catch of a bowhead whale was in 1979. Information on the subsistence and cultural need for bowhead whales by the village of Little Diomede was submitted to the IWC by the U.S. in 1992. The U.S. delegation called attention at that time to the need for one additional bowhead whale for Little Diomede. However, because a 3-year quota had been established the previous year, the U.S. did not seek any changes to the quota. Likewise, in 1993, the U.S. delegation called attention to the situation of Little Diomede, but did not seek a change in the quota.

5. Proposed U.S. Position at the 1994 Annual Meeting of the IWC

Based on the census data presently available for the nine previously recognized whaling villages and on the documented need of the village of Little Diomede to land one bowhead whale per year, the U.S. intends to seek a quota of a total of 48 bowhead whales landed per year for 1995 through 1997. Assuming a 75 percent efficiency in landing whales, the U.S. will seek IWC approval to strike up to 64 bowheads in order to land 48. The U.S. will take this position only if, in the view of the IWC Scientific Committee, such a quota will continue to allow the Bering-Chukchi-Beaufort Sea population of bowhead whales to move to the maximum sustainable yield level.

(Authority: 16 U.S.C. 916, 1361–1407, 1531–43)

Dated: March 22, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–7313 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 031094A]

Endangered Species; Permits

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

ACTION: Notice of receipt of applications for scientific research permits (P772#66 and P509A).

Notice is hereby given that NMFS Southwest Regional Office (P772i66) and Robert van Dam (P509A) have each applied in due form for a permit to take listed sea turtles as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR Parts 217–227).

The NMFS Southwest Regional Office (P772#66) requests authorization to conduct scientific research on sea turtles as described in the Interim Hawaiian Sea Turtle Recovery Plan and to conduct research on listed sea turtles taken incidentally by the Hawaiian longline fishery. The applicant requests this authorization for a duration of five years.

Robert van Dam (P509A) requests authorization to conduct scientific research on sea turtles at Mona Island, Puerto Rico in order to study the natural history of hawksbill sea turtles, in order to make it possible to implement more effective measures to manage wild populations of this species. The applicant requests this authorization for a duration of one year.

Written data or views, or requests for a public hearing on these applications should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above applications are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226 (301–713–2322); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310–980–4016)

Dated: March 21, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–7299 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Silk Apparel Produced or Manufactured in the People's Republic of China

March 24, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on February 23, 1994 (59 FR 8602) announced that the Governments of the United States and the People's Republic of China have agreed to establish a separate bilateral agreement on silk apparel products. A Memorandum of Understanding (MOU) dated January 17, 1994 and an exchange of letters dated March 17, 1994 between the two governments establishes an agreement on wearing apparel containing 70 percent or more by weight of silk, produced or manufactured in China for the period beginning on April 1, 1994 and extending through December 31, 1996.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period beginning on April 1, 1994 and extending through December 31, 1994.

A standard visa arrangement will be established for goods, produced or manufactured in China and exported from China on and after July 1, 1994, which are subject to the Silk Agreement. Further notice will be published in the **Federal Register.**

A description of the silk apparel categories will be published in the **Federal Register** establishing a correlation for silk apparel categories with the Harmonized Tariff Schedule of the United States.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 24, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding (MOU) dated January 17, 1994 and exchange of letters dated March 17, 1994 between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wearing apparel containing 70 percent or more by weight of silk in the following categories, produced or manufactured in China and exported during the period beginning on April 1, 1994 and extending through December 31, 1994, in excess of the following limits:

Category	Nine-month limit
Silk Apparel Group [1] 733, 734, 735, 736, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 750, 751, 752, 758 and 759, as a group.	267,157,000 square meters equivalent.
Specific Limit within Group 740 (Men's and boys' shirts, not knit).	2,428,895 dozen.
741 (Women's and girls' shirts/ blouses, not knit).	6,061,071 dozen.

[1] Silk handkerchiefs, gloves, hosiery, brassieres and other body supporting garments, scarves, and babies' garments are not included in this Agreement.

Apparel products in the foregoing categories which have been exported to the United States prior to April 1, 1994 shall not be subject to this directive.

Apparel products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–7387 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Acquiring Defense Software Commercially

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Acquiring Defense Software Commercially scheduled for March 29–30, 1994 as published in the **Federal Register** (Vol. 59, No. 46, Page 11052, Wednesday, March 9, 1994, FR Doc 94–5335) has been cancelled.

Dated: March 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–7356 Filed 3–28–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of the Army

Record of Decision for the Stationing of Mechanized or Armored Combat Forces at Fort Lewis, WA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: As part of the worldwide reorganization of its force structure, the Army has decided to station heavy (armored or mechanized) combat units at Fort Lewis, Washington. The Record of Decision announces the Army's decision to station two heavy brigades at Fort Lewis. This decision will add approximately 10,400 troops and 1,100 tracked vehicles to Fort Lewis and its subinstallation, Yakima Training Center (YTC).

The Army plans to initiate the stationing action with the arrival of the first heavy brigade beginning in April 1994. The 1st Brigade of the 7th Infantry Division, currently at Fort Lewis, will remain for an interim period. During this time frame, both a light infantry brigade and heavy brigade will be stationing at Fort Lewis. The disposition of the light infantry brigade will be decided prior to the arrival of a second heavy brigade.

ADDRESSES: Individuals may obtain a copy of the Record of Decision by contacting Mr. Randall W. Hanna, Chief, Environmental and Natural Resources Division, HQ, I Corps and Fort Lewis, Attn: AFZH–DEQ, Fort Lewis, Washington 98433–5000, Commercial telephone (206) 967–5337.

Dated: March 21, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health), OASA (I, L&E).

[FR Doc. 94–7243 Filed 3–28–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Trip Leasing Procedures for DOD Freight

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: MTMC is changing its trip leasing procedures for DOD freight established in November 1988. MTMC's

new rule will limit trip leasing of DOD shipments to DOD approved carriers.

EFFECTIVE DATE: This change is effective April 28, 1994.

ADDRESSES: Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Stachkunas, (703) 756–1292.

SUPPLEMENTARY INFORMATION: MTMC published notice of proposed revision to its trip lease rules in the **Federal Register** on October 20, 1993 (58 FR 201). Comments were received from 21 freight motor-common carriers, 5 carrier's representatives and the National Motor Freight Traffic Association. Comments were both in favor of, and against the proposal. Comments against the proposal suggested that it would restrict competition and increase Government costs; increase carrier costs; favor large carriers; eliminate efficiencies of the current system; prohibit use of carriers that have proven themselves reliable; increase service failures; decrease the pool of carriers needed to provide surge capability; and fail to increase MTMC's control over shipments. Comments supporting the proposal suggested that it would increase security over DOD shipments; reduce the risk of loss and damage; reduce transit times; eliminate administrative burden; reduce publication of frivolous rates; eliminate the need to monitor lease documentation; improve in transit visibility; put all carriers on an equal footing subject to the same rules; and increase understanding and enforceability of MTMC's Carrier Qualification Program (CQP).

MTMC considered all comments carefully and has decided to implement the proposed change in its trip lease rules for the following reasons:

Requiring carriers to trip lease only between DOD-approved carriers ensures that carriers will operate under the same rules, procedures, and qualification requirements. All large competitors, large and small, will be required to meet the same qualification criteria. Administrative cost and enforcement expenses will be reduced since MTMC will not be required to approve carriers to trip lease and maintain separate files on those carriers. The security, service, and in transit visibility of DOD shipments will be increased.

Carriers will still be subject to the trip leasing requirements set forth in 49 Code of Federal Regulations (CFR) Part 1057 and both lessor and lessee carriers will bear the burden of regulatory compliance.

Under this new rule, carriers will only be allowed to trip lease with carriers approved to handle DOD freight. Carriers will no longer be required to get approval from MTMC to trip lease. This will reduce the administrative burden on carriers as they will only be required to be approved under the MTMC CQP in order to trip lease with other DOD approved carriers.

For the reasons set forth in the preamble, the MTMC Freight Traffic Rules Publication No. 1A, item 230 is changed as follows:

Carriers desiring to trip lease will only do so with other Department of Defense (DOD) approved carriers. The requirements of 49 CFR part 1057 will be followed as applicable. Failure to comply with the regulatory requirements can result in nonuse or disqualification by MTMC.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–7414 Filed 3–28–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84–055A–E]

Grants and Cooperative Agreements; Cooperative Education Program

AGENCY: Department of Education.

ACTION: Extension of closing date.

SUMMARY: On September 24, 1993, the Department of Education published a combined application notice in the **Federal Register** (58 FR 50153) inviting applications for new awards for fiscal year 1994 under many of the Department's direct grant and fellowship programs. Among the programs listed in the combined application notice was the Cooperative Education Program. Detailed information concerning the Cooperative Education Program competition was included in the program notice.

The purpose of this notice is to allow those applicants in Mississippi affected by the recent severe weather additional time to submit their applications. Applicants who reside in the area designated by the President on February 18, 1994 as adversely affected by a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) between February 11 and the original closing date may take advantage of this extension. Applicants should indicate in their applications that they reside in an adversely affected area as designated by the President.

The revised deadline for receipt of applications for the Cooperative Education Program is March 31, 1994.

Note: Applications must be received by the extended due date—not postmarked by that date. Applications received after the extension will not be accepted.

FOR FURTHER INFORMATION CONTACT: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., Portals Building, Courtyard Level, Washington, DC 20202–5251. Telephone: (202) 260–3265.

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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin Board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Dated: March 23, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–7312 Filed 3–28–94; 8:45 am]

BILLING CODE 4000–01–M

[CFDA NO: 84.129U]

Parent Information and Training Programs—Technical Assistance Notice Inviting Applications for a New Award for Fiscal Year (FY) 1994

PURPOSE OF PROGRAM: To provide coordination and technical assistance to the Parent Information and Training projects.

ELIGIBLE APPLICANTS: Private nonprofit organizations.

SUPPLEMENTARY INFORMATION: Parent Information and Training Programs are authorized under Title VIII, section 803(c), of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Six grants were awarded under Parent Information and Training Programs for FY 1993 to private nonprofit organizations in the following States: Illinois, Louisiana, Minnesota, Oregon, Utah, and Washington. Under section 803(c)(6) of the Act, the Secretary provides coordination and technical assistance to the Parent Information and Training projects for establishing,

developing, and coordinating the training and information programs.

Deadline for Transmittal of Applications: May 13, 1994.

Deadline for Intergovernmental Review: July 12, 1994.

Applications Available: March 30, 1994.

Available Funds: $75,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, 85, and 86.

Statutory Requirements: The statutory requirements in section 21(b)(6) of the Act, section 803(c) of the Act, and section 803(f) of the Act, incorporating the requirements of section 306, apply to this program.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

For Applications: To request an application, telephone (202) 205–9343. 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.

FOR FURTHER INFORMATION CONTACT: Beverly Brightly, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC. 20202–2649. Telephone: (202) 205–9561.

Program Authority: 29 U.S.C. 774

Dated: March 23, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–7311 Filed 3–28–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

AGENCY: Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of roundtables.

SUMMARY: The U.S. DOE is announcing the first two in a series of regional roundtables to solicit comments and feedback from stakeholders, which include state and local officials, utility representatives, industry representatives, public interest groups and other interested parties on the *Climate Change Action Plan*, the Clinton Administration's blueprint for stabilizing greenhouse gas emissions at 1990 levels by the year 2000.

DATE AND LOCATION:

April 12, 1994, Hilton Hotel, 6th and University Avenue, Seattle, Washington.

April 14, 1994, Stouffer Concourse Hotel, 3801 Quebec Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Arlene Anderson or Carol Tombari, U.S. Department of Energy, Office of Energy, Efficiency and Renewable Energy, Green Room, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7541.

SUPPLEMENTARY INFORMATION: On October 19, 1993, President Clinton made a national commitment to stabilizing greenhouse gas (GHG) emissions at 1990 levels by the year 2000. The blueprint for achieving this goal is known as the *Climate Change Action Plan* (CCAP), a volume of 46 emissions-reducing "actions" the U.S. will take during the remainder of the decade. The Plan is founded on the principle that cost-effective energy efficiency programs provide energy cost reductions that more than offset the investment to increase efficiency. The CCAP focuses on and accelerates the implementation of the Energy Policy Act of 1992. As a result, the overall Plan is estimated to require no net increase in Federal funding as it creates jobs, reduces home and business energy bills, and induces over $60 billion in new domestic investment.

The Department of Energy's (DOE's) Office of Energy Efficiency and Renewable Energy has the responsibility for implementing the renewable energy and energy efficiency actions in the President's plan. An executive summary of the Plan may be obtained by calling DOE, (202) 586–7541. Several other Federal agencies and offices have important implementation responsibilities for the remaining actions and for other aspects of the Plan.

DOE's Office of Energy Efficiency and Renewable Energy and the National Association of State Energy Officials will conduct regional roundtables to solicit comments and feedback on the *Climate Change Action Plan*. The purpose of the roundtables is to describe and solicit feedback on DOE's preliminary proposals to implement its actions under the Plan. Rather than design individual implementation plans, however, DOE has examined its implementation responsibilities from the standpoint of comprehensiveness, integration, and leverage. As a result, DOE has developed an implementation approach that has the potential to integrate all CCAP activities, not only into DOE's programs, but also into other energy efficiency activities and programs.

Through these roundtables DOE hopes to begin soliciting input from a wide variety of stakeholders. The agency seeks feedback on the comprehensive strategy as well as specifics of proposed implementation activities. Comments or questions from the public may be submitted in person or in writing at the roundtable. Following the roundtable, written comments or questions may be sent to the address listed above. For several of the actions, DOE presents several implementation options rather than a single proposed implementation plan. In these instances, DOE seeks input that will help guide our selection of one of these options.

The roundtable format will provide a forum for representatives from state and local governments, utilities, industry, public interest groups and other interested parties to provide comments. The roundtable format is sufficiently flexible to allow participants to offer comments, either on specific actions or on the entire package, through the use of breakout sessions for key groups of actions. All comments will be considered. Facilitators will be provided for each session. A copy of a summary of the roundtable proceedings may be obtained by calling or writing to the address listed above.

Proposed Agenda

7:30 a.m.
Registration.
Welcome and Introduction.
Overview of Climate Change Action Plans.
Break-out Sessions.
- Utilities
- Buildings
- Industry
- Transportation

12:30 p.m.
Working Lunch.
Break-out Sessions (Cont'd).
Feedback and Closing Comments.

5:00 p.m.
Adjourn.

Detailed information about the roundtables can be obtained from: Carol

Tombari or Arlene Anderson (202) 586–7541.

Issued in Washington, DC, on March 21, 1994

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–7384 Filed 3–28–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 553–005 Washington]

City of Seattle, WA; Extension of Time

March 24, 1994.

The time for filing comments on the Draft Environmental Assessment for this project is extended to and including April 20, 1994.[1]

Lois D. Cashell,

Secretary.

[FR Doc. 94–7348 Filed 3–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8974–002 New Hampshire]

Southern New Hampshire Hydroelectric Development Corp.; Availability of Draft Environmental Assessment

March 23, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Upper Factory Hydroelectric Project located on the Cocheco River in Strafford County, New Hampshire, in the City of Dover, and has prepared a draft Environmental Assessment (EA) for the proposed project.

Copies of the EA are available for review in the Public Reference Branch, room 3308 at the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 8974–002 to all comments. For further information, please contact Allan Creamer, Environmental Assessment Coordinator, at (202) 219–0365.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7309 Filed 3–28–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Notice issued March 3, 1994 (59 FR 11054, March 9, 1994).

[Docket No. RP94–182–000]

Arkla Energy Resources Co.; Proposed Changes in FERC Gas Tariff

March 23, 1994.

Take notice that on March 18, 1994, Arlka Energy Resources Company (AER) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet Nos. 4 and 4.1, to become effective April 1, 1994.

AER states that these revised rate sheets are filed in compliance with section 5.7(c)(ii)(2)(B), First Revised Sheet Nos. 107 and 108, of AER's tariff on file with and approved by the Commission, which requires AER to credit net cash balancing revenues to its transportation customers. AER also states that the proposed rate sheets reflect the adjustment of the reservation charge for shippers under AER's Rate Schedules FT and NNTS, and the commodity charge for shippers under Rate Schedule IT, by the amount of the FT and IT Cash Balancing Revenue Credits, respectively, attributable to the period September through December 1993.

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 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 30, 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. 94–7308 Filed 3–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–237–012]

Alabama-Tennessee Natural Gas Co.; Filing of Report of Refunds

March 23, 1994.

Take notice that on March 21, 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing a report of refunds remitted to customers on March 10, 1994, pursuant to Article I, Paragraph 1.7 of the Joint Stipulation and Agreement filed on September 21, 1993 in this proceeding.

Alabama-Tennessee states that copies of its filing were served upon the Company's affected customers and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 30, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7305 Filed 3–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–41–021]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 23, 1994.

Take notice that on March 18, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following proposed tariff sheets, to be effective April 18, 1994:

First Revised Sheet No. 58
First Revised Sheet No. 59
First Revised Sheet No. 60
First Revised Sheet No. 64
First Revised Sheet No. 65
First Revised Sheet No. 66
First Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 72
First Revised Sheet No. 78
First Revised Sheet No. 79
First Revised Sheet No. 80
First Revised Sheet No. 84
First Revised Sheet No. 85
First Revised Sheet No. 86
Second Revised Sheet No. 94
Original Sheet No. 95

Columbia states that it tendered this filing in order to reinstitute its implementation of Order No. 528 as it relates to certain pipelines. Specifically, Columbia proposes to flow through refunds and additional billings received from Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, and Panhandle Eastern Pipe Line Company. In addition, Columbia proposes to complete the reallocation of amounts previously collected from its customers pursuant to earlier filings by these companies under Order No. 500. Columbia states that this action is being taken to partially implement an order issued by the U.S. Court of Appeals for the Third Circuit in In Re Columbia Gas System Inc., 997 F.2d 1039 (3rd Cir., 1993). This decision authorized Columbia to flow through to its customers refunds received from upstream pipelines after its bankruptcy which relate to periods prior to the bankruptcy.

Accordingly, by this filing, Columbia is proposing to return to its customers approximately $135.5 million in refunds received pursuant to Order No. 528. In addition, Columbia is proposing to flow through certain additional billings which have been paid with approval of the Bankruptcy Court.

Columbia states that copies of the filings were served upon Columbia's jurisdictional customers, interested state commission, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88–187; RP89–181; RP89–214; RP89–229; TM89–3–21; TM89–4–21; TM89–5–21; TM89–7–21; RP90–26; TM90–2–21; TM90–5–21; TM90–6–21; TM90–7–21; TM90–8–21; TM90–10–21; TM90–12–21; TM90–13–21; TM91–2–21; TM91–9–21; TM91–10–21; RP91–41; RP91–90 and RP91–201.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20046, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 30, 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 proceedings. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7304 Filed 3–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–8–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 23, 1994.

Take notice that on March 18, 1994 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included Appendix A attached to the filing. Such sheets are proposed to become April 1, 1994.

ESNG states that the above referenced tariff sheets are being filed pursuant 154.309 of the Commission's regulations and section 21.2 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect a decrease in ESNG's jurisdictional sales rates. Such decrease is due to a reduction in ESNG's projected average commodity cost of gas from that reflected in its Out-Of-Cycle Quarterly PGA filing in Docket Nos. TQ94–4–23–000 and TM94–6–23–000, et al., effective February 1, 1994. The reduction in ESNG's projected average commodity cost of gas is the result of lower spot bid prices received for April business.

ESNG states that the above referenced tariff sheets further "track" a change Transcontinental Gas Pipe Line Corporation (Transco) in its LSS Storage Service rate schedule, to be effective April 1, 1994.

ESNG states that copies of the filing have been served upon jurisdictional 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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 30, 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. 94–7310 Filed 3–18–94 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1057–000]

Kansas Gas and Electric Co.; Filing

March 23, 1994.

Take notice that on March 17, 1994, Kansas Gas and Electric Company (KG&E) tendered for filing a change to its Federal Power Commission Electric Service Tariff No. 93. KG&E states that the change adds a point of delivery for electric transmission service under an Electric Interconnection Contract between KG&E and Western Resources, Inc. The rate schedule change is to be effective April 1, 1994.

Copies of this filing were served upon Western Resources, Inc. and the Kansas Corporation Commission.

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 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 April 1, 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. 94–7303 Filed 3–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–181–000]

Overthrust Pipeline Co.; Request for Waiver

March 23, 1994.

Take notice that on March 17, 1994, Overthrust Pipeline Company (Overthrust), filed its requests for waiver of reporting requirements under part 284 of the Commission's regulations.

Overthrust requests that the requirement to file initial, subsequent, termination and annual reports be waived for all temporary capacity-release transactions. Overthrust also seeks waiver of the requirements under

Subpart B, §§ 284.106(a)(3)(iv) and 284.106(b); and Subpart G, §§ 284.223(d)(1)(iv) and 284.223(d)(2) to file transportation reports to reflect receipt and delivery-point changes. Overthrust states that it will continue to file transportation reports reflecting permanent capacity releases. Overthrust requests that the waiver be granted effective December 1, 1993, the date established by the Commission permitting Overthrust Pat 157 shippers to participate in the capacity-release program.

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 30, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7307 Filed 3–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–151–001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 23, 1994.

Take notice that on March 21, 1994, Texas Eastern Transmission Corporation (Texas Eastern) filed substitute revised tariff sheets in supplement to its February 28, 1994 filing in Docket No. RP94–151, to recover gas supply realignment costs ("GSR Costs") incurred as a consequence of Texas Eastern's implementation of Order No. 636. The proposed effective date of the filing is April 1, 1994.

Texas Eastern states that its customer, Long Island Lighting Company (LILCO), has requested that Texas Eastern make this supplemental filing to adjust its rates to remove certain lateral costs which were the subject of a LILCO request at the December 7, 1993 technical conference in Docket No. RP93–181. Texas Eastern states that it seeks to implement its February 28, 1994 filing to remove $77,252 from the $19,106,544 in GSR costs proposed to be recovered in the February 28, 1994 filing and to remove the associated additional interest.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions, as well as current interruptible customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 30, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–7306 Filed 3–28–94; 8:45 am]

BILLING CODE 6717–01–M

Southeastern Power Administration

Jim Woodruff Project

AGENCY: Southeastern Power Administration (Southeastern), DOE

ACTION: Notice

SUMMARY: On March 21, 1994, the Deputy Secretary confirmed and approved, on an interim basis, Rate Schedule JW–1–D for the Jim Woodruff Project's power. The rates were approved on an interim basis through September 20, 1995, and are subject to confirmation and approval by the Federal Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Director, Power Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued July 16, 1991, in Docket No. EF91–3031–000, confirmed and approved Wholesale Power Rate Schedule JW–1–C and JW–2–B through September 19, 1995. Rate Schedule JW–1–D replaces this schedule. Rate Schedule JW–2–B remains in effect.

Issued in Washington, DC., March 21, 1994.

William H. White,

Deputy Secretary.

[Rate Order No. SEPA–32]

In the Matter of: Southeastern Power Administration—Jim Woodruff Project Power Rates; Order Confirming and Approving Power Rates on an Interim Basis.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On November 4, 1993, the Secretary of Energy issued Amendment No. 3 to Delegation Order No. 0204–108, (58 FR 59716; November 10, 1993) granting the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate order is issued by the Deputy Secretary pursuant to said notice.

Background

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1–C and JW–2–B. All of these rate schedules were approved by the FERC on July 16, 1991, for a period ending September 19, 1995.

Public Notice and Comment

Southeastern prepared a Power Repayment Study dated August 1993 for the Jim Woodruff Project which showed that revenues at current rates were more than adequate to meet repayment criteria. A revised repayment study shows that Southeastern can forego the last step of a five step rate increase approved in 1991 and still meet repayment criteria. Southeastern is proposing Rate Schedule JW–1–D to forego this increase. Rate Schedule JW–2–B remains in effect.

Opportunities for public review and comment on the proposed Rate

Schedule JW–1–D and supporting documents were announced by Notice published in the **Federal Register** on September 8, 1993, and September 20, 1993, and all affected customers were notified by mail. Pursuant to the Notice, a public information and comment forum was scheduled in Tallahassee, Florida, on October 12, 1993, where an opportunity for oral presentation of views was afforded. The forum was cancelled because no interested party expressed an intention to attend. The written comments are included for the record. No substantive comments have been received by Southeastern.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in August 1993, for the Jim Woodruff Project, reveals that if Southeastern foregos the last step of a five step rate increase approved in 1991, all system power costs are paid within their repayment life. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaison Office, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning September 20, 1994, and ending no later than September 19, 1995.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 20, 1994, attached Wholesale Power Rate Schedule JW–1–D. The rate schedules shall remain in effect on an interim basis through September 19, 1995, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Issued in Washington, DC., March 21, 1994.

William H. White,

Deputy Secretary.

[FR Doc. 94–7385 Filed 3–28–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59333; FRL–4767–1]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–94–6. The test marketing conditions are described below.

EFFECTIVE DATE: March 18, 1994. Written comments will be received until April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Edna G. Pleasants, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 260–4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–94–6. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), Rm. ETG–102 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–94–6. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–94–6

Date of Receipt: February 2, 1994. The extended comment period will close April 13, 1994.

Applicant: Confidential.

Chemical: (G) Terephthalamido-*N,N'*-(Substituted hexane).

Use: (G) Laundry Additive.

Production Volume: 23,000 kilograms.

Number of Customers: Confidential.

Test Marketing Period: Twenty Four (24) months, commencing on the first day of nonexempt commercial manufacture.

Risk Assessment: EPA identified a potential aquatic ecotoxicity concern based on test data on structurally similar analogous substances. However, the Agency does not expect water releases of the TME substance to result in significant surface water concentrations. EPA also identified a potential cancer risk based on test data on chemical substances with similar functional groups. However, the Agency does not expect significant inhalation exposure since the TME substance will be manufactured and used in the liquid form. In addition, the Agency does not expect absorption through the skin.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: March 18, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–7367 Filed 3–28–94; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order No. 921]

Termination and Redesignation of Existing Orders Concerning Charters

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Chief Executive Officer of the Farm Credit Administration (FCA) issued FCA Order No. 921 authorizing the termination of certain FCA Orders and the redesignation of other FCA Orders. The text of the Order is as follows:

1. The following FCA Orders are hereby terminated and superseded: FCA Order Nos. 788, 789, 796, 797, 798, 815, 816, 817, 818, 838, 839, 840, 850, 851, and 852.

2. The following FCA Orders are hereby redesignated as FCA Historical Documents as indicated:

a. FCA Order No. 604 as Historical Document No. 604;

b. FCA Order No. 642 as Historical Document No. 642;

c. FCA Order No. 643 as Historical Document No. 643;

d. FCA Order No. 659 as Historical Document No. 659;

e. FCA Order No. 758 as Historical Document No. 758;

f. FCA Order No. 759 as Historical Document No. 759;

g. FCA Order No. 760 as Historical Document No. 760;

h. FCA Order No. 761 as Historical Document No. 761;

i. FCA Order No. 762 as Historical Document No. 762;

j. FCA Order No. 767 as Historical Document No. 767; and,

k. FCA Order No. 787 as Historical Document No. 787.

Authority to take further action on retention or elimination of these Historical Documents is hereby delegated to the Chief Operating Officer or her/his designee. These FCA Orders are hereby superseded by this Order.

3. Effect on Previous Orders: Terminates and supersedes FCA Order Nos. 788, 789, 796, 797, 798, 815, 816, 817, 818, 838, 839, 840, 850, 851, and 852. Redesignates and supersedes as FCA Orders, FCA Order Nos. 604, 642, 643, 659, 758, 759, 760, 761, 762, 767, and 787.

4. Source of Authority: 12 U.S.C. 2244; 12 CFR 600.4.

5. Effective Date of Order: The provisions of this order are effective immediately and shall remain in full force and effect until amended, superseded, or revoked.

The original Order was signed by Billy Ross Brown, Chief Executive Officer, on March 17, 1994.

Dated: March 23, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–7251 Filed 3–28–94; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Application for Assignment of an FM Construction Permit; Family Broadcasting, Inc.

1. The Commission has before it the following application for assignment of an FM construction permit:

Applicant	City/State	File No.	MM Docket
Family Broadcasting, Inc.	Hague, New York	BPH–910924MB	94–20.

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing upon the issues set forth below.

1. To determine, with respect to Family Broadcasting, Inc.:

(a) Whether the applicant, at the time it so certified, had reasonable assurance that its proposed site would be available to it;

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, the applicant misrepresented to the Commission the availability of its specified site; and

(c) If issue 1(b) above is resolved in the affirmative, the effect thereof on the applicant's qualifications to be a Commission licensee.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

Federal Communications Commission.

Linda B. Blair,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 94–7250 Filed 3–28–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1010–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1010–DR), dated February 28, 1994, and related determinations.

EFFECTIVE DATE: March 23, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee dated February 28, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 1994;

The counties of Dyer, Greene, and Union for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–7352 Filed 3–28–94; 8:45 am]

BILLING CODE 6718–01–M

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the Emergency Management Institute.

Dates of Meeting: May 4–5, 1994.

Place: Federal Emergency Management Agency, Special Facility, Conference and Training Center, Building 430, Berryville, Virginia.

Time:

May 4, 1994, 8:30 a.m.–5 p.m.

May 5, 1994, 8:30 a.m.–2 p.m.

Proposed Agenda: May 4: Discuss the board's 1993 Annual Report. The board's three working groups will provide status reports to the full board. The board will tour the Special Facility since EMI is now delivering resident courses there as well. As schedules permit, the board may meet with the FEMA Director.

May 5: The board will be briefed on the status of distance education initiatives and meet with FEMA program office representatives regarding EMI's curriculum.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1251, on or before April 25, 1994.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: March 14, 1994.

Dennis H. Kwiatkowski,

Deputy Associate Director, Preparedness, Training and Exercises.

[FR Doc. 94–7353 Filed 3–28–94; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

BankAmerica Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to engage in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1994.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California, to engage through its wholly-owned subsidiary, BA Futures, Inc., Chicago, Illinois, in executing and clearing, and clearing without executing, futures and options on futures on certain non-financial commodities, only with respect to those contracts listed in the Bank of Monetreal Order, 79 Federal Reserve Bulletin 1049 (1993).

Board of Governors of the Federal Reserve System, March 23, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-7321 Filed 3-28-94; 8:45 am]

BILLING CODE 6210-01-F

Kerndt Bank Services, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-6500) published on page 13323 of the issue for Monday, March 21, 1994.

Under the Federal Reserve Bank of Chicago heading, the entry for Kerndt Bank Services is revised to read as follows:

1. Kerndt Bank Services Inc., Lansing, Iowa, to acquire Peters Insurance Agency, Lansing, Iowa, and thereby engage in general insurance agency activities in a town with a population of less than 5,000 people, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Comments on this application must be received by April 5, 1994.

Board of Governors of the Federal Reserve System, March 23, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-7322 Filed 3-28-94; 8:45 am]

BILLING CODE 6210-01-F

USBancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12

CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 22, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. USBancorp, Inc., Johnstown, Pennsylvania, to acquire 100 percent of the voting shares of Johnstown Interim Bank, Johnstown, Pennsylvania, which will be formed to acquire Johnstown Savings Bank, Johnstown, Pennsylvania.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Bancorporation of Ohio, Akron, Ohio, to acquire 100 percent of the voting shares of Peoples National Bank, Wooster, Ohio, which currently operates as Peoples Federal Savings Bank.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bellevue State Bank ESOP, Bellevue, Iowa, to become a bank holding company by acquiring Bellevue Service Company, Bellevue, Iowa, and thereby indirectly acquire Bellevue State Bank, Bellevue, Iowa.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Financial Bancshares, Inc., Sallisaw, Oklahoma, to become a bank holding company by acquiring 100 percent of the voting shares of First Sallisaw Bancshares, Inc., Sallisaw, Oklahoma, and thereby indirectly acquire The First National Bank, Sallisaw, Oklahoma. Applicant also proposes to acquire The First National Bank of Roland, Roland, Oklahoma, an independent bank.

Board of Governors of the Federal Reserve System, March 23, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-7323 Filed 3-28-94; 8:45 am]

BILLING CODE 6210-01-F

Valley Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 18, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Valley Financial Corporation, Caro, Michigan, to engage *de novo* in general insurance agency activities in Caro, Michigan, a town with a population of less than 5,000 people, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-7324 Filed 3-28-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030794 AND 031894

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
GKN plc, Westland Group plc, Westland Group Plc	94-0841	03/07/94
Cyrus Tang, Tower Extrusions, Ltd., Tower Extrusions, Ltd	94-0843	03/07/94
Cyrus Tang, Walter Hauk, Combined Metal Group & Elgiloy, L.P	94-0844	03/07/94
Cyrus Tang, Cyrus Tang, Combined Metal Group & Elgiloy, L.P	94-0855	03/07/94
EMC Corporation, Tandem Computers Incorporated, Array Technology Corporation	94-0871	03/07/94
Kendall International, Inc., Carolyn and David Brodsky, Superior Healthcare Group, Inc	94-0881	03/07/94
Bell Microproducts Inc., Vantage Components Inc., Vantage Components Inc	94-0887	03/07/94
Murray T. Holland, PS Group, Inc., USTravel Systems Inc., USTS Northwest, Inc	94-0916	03/07/94
Savage Resources Limited, Compagnie de Suez S.A., Union Mines Inc	94-0911	03/08/94
Crane Co., ELDEC Corporation, ELDEC Corporation	94-0902	03/09/94
Bayerische Motoren Werke Aktiengesellschaft, British Aerospace plc, Rover Group USA, Inc	94-0882	03/10/94
Medtronic, Inc., DLP, Inc., DLP, Inc	94-0839	03/11/94
Worthington Industries, Inc., Carl I. Valdiserri, Rouge Steel Company	94-0864	03/11/94
Terence N. Deeks, The Navigators Group, Inc., The Navigators Group, Inc	94-0914	03/11/94
The Navigators Group, Inc., Terence N. Deeks, Navigators Management Corporation, Sommerset	94-0915	03/11/94
Russell Corporation, John K. Tcherneshoff, DeSoto Mills, Inc	94-0919	03/11/94
Michael Strauss, Grand Metropolitan Public Limited Company, Burger King Corporation	94-0922	03/11/94
Richard M. DeVos, IJ Holdings Corp ., Genmar Holdings, Inc	94-0923	03/11/94
Pohlad Companies, IJ Holdings Corp ., Genmar Holdings, Inc	94-0924	03/11/94
Occidental Petroleum Corporation, Agip S.p.A. (an Italian company), Agip S.p.A.	94-0938	03/11/94
Agip S.p.A. (an Italian company), Occidental Petroleum Corporation, Occidental Petroleum Corporation	94-0939	03/11/94
Fruit of the Loom, Inc., The Gitano Group, Inc., The Gitano Group, Inc	94-0954	03/11/94
Randall D. Smith ("Smith), Regency Health Services, Inc., Regency Health Services, Inc	94-0934	03/14/94
Hollinger Inc., Sun-Times Partners, L.P., Sun-Times Company	94-0941	03/14/94
Smiths Industries plc, Robert H. Adams, Adams Industries, Inc. and Wing Draft Inducer Co	94-0942	03/14/94
Welsh, Carson, Anderson & Stowe VI, L.P., Euro Brokers Investment Corporation, Euro Brokers Investment Corporation	94-0947	03/14/94
Proffitt's, Inc., MAACO Investments, Inc., MAACO Investments, Inc.	94-0958	03/14/94
Momentum Corporation, T.K. Gray, Inc., T.K. Gray, Inc	94-0957	03/15/94
Edward S. Rogers (a Canadian person), Maclean Hunter Limited (a Canadian company), Maclean Hunter Limited (a Canadian company)	94-0870	03/16/94
Enhanced Imaging Technologies, Inc., PPG Industries, Inc., PPG Industries, inc	94-0921	03/16/94
Maxim Integrated Products, Inc., Tektronix, Inc., Tektronix, Inc	94-0929	03/16/94
Associated Insurance Companies, Inc., Pettit-Morry Co., Pettit-Morry Co	94-0955	03/16/94
The J. M. Smucker Company, Kellogg Company, Mrs. Smith's Frozen Foods Co	94-0961	03/17/94
A. Schulman Inc., Exxon Corporation (a New Jersey corporation), ComAlloy International Corporation	94-0876	03/18/94
United HealthCare Corporation, Ramsay HMO, Inc., Ramsay HMO, Inc	94-0920	03/18/94
Williams Holdings PLC, Columbia Scientific Industries Corporation, Columbia Scientific Industries Corporation	94-0931	03/18/94
Kelso Partners IV, L.P., William E. Ray and Delores K. Ray, Raycom, Inc., Raycom Sports, Inc. and Raycom Management	94-0953	03/18/94
Summit Ventures III, L.P., Government Funding California, Government Funding California	94-0966	03/18/94
First Financial Management Corporation, James G. Bailey, The Master Collectors Inc	94-0968	03/18/94
N.V. Verenigd Bezit VNU, U S WEST, Inc., U S WEST Marketing Resources Group, Inc	94-0973	03/18/94
ConAgra, Inc., Ferruzzi Finanziaria S.p.A., Mississippi River Grain, Inc	94-0983	03/18/94
Armco Inc., AK Steel Holding Corporation, AK Steel Holding Corporation	94-0988	03/18/94
Kawasaki Steel Corporation, AK Steel Holding Corporation, AK Steel Holding Corporation	94-0990	03/18/94
Kokusai Kenshin Denwa Co., Ltd., Telehouse International Corporation of America, Telehouse International Corporation of America	94-0995	03/18/94
Thomas H. Lee Equity Partners, L.P., THL-KBG Acquisition Corp. (Joint Venture), THL-KBG Acquisition Corp. (Joint Venture)	94-0996	03/18/94
Thomas H. Lee Equity Partners, L.P., KBG Holdings, Inc., KBG Holdings, Inc	94-1000	03/18/94
Yamazaki Baking Co. Ltd., Food Research Corporation, Vie de France Corporation	94-1004	03/18/94

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-7345 Filed 3-28-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that on February 25, 1994, a Research Integrity Adjudications Panel of the Department Appeals Board issued a ruling upholding scientific misconduct findings of the Office of Research Integrity (ORI) in the following case:

John C. Hiserodit, M.D.: An inquiry conducted by the University of Pittsburgh and an investigation conducted by the Office of Research Integrity found that Dr. Hiserodt deliberately and knowingly falsified four figures and one table to two research grant applications submitted to the National Institutes of Health, and deliberately and knowingly fabricated a laboratory notebook to cover up the falsifications in the grant applications.

In reporting research results on antigen recognition by natural killer cells, Dr. Hiserodt falsely reported that a purportedly unique protein had a molecular weight of 48 kilodaltons by altering photographs of autoradiograms, falsely reported that this protein has been found in human cells, falsely reported the results of a gene sequence in response to questions raised by NIH grant reviewers about his experimental findings, and fabricated a laboratory notebook to cover-up the falsified research when questions about it were raised by investigating officials. Dr. Hiserodt has been debarred from receiving Federal grant or contract funds for a period of five years beginning March 9, 1984. In addition, any institution receiving PHS research support involving Dr. Hiserodt must monitor the accuracy of his research for an additional two-year period following the five-year debarment (for a total period of seven years) beginning March 9, 1999. He has also been prohibited from serving on PHS Advisory Committees or review groups for seven years beginning February 25, 1994. Dr. Hiserodt is also required to request correction of the article "The Expression and Functional Involvement of Laminin-like Molecules in Non-MHC Restricted Cytotoxicity by Human Leu-19+/CD3-Natural Killer Lymphocytes," *Journal of Immounology*, Vol. 141, 3318-23, 19898, to indicate that Figure 2 in the article may not be relied upon.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–433–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 94–7349 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–17–M

Administration for Children and Families

Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1995

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of the Fiscal Year 1995 Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the Fiscal Year 1995 individual allotments to States administering the Basic Support and Protection and Advocacy programs, pursuant to section 125 and section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotments for the States published herein are based upon Fiscal Year 1995 budget request, and are contingent upon Congressional appropriations for FY 1995. If Congress enacts and the President approves an amount different from the Fiscal Year 1995 budget request, the allotments will be adjusted accordingly.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 401–6955.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities has updated the data elements for issuance of Fiscal Year 1995 allotments for the Developmental Disabilities formula grant programs. The data elements used in the update are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1992, are from Table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1993" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income, 1987–92, are from Table 1, page 74 of the "Survey of Current Business," September 1993, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. State data on Total Population and Working Population (ages 18–64) as of July 1, 1992, are from "Current Population Reports: Population Estimates and Projections, Series P–25, Number 1010, issued by the Bureau of the Census, U.S. Department of Commerce. Estimates for the Territories are no longer available, therefore, the Territories population data are from the 1990 Census Population Counts. The Territories' working populations were issued in the Bureau of Census report, "General Characteristics Report: 1980," which is the most recent data available from the Bureau.

FY 1995 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Basic support	Protection and advocacy
Total	$59,343,000	$34,753,000
Alabama	1,130,626	646,552
Alaska	350,000	257,000
Arizona	783,532	448,464
Arkansas	658,334	376,535
California	5,304,799	3,035,520
Colorado	612,225	353,316
Connecticut	565,964	323,590
Delaware	350,000	257,000
District of Columbia	350,000	257,000
Florida	2,661,244	1,522,587
Georgia	1,511,355	864,522
Hawaii	350,000	257,000
Idaho	350,000	257,000
Illinois	2,323,772	1,328,944

FY 1995 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Basic support	Protection and advocacy
Indiana	1,302,452	744,977
Iowa	675,944	386,552
Kansas	542,948	310,561
Kentucky	1,033,459	590,954
Louisiana	1,192,757	682,120
Maine	350,000	257,000
Maryland	856,778	490,112
Massachusetts	1,134,143	648,518
Michigan	2,156,605	1,233,228
Minnesota	911,599	521,451
Mississippi	808,637	462,472
Missouri	1,180,512	675,168
Montana	350,000	257,000
Nebraska	351,445	257,000
Nevada	350,000	257,000
New Hampshire	350,000	257,000
New Jersey	1,300,902	743,905
New Mexico	398,477	257,000
New York	3,543,800	2,026,261
North Carolina	1,618,418	925,698
North Dakota	350,000	257,000
Ohio	2,558,401	1,463,137
Oklahoma	764,811	437,566
Oregon	622,209	356,003
Pennsylvania	2,691,147	1,538,848
Rhode Island	350,000	257,000
South Carolina	928,228	530,930
South Dakota	350,000	257,000
Tennessee	1,264,751	723,305
Texas	3,653,197	2,090,445
Utah	441,518	271,831
Vermont	350,000	257,000
Virginia	1,266,674	724,506
Washington	955,540	546,737
West Virginia	611,379	349,473
Wisconsin	1,154,768	660,402
Wyoming	350,000	257,000
American Samoa	200,000	137,495
Guam	200,000	137,495
Marshall Islands [1]	200,000	0
Micronesia [1]	200,000	0
Palau [1]	200,000	0
Puerto Rico	1,569,650	918,335
Trust Territories [2]	0	137,495
Virgin Islands	200,000	137,495
Northern Mariana Islands	200,000	137,495

[1] The 1990 Amendments to the Developmental Disabilities Assistance and Bill of Rights Act (the Act) provided that the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau (formerly the Trust Territories of the Pacific Islands (TTPI)) each would receive a minimum allotment under the Basic Support formula program.

[2] Prior to the Act, TTPI had been eligible for a single minimum allotment under both programs, Basic Support and Protection and Advocacy. Under the 1990 Amendments, TTPI continues to be eligible for a single minimum amount under the Protection and Advocacy program; however, under the Compact of Free Association, P. L. 99–239, only the Republic of Palau continues to be eligible to receive funds under the Protection and Advocacy program. Therefore, the Republic of Palau will receive its proportional share of the TTPI allotment, and the remainder will be withheld for reallotment in accordance with section 142(b)(1) of the Act.

Dated: March 11, 1994.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 94–7347 Filed 3–28–94; 8:45 am]

BILLING CODE 4184–01–P

Agency for Toxic Substances and Disease Registry

[ATSDR–419]

Public Health Interventions To Prevent or Mitigate Possible Adverse Health Effects Related to the Bunker Hill Superfund Site Hazardous Exposures

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a grant with the Idaho Department of Health and Welfare (IDHW) to provide public health interventions for individuals and community members living near the Bunker Hill Superfund site to prevent or mitigate possible adverse health effects related to exposure to lead and other hazardous substances. Approximately $50,000 is available in FY 1994 to fund this project. It is expected that the award will begin on or about May 15, 1994, for a 12-month budget period, within a five year project period.

Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this project is for ATSDR to assist the Idaho Department of Health and Welfare (IDHW) to: (1) Develop, disseminate and evaluate appropriate educational programs and materials to educate community members and health professionals about the health effects related to exposure to lead and other hazardous substances; (2) Coordinate and refer cases of exposure for appropriate health follow-up interventions related to blood lead screening activities in the Silver Valley; and (3) Provide counseling to citizens who have concerns and questions about the health effects of lead exposure.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health and Health Promotion. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority: This program is authorized under Sections 104 (i) (1)(E), (4), (14), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i) (1)(E), (4), (14), and (15)].

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American People.

Eligible Applicant

Assistance will be provided only to the Idaho Department of Health and Welfare (IDHW). No other applications will be solicited. The program announcement and application kit have been sent to IDHW. The IDHW has developed a unique expertise participating in health studies and health intervention programs in Silver Valley, Shoshone County, Idaho. The IDHW and Panhandle Health District have a legislated mandate to provide health services to residents of the Silver Valley area.

The IDHW has a history of working with ATSDR and the CDC to determine adverse health effects related to lead exposure from the Bunker Hill Superfund site. Studies conducted by IDHW funded by the CDC and more recently the ATSDR have documented an unacceptable level of lead absorption among children who live near the Bunker Hill lead smelter in northern Idaho. ATSDR is concerned about the health of children, pregnant women and other populations at risk living near the Bunker Hill Superfund site because of existing lead exposure and possible new lead exposures from soil and dust during remediation of the site by the Environmental Protection Agency. ATSDR has determined that there is a need for communitywide preventive interventions related to lead exposure for individuals and community members living near the Bunker Hill Superfund site.

Executive Order 12372 Review

The application is subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. The applicant should contact their Single Point of Contact (SPOC) as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. Information on the Idaho SPOC is included in the application kit sent to the applicant. If the SPOC has any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 419 and contact Ms. Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, (404) 842–6797.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325. telephone (202) 783–3238.

Dated: March 23, 1994.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–7317 Filed 3–28–94; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

[Docket No. 94N–0014]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the General Electric Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *p*-cumylphenol as a chain terminator in the manufacture of polycarbonate resins intended for use in food-contact applications.

DATES: Written comments on the petitioner's environmental assessment by April 28, 1994.

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

FOR FURTHER INFORMATION CONTACT: Vir D. 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: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4413) has been filed by the General Electric Co., 1 Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposes to amend the food additive regulations in § 177.1580

Polycarbonate resins (21 CFR 177.1580) to provide for the safe use of *p*-cumylphenol as a chain terminator in the manufacture of polycarbonate resins intended for use in food-contact applications.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before April 28, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 28, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–7249 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0113]

Drug Export; NEUTROLITE® Kit for the Preparation of Technicium TC99m Bicisate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Du Pont Merck Pharmaceutical Co. has filed an application requesting approval for the export of the human drug NEUTROLITE® kit for the preparation of technetium TC99m bicisate to Denmark.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that the Du Pont Merck Pharmaceutical Co., 331 Treble Cove Rd., North Billerica, MA 01862, has filed an application requesting approval for the export of the human drug NEUTROLITE® kit for the preparation of technetium TC99m bicisate to Denmark. This product is indicated for the evaluation of regional cerebral perfusion abnormalities in adult patients with central nervous system disorders. The application was received and filed in the Center for Drug Evaluation and Research on February 2, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 8, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 17, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–7342 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0112]

Drug Export; PHOTOLEX Plus™ Broad Spectrum Sunscreen Lotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Allergan Herbert, Division of Allergan, Inc., has filed an application requesting approval for the export of the human drug PHOTOPLEX Plus™ Broad Spectrum Sunscreen Lotion to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency

publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Allergan Herbert, Division of Allergan, Inc., 2525 Dupont Dr., P.O. Box 19534, Irvine, CA 92713, has filed an application requesting approval for the export of the human drug PHOTOPLEX Plus™ Broad Spectrum Sunscreen Lotion to Canada. This product is indicated for the protection of the skin where exposure to UVA and UVB light is contraindicated and offers adjuvant therapy for sun-sensitive dermatoses. The application was received and filed in the Center for Drug Evaluation and Research on December 7, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 8, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 17, 1994.

Raymond E. Hamilton,

Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–7246 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0111]

Drug Export; ULTRAM® (Tramadol Hydrochloride) Tablets 50 mg and 100 mg

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the R.W. Johnson Pharmaceutical Research Institute has filed an application requesting approval for the export of the human drug ULTRAM® (Tramadol Hydrochloride) Tablets 50 mg and 100 mg to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that the R. W. Johnson Pharmaceutical Research Institute, Welsh and McKean Roads, Spring House, PA 19477–0776, has filed an application requesting approval for the export of the human drug ULTRAM® (Tramadol Hydrochloride) Tablets 50 mg and 100 mg to Canada. This product is indicated for the management of pain.

The application was received and filed in the Center for Drug Evaluation and Research on January 25, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 8, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 17, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–7247 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Substructure Reorganization of the Health Care Financing Administration

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) is amended to reflect the establishment of the subordinate organizational structure for HCFA which was recently approved. Although the Bureaus/Offices have recently been published, the entire set of HCFA's functional statements are being republished to facilitate the amendment of Part F of the Department statement. Included in this document are the new functional statements for the subcomponents of HCFA.

The specific amendments to Part F are:

- Section F.10., Health Care Financing Administration (Organization) is amended to read as follows:

Section F.10., Health Care Financing Administration (Organization)

The Health Care Financing Administration (HCFA) is an Operating Division of the Department. It is headed by an Administrator, HCFA, who is appointed by the President and reports to the Secretary. It consists of the following organizational elements:

A. Office of the Administrator (FA).

1. Provider Reimbursement Review Board (FA–1).

2. Equal Employment Opportunity Staff (FA–3).
3. Executive Secretariat (FA–4).
4. Office of Legislative and Inter-Governmental Affairs (FAA).
a. Division of Congressional Affairs (FAA1).
b. Division of Hearings & Policy Presentation (FAA2).
c. Division of Medicare Part A Analysis (FAA3).
d. Division of Medicare Part B Analysis (FAA4).
e. Division of Medicaid Analysis (FAA5).
f. Division of Intergovernmental Affairs (FAA6).
5. Medicaid Bureau (FAB).
a. Executive Operations Staff (FAB–1).
b. Medicaid Special Program Initiatives Staff (FAB–2).
c. Office of Medicaid Management (FAB1).
(1). Division of Financial Management (FAB11).
(2). Division of Program Performance (FAB12).
(3). Division of Payment Systems (FAB13).
d. Office of Medicaid Policy (FAB2).
(1). Division of Payment Policy (FAB21).
(2). Division of Coverage Policy (FAB22).
(3). Division of Eligibility Policy (FAB23).
6. Office of Managed Care (FAC).
a. Operational Analysis Staff (FAC–1).
b. Office of Managed Care Policy and Planning (FAC1).
(1). Division of Managed Care Policy and Evaluation (FAC11).
(2). Division of Planning and Promotion for Managed Care (FAC12).
c. Medicaid Managed Care Office (FAC2).
d. Office of Managed Care Operations (FAC3).
(1). Division of Payment and Operations Support (FAC31).
(2). Division of Operations (FAC32).
(3). Division of Finance (FAC33).

B. Associate Administrator for Customer Relations and Communications (FF).
1. Office of Beneficiary Services (FFA).
2. Office of Public Affairs (FFB).
a. Freedom of Information Division (FFB1).
b. Division of Public Appearances (FFB2).
3. Office of Public Liaison (FFC).
a. Division of Professional and Business Affairs (FFC1).
b. Division of Media Relations (FFC2).

C. Associate Administrator for Policy (FK).
1. Special Analysis Staff (FK–1).
2. Bureau of Policy Development (FKA).
a. Regulations Staff (FKA–1).
b. Office Of Regulations Management (FKA–2).
c. Office of Program Support (FKA–3).
(1) Executive Secretariat (FKA–31).
(2) Inquiries Staff (FKA–32).
(3) Program Liaison Staff (FKA–33).
d. Office of Payment Policy (FKA1).
(1) Division of Medical Services Payment (FKA11).
(2) Division of Hospital Payment Policy (FKA12).
(3) Division of Payment and Reporting Policy (FKA13).
(4) Division of Special Payment Programs (FKA14).
e. Office of Coverage and Eligibility Policy (FKA2).
(1) Division of Provider Services Coverage Policy (FKA21).
(2) Division of Medical Services Coverage Policy (FKA22).
(3) Division of Medicare Eligibility Policy (FKA23).
3. Office of Research and Demonstrations (FKB).
a. Office of Demonstrations and Evaluations (FKB1).
(1) Division of Long-Term Care Experimentation (FKB11).
(2) Division of Hospital Experimentation (FKB12).
(3) Division of Health Systems and Special Studies (FKB13).
b. Office of Research (FKB2).
(1) Division of Beneficiary Studies (FKB21).
(2) Division of Payment and Economic Studies (FKB22).
(3) Division of Program Studies (FKB23).
c. Office of Operations Support (FKB3).
(1) Division of Research and Demonstrations Systems Support (FKB31).
(2) Division of Program Support (FKB32).
4. Office of the Actuary (FKC).
a. Office of Medicare and Medicaid Cost Estimates (FKC1).
(1) Division of Hospital Insurance (FKC11).
(2) Division of Supplementary Medical Insurance (FKC12).
(3) Division of Medicaid Cost Estimates (FKC13).
b. Office of National Health Statistics (FKC2).
(1) Division of Health Cost Analysis (FKC21).
(2) Division of Survey Analysis (FKC22).

D. Associate Administrator for Operations and Resource Management (FL).
1. Office of the Attorney Advisor (FL–1).
2. Office of Planning and Support (FL–2).
3. Office of Financial and Human Resources (FLA).
a. Management Planning and Analysis Staff (FLA–1).
b. Office of Financial Management (FLA1).
(1) Division of Accounting (FLA11).
(2) Division of Budget (FLA12).
c. Office of Human Resources (FLA2).
(1) Division of Information and Organizational Management (FLA21).
(2) Division of Performance Management and Development (FLA22).
(3) Division of Staffing and Employee Services (FLA23).
d. Office of Acquisitions and Grants (FLA3).
(1) Division of Health Standards Contracts (FLA31).
(2) Division of Contracts and Grants (FLA32).
e. Office of Administrative Services (FLA4).
(1) Division of Facilities Management (FLA41).
(2) Division of Safety and Property Management (FLA42).
(3) Division of Telecommunications and Graphics Services (FLA43).
(4) Division of Printing and Distribution Services (FLA44).
4. Bureau of Program Operations (FLB).
a. Executive Secretariat (FLB–1).
b. Issuances Staff (FLB–3).
c. Office of Contracting and Financial Management (FLB1).
(1) Division of Acquisitions and Contracts (FLB11).
(2) Division of Financial Management (FLB12).
(3) Division of Contractor Planning and Management (FLB13).
(4) Division of Account Management and Collection (FLB14).
d. Office of Medicare Benefits Administration (FLB2).
(1) Division of Utilization Analysis (FLB21).
(2) Division of Entitlement and Benefit Coordination (FLB22).
(3) Division of Audit and Payment Management (FLB23).
(4) Division of Medigap Operations (FLB24).
e. Office of Program Operations Procedures (FLB3).
(1) Division of Claims Processing Procedures (FLB31).
(2) Division of Claims Processing Requirements (FLB32).
(3) Division of Appeals and Communications (FLB33).
(4) Division of Operational Systems Development (FLB34).
f. Office of Quality and Evaluation (FLB4).
(1) Division of Quality Programs (FLB41).
(2) Division of Standards (FLB42).
(3) Division of Program Evaluation (FLB43).
(4) Division of Reports and Information Management (FLB44).
5. Bureau of Data Management and Strategy (FLC).
a. Office of Information Resources Management (FLC1).
(1) Division of Information Systems Management (FLC11).
(2) Division of ADP Planning and Resources Management (FLC12).
b. Office of Statistics and Data Management (FLC2).
(1) Division of Payment Policy Support (FLC21).
(2) Decision Support Division (FLC22).
(3) Division of Special Programs (FLC23).
c. Office of Program Systems (FLC3).
(1) Division of Program Management Systems (FLC31).
(2) National Claims History Division (FLC32).
(3) Division of Medicaid Statistics (FLC33).
d. Office of Enrollment Systems (FLC4).
(1) Division of Enrollment Applications (FLC41).
(2) Division of Capitation and Collection Systems (FLC42).
(3) Division of Medicare Operations Support (FLC43).
e. Office of Information Technology (FLC5).
(1) Division of Administrative Systems (FLC51).
(2) Division of Office Automation Systems (FLC52).
f. Office of Computer Operations (FLC6).
(1) Division of Data Center Services (FLC61).
(2) Division of Data Communications and Distributed Services (FLC62).

6. Office of the Regional Administrators (FLD(I–X)).
a. Division of Health Standards and Quality (FLD(I–X)A).
b. Division of Medicaid (FLD(I–X)B).
c. Division of Medicare (FLD(I–X)C).
7. Health Standards and Quality Bureau (FLE).
a. Management Resources Staff (FLE–1).
b. Office of Peer Review (FLE1).
(1) Division of Program Operations (FLE11).
(2) Division of Review Programs (FLE12).
(3) Division of Systems Management (FLE13).
(4) Division of Program Assessment and Information (FLE14).
c. Office of Survey and Certification (FLE2).
(1) Division of Long-Term Care Services (FLE21).
(2) Division of Systems Management and Data Analysis (FLE22).
(3) Division of Program Operations (FLE23).
(4) Division of Laboratory Standards and Performance (FLE24).
(5) Division of Hospitals, Home Health, and Ambulatory Services (FLE25).

• Section F.20., Health Care Financing Administration (Functions) is amended by deleting the statement in its entirety and replacing it with the following statements. The following statements provide the overall organizational structure of the Health Care Financing Administration. The new HCFA organizational structure is described as follows:

A. Office of the Administrator (FA)

• The Administrator directs the planning, coordination, and implementation of the programs under Titles XI, XVIII, and XIX of the Social Security Act and related statutes, as amended, and directs the development of effective relationships between these programs and private and federally supported health-related programs.

• Within broad Department of Health and Human Services policy and guidelines, the Administrator oversees the establishment of program goals and objectives and the development of policies, standards and guidelines; evaluates progress in the administration of HCFA programs; and ensures that required actions are taken to direct or redirect efforts to achieve program objectives.

• The Administrator works with the States, other Federal agencies and other concerned nongovernmental organizations in administering health care financing programs.

• The Administrator is assisted by a general deputy, who functions with full authority during the Administrator's absence.

1. Provider Reimbursement Review Board (FA–1)

• The Provider Reimbursement Review Board (Board) is organizationally assigned to the HCFA for administrative support.

• The Board, after determining that it has jurisdiction, conducts hearings to resolve disputes on cost and prospective payment submitted by Medicare providers under Section 1878 of the Social Security Act.

• Upon the completion of these hearings, the Board renders impartial decisions on these appeals. This is the initial step in the judicial review process.

• Provides staff support to the Medicare Geographic Classification Review Board (MGCRB) and conducts Medicare and Medicaid hearings on behalf of the Secretary or the Administrator that are not within the jurisdiction of the Department Appeals Board, the Social Security Administration's Office of Hearings and Appeals, or the States.

2. Equal Employment Opportunity Staff (FA–3)

• Provides principal advisory services to the Administrator concerning equal employment opportunity (EEO) and civil rights policies and programs.

• Develops EEO and voluntary civil rights compliance policy for HCFA and assesses the Agency's compliance with applicable equal opportunity statutes, executive orders, regulations and policies.

• Identifies policy and operational issues and proposes solutions for resolving these issues.

• Serves as the central liaison point with the Department on EEO and civil rights issues.

• Coordinates the development of HCFA affirmative EEO plans and evaluates their implementation by HCFA components.

• Promotes EEO special emphasis programs and activities affecting the concerns of minority groups, women, and individuals with disabilities.

• Provides for conciliation and adjudication of informal and formal discrimination complaints by means of EEO counseling, formal hearings, issuance of final decisions, etc.

• Manages, coordinates and monitors HCFA's equal employment opportunity activities working directly with bureau and office personnel.

3. Executive Secretariat (FA–4)

• Assists the HCFA Administrator in the resolution of agency program and administrative policy matters through memoranda, action documents, or correspondence.

• Monitors HCFA performance in developing necessary documents for the Administrator's review.

• Manages the clearance system and reviews documents for consistency with the Administrator's and Secretary's assignments, previous decisions on related matters, and editorial standards.

• Facilitates the resolution of issues connected with matters forwarded to the Administrator.

• Operates the agency-wide correspondence tracking and control system, and provides guidance and technical assistance on standards for content of correspondence and memoranda.

• Serves as a primary focal point for liaison with the Executive Secretariat in the Office of the Secretary on HCFA correspondence and special administrative matters.

4. Office of Legislative and Inter-Governmental Affairs (FAA)

• The Office of Legislative and Inter-Governmental Affairs provides leadership and executive direction within HCFA for legislative planning and congressional and intergovernmental affairs.

• Develops and evaluates recommendations concerning legislative proposals for changes in health care financing.

• Develops the long-range HCFA legislative plans.

• Coordinates activities with the Office of the Assistant Secretary for Legislation (ASL) and serves as the ASL's principal contact point on legislative and congressional relations, and intergovernmental affairs.

• Manages HCFA involvement in congressional hearings.

• Provides technical, analytical, and advisory services to HCFA components, to the Department, to other elements of the Executive Branch, and other government agencies interested in health care financing legislation, congressional relations, and intergovernmental affairs.

• In conjunction with the ASL, provides information services to congressional committees, individual Congressmen, and private organizations on health care financing legislation.

• Provides leadership for HCFA in the area of intergovernmental affairs.

• Advises the Administrator on program matters which affect other units and levels of government.

• In coordination with the Department's Inter-Governmental Affairs office, the Regional Directors, and other HCFA offices, meets with key

State and local officials in order to strengthen HCFA's relationships with other governmental jurisdictions and to resolve sensitive intergovernmental problems and issues. Reviews and consults with State and local officials regarding proposed HCFA policy and operational issuances. Assists States and localities in requesting and obtaining technical materials, assistance, and support from appropriate HCFA components. Upon State requests, coordinates the exchange of HCFA staff with State and local agencies.

• Develops and provides briefings on intergovernmental affairs issues for HCFA staff.

• Briefs State and local agencies on HCFA's mission, organization, and functions.

a. Division of Congressional Affairs (FAA1)

• Serves as the HCFA focal point for all congressional liaison activities. Coordinates HCFA's congressional liaison activities with the Office of the Assistant Secretary for Legislation (ASL).

• Responds to congressional inquiries and constituent concerns related to Medicare, Medicaid, and other health care financing issues. Organizes briefings for Congressmen, congressional staff and the public on specific issues and prepares reports on these issues for higher level management.

• Notifies Congress of specific HCFA activities of interest to Members.

• Provides advice to the Director, Office of Legislative & Inter-Governmental Affairs (OLIGA), the Administrator, and other HHS policy officials on the resolution of sensitive congressional issues.

• Prepares legislative histories and congressional profiles used by HCFA senior staff in preparation for congressional hearings.

• Prepares a variety of summary reports on congressional legislative activities and inquiries for use by the Director, OLIGA, the Administrator, and other HHS policy officials.

• Maintains the HCFA legislative reference library. Provides legislative reference and research services to HCFA, the Department, and the general public.

b. Division of Hearings & Policy Presentation (FAA2)

• In preparation for congressional hearings, drafts testimony to be used by the Administrator, the Secretary, and other HHS policy officials.

• Serves as the principle HCFA contact point with the Office of the Assistant Secretary for Legislation on congressional hearings and coordinates the preparation for such hearings, working with other Office of Legislative & Inter-Governmental Affairs and HCFA components.

• Clears other departmental and Administration testimony that has a bearing on Medicare, Medicaid, or other health care financing programs.

• Reviews other written products such as bill reports, studies, policy statements, etc., for clarity, presentation, and consistency with overall HCFA policy.

• Develops policy presentations for the general media in consultation with the Office of the Associate Administrator for Customer Relations & Communications.

c. Division of Medicare Part A Analysis (FAA3)

• Conducts legislative, economic, and policy analyses related to Medicare Part A issues. Substantive areas include Medicare Part A benefits, eligibility, payment, and financing, and other cross-cutting parts of Medicare and the health delivery system that have an effect on Medicare Part A.

• Coordinates the development of Medicare Part A legislative proposals and develops the technical specifications for such legislation.

• Plans, develops, and directs the strategy to enhance the enactment of the Administration's Medicare Part A legislative program.

• Analyzes and reviews Medicare Part A regulations, issue papers, Office of the Inspector General reports, reports to Congress, and other policy documents for the Director, Office of Legislative & Inter-Governmental Affairs (OLIGA).

• Designs and conducts long-range Medicare Part A policy studies as well as other special projects, such as representing HCFA or OLIGA on task forces, outside commissions or policy panels in assigned areas.

• Working with the Office of the Assistant Secretary for Legislation (ASL), provides (or coordinates) technical consultative services to congressional members, their staff and the public on Medicare Part A legislation and related HCFA activities.

• Recommends the HCFA and HHS position on Medicare Part A legislation likely to be considered by Congress. Develops bill reports and coordinates comments from other HCFA and HHS components. Clears enrolled bill reports and recommends Presidential veto or signature. Prepares legislative summaries of newly enacted legislation and selected congressional bills.

• Monitors all Medicare Part A congressional legislative activity, with an emphasis on Budget Reconciliation and other major legislation.

• Assists in the preparation of Medicare Part A briefing materials, background, and testimony for HCFA and HHS policy officials' appearances at congressional hearings.

• Provides assistance to other offices within OLIGA to ensure consistent, coordinated analyses and responses. Provides input to cross-cutting projects.

d. Division of Medicare Part B Analysis (FAA4)

• Conducts legislative, economic, and policy analyses related to Medicare Part B issues. Substantive areas include Medicare Part B benefits, eligibility, payment, and financing, and other cross-cutting parts of Medicare and the health delivery system that have an effect on Medicare Part B.

• Coordinates the development of Medicare Part B legislative proposals and develops the technical specifications for such legislation.

• Plans, develops, and directs the strategy to enhance the enactment of the Administration's Medicare Part B legislative program.

• Analyzes and reviews Medicare Part B regulations, issue papers, Office of the Inspector General reports, reports to Congress, and other policy documents for the Director, Office of Legislative & Inter-Governmental Affairs (OLIGA).

• Designs and conducts long-range Medicare Part B policy studies as well as other special projects, such as representing HCFA or OLIGA on task forces, outside commissions or policy panels in assigned areas.

• Working with the Office of the Assistant Secretary for Legislation, provides (or coordinates) technical consultative services to congressional members, their staff and the public on Medicare Part B legislation and related HCFA activities.

• Recommends the HCFA and HHS position on Medicare Part B legislation likely to be considered by Congress. Develops bill reports and coordinates comments from other HCFA and HHS components. Clears enrolled bill reports and recommends Presidential veto or signature. Prepares legislative summaries of newly enacted legislation and selected congressional bills.

• Monitors all Medicare Part B congressional legislative activity, with an emphasis on Budget Reconciliation and other major legislation.

• Assists in the preparation of Medicare Part B briefing materials, background, and testimony for HCFA

and HHS policy officials' appearances at congressional hearings.

• Provides assistance to other offices within OLIGA to ensure consistent, coordinated analyses and responses. Provides input to cross-cutting projects.

e. Division of Medicaid Analysis (FAA5)

• Conducts legislative, economic, and policy analyses related to the Medicaid program. Substantive areas include Medicaid eligibility, payment, coverage, financing, the impact on Medicaid of changes to Public Health Service, and welfare programs, and the health care of low income individuals.

• Coordinates the development of Medicaid legislative proposals and develops the technical specifications for such legislation. Plans, develops, and directs legislative strategy to enhance the enactment of the Administration's legislative program for the Medicaid program.

• Analyzes and reviews Medicaid regulations, issue papers, Office of the Inspector General reports, reports to Congress, and other policy documents for the Director, Office of Legislative & Inter-Governmental Affairs (OLIGA).

• Designs and conducts long-range Medicaid policy studies as well as special projects, such as representing HCFA or OLIGA on task forces, outside commissions or policy panels in assigned areas.

• Working with the Office of the Assistant Secretary for Legislation, provides (or coordinates) technical consultative services to congressional members, their staff and the public on Medicaid legislation and related HCFA activities.

• Recommends the HCFA and HHS position on Medicaid legislation likely to be considered by Congress. Develops bill reports and coordinates comments from other HCFA and HHS components. Clears enrolled bill reports and recommends Presidential veto or signature. Prepares legislative summaries of newly enacted legislation and selected congressional bills.

• Monitors all Medicaid congressional legislative activities, with an emphasis on Budget Reconciliation and other major legislation.

• Prepares Medicaid briefing materials, background, and testimony for HCFA and HHS policy officials' appearances at congressional hearings.

• Provides assistance to other offices within OLIGA to ensure consistent, coordinated analyses and responses. Provides input to cross-cutting projects.

f. Division of Intergovernmental Affairs (FAA6)

• Provides leadership for HCFA in the area of intergovernmental affairs.

• Advises the Director, Office of Legislative & Inter-Governmental Affairs, on all policy and program matters which affect other units and levels of government.

• In coordination with the Department's Intergovernmental Affairs office, the Principal Regional Directors, and other HCFA offices, meets with key State and local officials in order to strengthen HCFA's relationships with other governmental jurisdictions and to resolve sensitive intergovernmental problems and issues.

• Reviews and consults with State and local officials regarding proposed HCFA policy and operational issuances.

• Assesses the impact on State and localities of HCFA actions involving penalties, disallowances, compliance actions, or new performance standards.

• Assists States and localities in requesting and obtaining technical materials, assistance, and support from appropriate HCFA components.

• Upon State requests, arranges for the exchange of HCFA staff with State and local agencies.

• Develops and provides briefings on intergovernmental affairs issues for HCFA staff.

• Briefs State and local agencies on HCFA's mission, organization, and functions.

5. Medicaid Bureau (FAB)

• Directs the planning, coordination, and implementation of the Medicaid program under Title XIX of the Social Security Act and related statutes, as amended, except for Medicaid managed health care.

• Formulates, evaluates, and prepares policies, specifications for regulations, instructions, preprints and procedures related to Medicaid eligibility, coverage, and payment activities; makes recommendations for legislative changes; and, reviews State plan amendments and makes recommendations on approvals/disapprovals.

• Oversees, coordinates, processes and assesses the operation of State Medicaid Home and Community-Based Services Waivers.

• Administers the State grants process for administrative and program payments, including budget preparation by States.

• Provides Medicaid payment policy for administrative costs, availability of Federal Financial Participation (FFP) and designation of appropriate FFP rates.

• Develops and monitors planning, development and implementation of Medicaid program operations in regional offices and State Medicaid agencies.

• Develops and promulgates policies and procedures for the proper maintenance, review, and approval of State plans and their amendments.

• Monitors State compliance with State plan and oversees the compliance process.

• Develops requirements, standards, procedures, guidelines, and methodologies pertaining to the review and evaluation of State agencies' automated systems.

• Develops, operates, and manages a program for the performance evaluation of Medicaid State agencies and fiscal agents.

• Implements Medicaid maternal and infant health initiative and the Early and Periodic Screening, Diagnostic, and Treatment program through coordination of HCFA resources and activities with those of the Public Health Service and other national organizations, monitoring program performance, effective interagency and interprogram liaison, guidance, and technical assistance.

• Provides technical assistance to States, regional offices, and other interested groups in all special Medicaid initiatives. Coordinates with HCFA's Office of Legislative and Inter-Governmental Affairs on all issues that affect States.

• Coordinates with the Office of Research and Demonstrations HCFA review and management of State waiver requests and projects.

a. Executive Operations Staff (FAB–1)

• Advises the Medicaid Bureau (MB) managers on organizational design and implementation; requests to establish positions; and delegations of management and program administration authorities.

• Establishes and implements integrated and coordinated MB work planning. Plans and monitors the execution of major Bureau program initiatives through the administration of the Bureau's work planning to ensure fairness and equity among components and to assure that measurable and verifiable outputs are provided.

• Interprets administrative budgetary policies and limitations and develops and issues guidelines and instructions to MB managers for budget formulation and execution. Executes the budget for the bureau through the issuance of staff and dollar controls, budget allowances for administrative expenditures, and

employment ceilings to bureau components.

• Provides services and liaison with the Office of Financial & Human Resources related to procurement; space acquisition, utilization and management; telephone systems; records; publications; forms printing; and reprographics.

• Directs a bureau-wide tracking and control system for legislation, regulations, instructions and correspondence; and provides training and technical assistance on standards for content of written documents.

• Serves as the focal point for the General Accounting Office and the Office of the Inspector General reports relating to MB; and coordinates other operational reviews of, and within, MB (e.g., internal control reviews).

• Provides bureau support and represents MB on issues related to microcomputer systems.

b. Medicaid Special Program Initiatives Staff (FAB–2)

• Implements Medicaid maternal and infant health initiative and the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program through coordination of HCFA resources and activities with those of the Public Health Service and other national organizations, monitoring program performance, effective interagency and interprogram liaison, guidance, and technical assistance.

• Serves as HCFA liaison and manager of the Medicaid Maternal and Child Health Technical Advisory Group.

• Assists in developing Medicaid participation in alternative service and delivery methods (e.g., collaboration and pluralistic funding of health care for varied Human Immuno Virus/Acquired Immune Deficiency Syndrome (AIDS)-infected Medicaid Recipients) and conducts reconnaissance and analyses to identify emerging and potential problem areas (e.g., financing community substance abuse programs).

• Provides technical assistance to States, regional offices, and other interested groups in all special Medicaid initiatives.

• Evaluates the effect of proposed legislation on sensitive and special Medicaid issues (i.e., EPSDT and AIDS) and recommends new or amended legislation in regard to these special areas.

c. Office of Medicaid Management (FAB1)

• Provides oversight, coordinates, and formulates the national Medicaid medical assistance and administrative costs budgets and justifications. Develops and maintains budget preparation and execution policies and procedures used by States and regional offices.

• Administers the State grants process for administrative and program payments including regional office disallowances.

• Develops and monitors Medicaid automated systems requirements, standards, procedures, guidelines, and methodologies. Directs review, evaluation, and assessment of the operation, development, and funding of Medicaid State agency automated systems, including the claims processing and information retrieval and integrated eligibility systems, and coordinates systems requirements for Federal programs such as Child Health Assurance, Child Support Enforcement, food stamps, and Aid to Families with Dependent Children.

• Provides oversight and coordinates the Medicaid State plan preprint process. Assists components in the development, publication, timely issuance to States, and maintenance of the master copy of State plan preprints.

• Provides oversight of planning, development, implementation, and monitors Medicaid program operations in regional offices and State Medicaid agencies including drug rebate program, Systematic Alien Verification for Entitlement System, national Medicaid eligibility quality control program, Medicaid Drug Use Review program, State claims processing and payment operations, and third party liability activities.

(1) Division of Financial Management (FAB11)

• Provides oversight and coordinates the national Medicaid medical assistance and administrative costs budgets and justifications. Develops and maintains budget preparation and execution policies and procedures used by States and regional offices.

• Establishes policies and procedures by which Medicaid State agencies and regional offices submit quarterly budget estimates and reports and administers the State grants process for administrative and program payments.

• Reviews all State claims for Federal payment under Title XIX of the Social Security Act including regional office disallowances of State claims.

• Serves as the focal point for the defense of disallowance decisions before the Department Appeals Board.

• Provides oversight and manages the national State Performance Evaluation and Comprehensive Test of Reimbursement Under Medicaid review process.

• Provides the definitive HCFA interpretation of Medicaid payment policy for administrative costs. Responsible for operational policies regarding availability of Federal Financial Participation (FFP), designation of appropriate FFP rates, and for issuing interpretations to regional offices regarding operational FFP issues.

• Directs regional office financial reviews and audits of State agencies and oversees the Medicaid claims processing review activity.

• Provides oversight, administration, and maintenance of the Medicaid Budget and Expenditure System.

(2) Division of Program Performance (FAB12)

• Develops, implements, and operates the national Medicaid eligibility quality control program to determine the effectiveness of Medicaid State agencies' performance in the area of eligibility determinations.

• Provides documentation and analysis necessary to initiate and support actions on disallowances, penalties, and corrective action requirements, and adjudication of appeals of disallowances and penalties.

• Develops, implements, and coordinates a system for reviewing the States' performance of the Income Eligibility Verification System (IEVS) requirements. Develops and interprets regulations and policies for States to establish IEVS.

• Develops, coordinates, and promulgates operational policy for utilizing the Systematic Alien Verification for Entitlement system.

• Provides expertise on sampling, precision, universe identification, and other technical statistical issues in support of the Medicaid quality control and assessment programs.

• Develops and promulgates policies and procedures for the proper maintenance, review, and approval of State plans and their amendments. Monitors State compliance to State plan and oversees the compliance process.

• Ensures adherence to all Automated Data Processing (ADP) security measures, policies, and procedures; assists with the development, modification, and review of HCFA ADP policies as they apply to Medicaid.

• Directs the bureau's ADP activities relating to development, implementation, and administration of mainframe ADP systems programs.

• Provides oversight and coordinates the Medicaid State plan preprint process. Assists components in the development, publication, timely

issuance to States, and maintenance of the master copy of State plan preprints.

• Develops procedures with the Social Security Administration concerning Medicaid eligibility operational issues such as transfer of resources, deemed Supplemental Security Income recipients and the State Data Exchange.

(3) Division of Payment Systems (FAB13)

• Provides bureau support in the development and implementation of new systems that interface with other HCFA components or involve mainframe computers.

• Develops the requirements, standards, procedures, guidelines, methodologies, and test criteria pertaining to the review, evaluation, and assessment of operations, development, and funding of State agency automation, claims processing and information retrieval and integrated eligibility systems to determine their compliance with published Federal requirements.

• Reviews State agency requests for Federal Financial Participation (FFP) in the costs of operating Medicaid claims processing, information retrieval systems, and development and operations of the integrated eligibility systems.

• Reviews State agency FFP requests for Medicaid Management Information Systems and interdepartmental integrated eligibility systems for approval.

• Plans, develops, and monitors systems requirements for Medicaid and coordinates systems requirements for related Federal programs such as Child Health Assurance, Child Support Enforcement, Food Stamps, and Aid to Families with Dependent Children.

• Provides operational and systems support for implementation of the Medicaid drug rebate program. Maintains liaison with and provides technical assistance to drug manufacturers, Medicaid State agencies, pharmaceutical associations, private sector vendors and other parties regarding the drug rebate program. Prepares an annual report to Congress regarding drug product and expenditure information.

• Serves as the focal point for Medicaid third party liability, qualified Medicare beneficiary, and Drug Use Review operating instructions and policy guidance to Medicaid State agencies and regional offices.

• Coordinates with all State Medicaid agencies, in conjunction with HCFA regional offices, implementation of system coding and other changes related to the Medicare program's Physician Payment Reform initiative and other data initiatives such as common coding, uniform billing, and electronic media claims formats.

d. Office of Medicaid Policy (FAB2)

• Formulates, evaluates and prepares policies, specifications for regulations, instructions, preprints, and procedures related to Medicaid eligibility, coverage, and payment activities.

• Makes recommendations for legislative changes to improve program policy and ease of administration.

• Reviews State plan amendments and makes recommendations on approvals/disapprovals.

• Oversees, coordinates, processes, and assesses the operation of State Medicaid Home and Community-Based Services Waivers.

(1) Division of Payment Policy (FAB21)

• Formulates and evaluates policies, regulations, instructions, and procedures related to Medicaid coverage activities. Prepares regulations, manuals, program guidelines, State plan preprints, and general instructions related to Medicaid institutional and non-institutional payment policy.

• Provides interpretations of Medicaid payment policies to regional offices, congressional staffs, other Departments of the Federal government, interest groups and State agencies.

• Develops, evaluates, and reviews Medicaid policies, regulations, guidelines, and instructions pertaining to provider and other facility payment under the Medicaid program including, for example, Medicaid institutional payment plans, Medicaid community provider rates, Medicaid payment of such entities as rural health clinics and federally qualified health centers and capitated rates for Medicaid managed care organizations.

• Formulates and evaluates policies and procedures related to Medicaid payment for long-term care, physician services, practitioner services, case management, obstetrical and pediatric services, pharmaceuticals, supplies and equipment such as hearing aids, eyeglasses, durable medical equipment, laboratory, and other medical services.

• Participates in the development and evaluation of proposed legislation in the area of Medicaid payment.

• Reviews State plan amendment requests under Medicaid.

• Analyzes and recommends legislative or other remedies to improve the effectiveness of Medicaid payment policies.

• Reviews, with the Office of Research and Demonstrations, research and demonstration agendas in the area of Medicaid payment.

(2) Division of Coverage Policy (FAB22)

• Formulates and evaluates policies, regulations, instructions, and procedures related to Medicaid coverage activities. Prepares specifications for regulations, manuals, program guidelines, State plan preprints, and general instructions related to these areas.

• Provides interpretations of Medicaid coverage policies to regional offices, congressional staffs, other departmental offices, other Departments of the Federal government, interest groups and State agencies.

• Develops, evaluates, and reviews all Medicaid coverage policies, regulations, and procedures.

• Develops, evaluates, and reviews policies, regulations, and procedures pertaining to States' requests for approval of waivers of Medicaid requirements to provide home and community-based services and makes recommendations whether the waivers should be approved or disapproved.

• Develops, evaluates, and reviews national coverage policies concerning Medicaid medical service contracts, interagency agreements, and prior authorizations.

• Reviews coverage related Medicaid State plan amendment requests.

• Identifies, studies, and makes recommendations for modifying Medicaid coverage policies to reflect changes in recipient health care needs, program objectives, and the health care delivery system.

(3) Division of Eligibility Policy (FAB23)

• Develops, interprets, and evaluates policies pertaining to all conditions under which recipients are eligible to have their health care services covered under Medicaid, the rights and responsibilities of recipients and applicants, and other special eligibility and technical issues.

• Evaluates the effect of proposed legislation on current eligibility policies and recommends specifications for new or proposed legislation on eligibility.

• Provides consultation regarding State plan amendments and waiver requests and prepares State plan disapproval actions.

• Prepares specifications for regulations, preprints, and manual instructions pertaining to Medicaid eligibility policy.

6. Office of Managed Care (FAC)

• Provides national direction and executive leadership for managed health care operations, including health

maintenance organizations (HMOs), prepaid health plans (PHPs), primary care case management programs, competitive medical plans (CMPs), and other capitated health organizations.

• Serves as the departmental focal point in the areas of managed health care plan qualification, including quality assurance, ongoing regulation, State and employer compliance efforts, Medicare and Medicaid HMO, Medicare CMP contracting and Medicaid freedom of choice waivers.

• Develops national managed care policies and objectives for the development, qualification, and ongoing compliance of HMOs and CMPs.

• Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents. Formulates, evaluates, and prepares policies, specifications for regulations, instructions, preprints, and procedures related to managed health care. Makes recommendations for legislative changes to improve managed health care program policy.

a. Operational Analysis Staff (FAC–1)

• Identifies and analyzes issues, problems, and trends related to the Office of Managed Care (OMC) operations.

• Develops OMC operational policy manuals, standard operating procedures, and other instructions and issuances. Assists the Office of Managed Care Policy & Planning (OMCPP) in the development of policy and regulatory proposals.

• Performs special studies and projects for OMC in the areas of payment, operations, and finance.

• Responds to operational policy questions generated by OMC staff, regional offices, contractors, and other HCFA or departmental components.

• Establishes and maintains liaison with trade associations, State regulatory agencies, OMCPP, and departmental components, such as the Office of the General Counsel.

b. Office of Managed Care Policy and Planning (FAC1)

• Develops national policies and objectives for the development, qualification, and ongoing compliance of Health Maintenance Organizations (HMOs) and Comprehensive Medical Plans (CMPs). Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents.

• Acts as the focal point for all managed health care research, demonstration, and evaluation study activity within and external to the Department.

• Develops and implements programs to encourage greater access of Federal Medicare beneficiaries to HMOs and other prepaid health plans.

• Monitors and analyzes Federal activities and policies regarding Federal beneficiaries in Medicare, CHAMPUS, and the Federal Employees Health Benefits' programs. Coordinates the development and implementation of health education and health promotion programs in managed health care plans.

• Coordinates the Department's efforts to move toward a pluralistic health care delivery system.

• Conducts special studies of managed health care plans operations and operating data and identifies trends and develops performance measures which can be used by the Office of Managed Care Operations and by the industry to assess the development and operation of managed health care plans.

• Develops and issues technical guidance documents for use by the industry in the development of managed health care plans and the improvement of operations in existing managed health care plans.

• Develops and maintains close relationships with national organizations representing the managed health care plans industry to enhance technical assistance capability and to establish appropriate performance measures.

• Plans, coordinates, and directs the development and preparation of managed care legislative proposals, regulatory proposals, and policy documents and performs strategic policy and planning functions and other special tasks as required by the Administrator.

• Provides liaison staff for activities with other Federal programs and agencies, health care professional associations, and trade associations.

(1) Division of Managed Care Policy and Evaluation (FAC11)

• Develops and coordinates legislative proposals, regulatory specifications, and other policy documents to establish managed health care national policies and to address the Agency objectives for the development, qualification, contracting, and ongoing compliance of health maintenance organizations (HMOs), comprehensive medical plans (CMPs), preferred provider organizations (PPOs), and other managed systems of health care.

• Analyzes the manner in which the Agency objectives and policies are tied into pending or existing managed health care legislation and regulations. Evaluates national trends and their possible effect on Agency-wide activities.

• Reviews and analyzes policies regarding Federal beneficiaries in Medicare, CHAMPUS, and the Federal Employees Health Benefits' programs for coordination with managed health care programs.

• Reviews and analyzes coordinated internal and external health care research, demonstration, and evaluation study activities.

• Develops presentation material for use with congressional committees and with the Office of Management and Budget related to the program and appropriation legislation affecting the managed health care objectives of the Administration.

(2) Division of Planning and Promotion for Managed Care (FAC12)

• Develops and implements activities to promote managed health care programs to Health Maintenance Organizations (HMOs), Comprehensive Medical Plans (CMPs), preferred provider organizations (PPOs), employers, insurance companies, managed health care associations/organizations, and other professional medical and private groups, including Federal beneficiary and consumer groups.

• Develops and coordinates managed health care education and promotional programs within the Agency/Department to encourage greater access of Federal Medicare beneficiaries to HMOs, CMPs, PPOs, and other managed health care organizations. Supports the Agency/Department's efforts to move toward a pluralistic health care delivery system.

• Develops and supports the maintenance of close working relationships with national organizations representing the managed health care industry to enhance technical assistance options and to promote appropriate managed health care performance measurement standards.

• Develops, coordinates, and supports strategic planning activities for the managed health care program in the Agency and any other specific managed health care planning initiatives.

• Establishes and maintains a system to monitor the planning schedule to assure appropriate coordination and completion of managed health care activities within the Agency.

• Supports the liaison activities for the Agency for managed health care programs with other Federal/State programs and agencies, health care professional organizations/associations,

trade associations, and consumer groups.

c. Medicaid Managed Care Office (FAC2)

- Serves as the operational focal point for all Medicaid managed care activities.
- Formulates, evaluates, and prepares policies, specifications for regulations, instructions, preprints, and procedures related to Medicaid managed health care, including waivers.
- Makes recommendations for legislative changes to improve managed health care program policy.
- Provides oversight of, and assistance to, State Medicaid agencies on all managed health care issues, including Medicaid managed health care contracting activities. Provides technical assistance to State regulators.
- Serves as the focal point and repository for State laws and regulations dealing with Health Maintenance Organizations (HMOs), group medical practice, insurance, licensing, foundations, service corporations, certificate of need, and reserve requirement statutes.
- Develops guidelines, policies, and procedures for use by the regional offices when reviewing and approving/disapproving State Medicaid agency contracts with managed health care plans.
- Formulates and evaluates policies and procedures related to HMOs and other managed health care contracts and freedom of choice waiver programs including the preparation of recommendations for waivers of freedom of choice and other State plan exception requirements; monitoring of approved HMOs and other managed health care contracts and freedom of choice waivers and recommendations for the removal of waivers; State plan/waiver processing policy; and other related issues.
- Evaluates and assures the cost-effectiveness of approved Medicaid freedom of choice waivers through review of State program and cost reports, independent assessments, and regional compliance/validation reviews.

d. Office of Managed Care Operations (FAC3)

- Provides national direction and executive leadership for managed health care operations, including health maintenance organizations (HMOs), comprehensive medical plans (CMPs), and other capitated health organizations.
- Develops national operations objectives for the qualification and ongoing compliance of managed health care plans.
- Develops long- and short-range program operational goals and objectives.
- Serves as the departmental focal point in the areas of managed health care plan qualification, ongoing regulation, employer compliance efforts, and Medicare HMO and CMP risk contracting.
- Administers Medicare managed care contracts, the capitation formula, and payment policies.
- Oversees the operation of the managed health care information system.
- Determines the amounts of payments to be made to managed health care plans and the amounts, methods, and frequency of retroactive adjustments.
- Incorporates a prospective payment system for managed health care through the implementation of the Tax Equity and Fiscal Responsibility Act risk contracts.
- Evaluates cost reporting methodologies and conducts a continuing audit program to determine the final program liability for cost contracts.
- Administers beneficiary enrollment and disenrollment including coordination with beneficiary groups and other HCFA and HHS components.

(1) Division of Payment and Operations Support (FAC31)

- Manages the national Medicare beneficiary enrollment and disenrollment operations.
- Ensures timely and accurate payment to managed health care plans.
- Plans, develops, operates, and evaluates the operational and management information systems supporting the Medicare managed health care program.
- Conducts special analyses of specific managed health care plans and management information systems to identify problems and determine the need for new or enhanced systems design.
- Establishes national operational policy, procedures, and instructions for system specifications and data exchange methods which define and automate the managed health care plans' enrollment, disenrollment, and other systems operations.
- Serves as liaison with the Bureau of Data Management and Strategy and other HCFA Central Office and regional office components in their implementation and evaluation of the management information systems.

(2) Division of Operations (FAC32)

- Directs the qualification applications process for Health Maintenance Organizations (HMOs) under the requirements of section 1301 of the Public Health Service Act (PHS Act).
- Coordinates with and provides technical assistance to the regional offices on the monitoring of Medicare HMOs and Comprehensive Medical Plans.
- Manages and monitors the processing of Medicare managed health care contract reconsiderations.
- Investigates and evaluates applicants' conformance with legal and financial requirements for qualification for Medicare contracts under section 1301 of the PHS Act, section 1833 and section 1876 of the Social Security Act, and related regulations.
- Coordinates Program Advisory Council activities, including obtaining regional office reports and recommendations, incorporating information from Central Office reviewers, and issuing approval of initial applications and renewals. Coordinates and makes recommendations on nonrenewals, terminations, and revocations based on information and analysis provided by regional offices.
- Implements new legislation and regulations regarding managed health care operations.
- Assures compliance with section 1310 of the PHS Act by employers with the mandatory offering of a managed health care plan alternative in employer health benefit plans.
- In consultation with the regional offices, establishes performance standards and evaluates the plans' performance.
- Provides training for and guidance of regional offices in activities related to managed health care. Also provides training and workshops for HMOs.
- Establishes and maintains liaison with appropriate State and Federal regulatory agencies for coordination of qualification, contract, and monitoring issues.

(3) Division of Finance (FAC33)

- Establishes interim payment rates, retroactively adjusts payments, and performs end-of-year settlements for all cost-based contracting plans.
- Reviews initial Adjusted Community Rate proposals.
- Trains and guides the audit contractor who performs the desk review of the Health Maintenance Organization (HMO) and Comprehensive Medical Plan (CMP) cost reports.
- Provides operational input for legislative and regulatory proposals and standard operating procedures related to

cost methodology and fiscal responsibility.

• Establishes national financial standards for federally qualified HMOs and CMPs and assures that these entities comply with these requirements.

• Establishes national standards for the protection of enrolles in the event of HMO or CMP insolvency. Assures that HMOs and CMPs comply with these standards.

• Develops procedures to improve or revise the payment methodologies and processes of Medicare contractors and financial reviews of HMOs and CMPs.

• Manages the plan qualification fiscal soundness and insolvency protection reviews process.

B. Associate Administrator for Customer Relations and Communications (FF)

• The Associate Administrator for Customer Relations and Communications is responsible for the effective direction and implementation of HCFA policies, rules, and procedures in the areas of: customer relations and program communication.

• Advises HCFA components concerning the services, requirements, and initiatives relating to HCFA beneficiaries; liaison with external medical, dental, and allied health practitioners, institutional providers of health services, and academic institutions responsible for the education of health care professionals; and directing the public affairs activities of HCFA.

1. Office of Beneficiary Services (FFA)

• Provides advisory services to the Associate Administrator for Customer Relations and Communications and HCFA components concerning the services for, needs of, and initiatives relating to HCFA beneficiaries.

• Promotes an awareness of the concerns of children, the elderly, and needy among the HCFA components responsible for developing program policies, regulations, and legislative proposals. Analyzes the impact of proposed HCFA policies, regulations, and instructions on beneficiaries. Maintains close working relationships with HCFA central and regional components, the Social Security Administration District Offices, the Public Health Service, other Federal agencies, State agencies, and beneficiary consumer groups to identify and assess the need for information, benefits and services; the impact of proposed HCFA actions; and the effects that operating systems and programs have on the health care system programs and current and future beneficiaries.

• Presents the overall HCFA mission and promotes its acceptance by beneficiaries and representatives of their constituent organizations.

• Participates with other HCFA components in the development and implementation of program objectives and strategies pertaining to beneficiary services.

• Through direct contact with children, the elderly, the needy and/or their representative groups determines their understanding of HCFA's programs and services and conveys this information to HCFA components.

• Responds to beneficiary referrals concerning accessing and utilizing the Agency's health care financing programs.

• Plans, directs, and coordinates the production of radio, television, and film products, and the preparation of general-purpose publications.

• Reviews and clears all print, audiovisual, and exhibit plans and material intended for external dissemination and serves as clearance liaison with the Office of the Secretary, Office of the Assistant Secretary for Public Affairs.

2. Office of Public Affairs (FFB)

• Plans, directs and coordinates the public affairs activities of HCFA including: speech writing, public appearances, Administrator's meetings, special AACRC projects as well as conducting evaluations and analysis.

• Provides advice and counsel from a public affairs perspective to the AACRC and all HCFA components.

• Administers the Freedom of Information Act and Privacy Act responsibilities for HCFA.

a. Freedom of Information Division (FFB1)

• Conducts activities necessary to the receipt, management, response, and reporting requirements of the Department under the Freedom of Information Act (FOIA) regarding all correspondence received by HCFA.

• Maintains an orderly log of all FOIA requests received by the Agency, refers requests to the proper components within headquarters, the regions, or among carriers and intermediaries for the collection of the documents requested, prepares replies to requesters including denials of information as permitted under FOIA, and drafts briefing materials and responses in connection with appeals of denial decisions.

• Consults with the Office of the General Counsel and the Department of Health and Human Services' Freedom of Information Officer regarding denials, releases, and appeals.

• Provides guidance for FOIA coordinators in HCFA central and regional office components and maintains up-to-date knowledge of Federal Court decisions interpreting FOIA.

• Prepares guidelines and Medicare and Medicaid manual changes regarding FOIA program, keeps track of any charges levied for FOIA research activities, and assures prompt payment.

b. Division of Public Appearances (FFB2)

• Responsible for the efficient handling of speaking requests received by top HCFA management.

• Logs requests, recommends acceptance or denial of invitations and coordinates correspondence for all invitations.

• Arranges the scheduling of speaking appearances, compiles briefing information, ensures that talking points or speeches are prepared as necessary, and conducts follow-up activities such as arranging for transcripts, courtesy correspondence, reprint permissions, photographs, and biographies.

• Recommends speaking opportunities and forums consistent with Agency goals and objectives and overall public affairs plans.

• Advises the Division of Media Relations on potential news opportunities stemming from public appearances and speaking engagements.

3. Office of Public Liaison (FFC)

• Directs and implements HCFA policies, rules, and procedures in the areas of liaison with external medical, dental, and allied health practitioners, institutional providers of health services, and business and academic institutions responsible for the education of health care professionals.

• Plans, directs and coordinates media relations.

a. Division of Professional and Business Affairs (FFC1)

• Maintains liaison with external medical, dental, and allied health practitioners, institutional providers of health services, representatives of the business and insurance community, and academic institutions responsible for the education of health care professionals.

• Provides professional knowledge and makes recommendations to the Director, Office of Public Liaison (OPL) and manages the development of policies, regulations, procedures, and legislative proposals which affect the health care field.

• Serves as the focal point in HCFA for external health care groups to gain an understanding of HCFA objectives.

• Evaluates and transmits suggestions and criticisms from the health care field to the Director.

• OPL promotes an exchange of viewpoints between the health care field and HCFA components.

b. Division of Media Relations (FFC2)

• Maintains relations with the nation's news media including nationwide press, radio, television, wire services, and individual reporters, writers, editors, and individual publications and broadcasters.

• Provides writing and editing services necessary in conducting the public affairs activities of the Agency.

• Develops and carries out a general plan for providing information to the public through the news media and for promoting and disseminating information on specific HCFA-related topics, issues, and activities.

• Responds to inquiries from the news media through correspondence, telephone, and direct interviews and arranges for interviews and similar response from senior Agency staff.

• Prepares drafts and obtains clearances for press releases and statements for the news media.

• Drafts publications, fact sheets, reports, leaflets, pamphlets, white papers, scripts, articles, and other background materials for distribution to the general public on HCFA programs and related topics.

• Prepares and edits articles for submission to external periodicals and publications on HCFA programs and prepares materials as needed for internal employee communications such as the HCFA Newsletter.

C. Associate Administrator for Policy (FK)

• The Associate Administrator for Policy is responsible for the effective direction and implementation of the development and review of policies and regulations pertaining to all HCFA programs including HCFA's research and demonstrations activities.

• Conducts research and develops legislative proposals designed to reform and make improvements in the health care delivery system and develops the technical specifications for such legislation.

• Performs actuarial, economic and demographic studies to predict HCFA program expenditures under current law and under proposed modifications to current law.

1. Special Analysis Staff (FK–1)

• Conducts legislative, economic and policy analyses related to the private health insurance industry and the overall structure of health care financing and reform.

• Analyzes and reviews current literature regarding the state of the nation's health policy in order to develop national trend analyses for future HCFA program directions.

• Plans and develops future HCFA program policy in order to assist in the development of legislative strategies that will enhance the Department's legislative program.

• Coordinates policy development and research relating to legislative proposals designed to reform and make improvements in the health care delivery system including the technical specifications for such legislation.

2. Bureau of Policy Development (FKA)

• Establishes national program policy on all issues of Medicare payment including provider payment policy, provider accounting and audit policy, and physician and medical services payment policy.

• Develops, evaluates, and reviews national policies and standards concerning the coverage and utilization effectiveness of items and services under the Medicare program provided by hospitals, long-term care facilities, hospices, End Stage Renal Disease facilities, home health agencies, alternative health care organizations, comprehensive outpatient rehabilitation facilities, physicians, health practitioners, clinics, laboratories, and other health care providers and suppliers.

• Serves as the principal organization within HCFA for evaluating the medical aspects of Medicare coverage issues and for developing provider conditions of participation.

• Develops, evaluates, and reviews national Medicare coverage issues concerning reasonableness and necessity for medical and related services.

• Develops, interprets, and evaluates program policies pertaining to Medicare eligibility, Medicare secondary payer policies and other technical issues.

• Develops regulations for the Medicare and Medicaid programs.

• Manages the HCFA system for developing regulations, setting regulation priorities, and corresponding work agenda.

• In cooperation with the Office of the General Counsel, coordinates litigation affecting the Medicare program.

a. Regulations Staff (FKA–1)

• Drafts all HCFA regulations and related clearance documents and HCFA rulings.

• Establishes and assures compliance with editorial standards for clarity and uniformity of HCFA regulations and with the requirements of the Office of the Federal Register.

• Recommends schedules for the development of regulations, tracks progress against these schedules, and develops routine and special reports on HCFA's regulatory activities.

• Negotiates resolution of policy issues with originating component to meet regulations schedules. Obtains clearances of draft regulations from initiating bureaus.

• Coordinates the Bureau of Policy Development's (BPD) review of regulations received for concurrence from other HCFA components and prepares BPD's response.

• Reviews draft regulations and completes needed studies to assure compliance with the requirements for regulatory impact analysis of Executive Order 12612, the Regulatory Flexibility Act, and small rural hospital impact.

• Maintains specialized word processing systems to assure efficient preparation of regulations documents.

• Maintains official agency regulations files. Maintains current compilation of 42 Code of Federal Regulations, Part 400-End.

b. Office Of Regulations Management (FKA–2)

• Manages the HCFA process for developing regulations, setting regulation priorities, and corresponding work agendas.

• Coordinates for the Administrator the development of all policy documents associated with specific regulations under development.

• Negotiates work plans with major HCFA operating components for the development of each regulation and monitors performance through a computerized tracking system.

• Works jointly with HCFA and the Office of the General Counsel to identify and resolve all issues associated with each regulation.

• Manages the HCFA process for substantive review and clearance of regulations within HCFA, and with the Office of the General Counsel.

• Establishes editorial and technical standards for writing regulations.

• Reviews each regulation to ensure consistency with Federal Register technical requirements, editorial standards, and policy agreements reached during the development of the regulation.

• Serves as liaison on regulation issues to the Office of the Secretary, the Office of the General Counsel, other Department and Federal agencies, and the **Federal Register**. Provides training to HCFA regulation writers and clerical staff.

c. Office of Program Support (FKA–3)

• Directs the planning, development, and coordination of a comprehensive program of management activities including: financial management, management analysis and information, field liaison, Freedom of Information operations, and an executive secretariat for the Bureau.

• Prepares responses to all Medicare public inquiries addressed to or referred to the Bureau.

• Serves as principal advisor to the Director, as well as the Bureau's executive staff, on the full range of management and related administrative issues.

• Responsible for handling highly sensitive and complex assignments requiring the Director's and Deputy Director's personal attention often involving inter-Bureau and office coordination and direction.

(1) Executive Secretariat (FKA–31)

• Assigns, controls, tracks, and coordinates all work assigned to, or generated within the bureau, except regulations.

• Prepares regular reports on bureau and component performance on significant bureau activities and accomplishments and long-range calendar events.

• Reviews all action documents submitted to the Office of Program Support to assure accuracy and completeness of staff work and general readiness for the action requested.

• Coordinates bureau responses to: (1) Requests for background and briefing materials, (2) requests for comments on experimentation and demonstration proposals, and (3) Audit and Service Delivery Assessment reports.

• Prepares or coordinates the preparation of responses to Secretary and Administrator correspondence.

• Handles bureau Freedom of Information requests, determining what information may and may not be released to the public, and ensuring that bureau replies are fully responsive.

• Coordinates the development, implementation, and maintenance of the bureau's work planning system.

• Manages bureau-wide internal control systems.

(2) Inquiries Staff (FKA–32)

• Plans, directs, and coordinates an inquiries program for the bureau.

• Receives controls, analyzes, and prepares responses to inquiries from beneficiaries and their representatives, the White House, members of Congress, State and local agencies, officials of professional organizations, and the mass media.

• Analyzes trends in public thinking and reports possible policy implications to management.

• Provides technical assistance upon request to components and field offices.

(3) Program Liaison Staff (FKA–33)

• Evaluates the impact of policy development and issuance processes on regional operations, and determines whether policies and instructions are being adequately and consistently carried out by the regional offices.

• Responds promptly to requests from the regional offices for specific policy guidance and provides general policy interpretations.

• Develops, coordinates, and directs a management program for the management analysis functions, internal financial management, manpower selection and placement, training and employee development, position control and manpower utilization.

• Develops and issues Bureau-wide problem area reporting, coordination of Bureau operational planning activities, and a variety of administrative support services, including property and space management.

• Designs and evaluates Bureau management information systems, conducts management information and project management monitoring studies, and administers the Bureau's reports management program.

• Responsible for the Bureau's Automatic Data Processing, Telecommunications and Word Processing systems including identifying needs, procurement, evaluation, and maintaining liaison with the Bureau of Data Management and Strategy, Office of Computer Operations.

d. Office of Payment Policy (FKA1)

• Establishes national Medicare policy on all payment issues including provider and other facility payment, reporting and accounting policy, and physician and medical services payment policy, and assists in the development and evaluation of related legislation.

• Develops, evaluates, and maintains regulations, policies, and standards for payments to hospitals for inpatient services under the prospective payment system.

• Coordinates with and reviews recommendations from the Prospective Payment Assessment Commission and the Physician Payment Review Commission.

• Develops policies for physician fee schedules and reasonable charges for physician and medical services payment.

• Develops and maintains fee schedules for independent laboratory and ambulatory surgical centers.

• Develops payment policy for special forms of health care delivery such as hospital outpatient departments, health maintenance organizations, rural health clinics, hospices, health care prepayment plans, and comprehensive health centers.

• Establishes payment policies as they apply to the End-Stage Renal Disease (ESRD) Program.

• Establishes policy for implementing payment controls and cost containment programs.

• Reviews requests for exceptions to payment limitations and recommends approval or disapproval.

(1) Division of Medical Services Payment (FKA11)

• Formulates and evaluates national policies and standards for Medicare payment and fiscal standards for physician services, practitioner services, pharmaceuticals, supplies and equipment such as hearing aids, eyeglasses, durable medical equipment, and other medical services.

• Develops policies for reasonable charges for physician and medical services payment.

• Drafts program regulations, manuals, guidelines, and other general instructions related to medical services payment.

• Coordinates with other HCFA bureaus, divisions, and offices, the Social Security Administration, and other Departmental components in the development of payment policies for medical services.

• Coordinates with and reviews recommendations from the Physician Payment Review Commission.

• Participates in the development and evaluation of proposed legislation in the area of medical services payment and recommends alternatives to current methods of payment.

• Provides interpretations of established policies and technical assistance to Departmental and HCFA components, regional offices, fiscal intermediaries, and carriers.

(2) Division of Hospital Payment Policy (FKA12)

• Develops, evaluates, and maintains regulations, policies and standards for payments to hospitals for inpatient services under the prospective payment system (PPS).

• Develops, evaluates, and maintains policies pertaining to the determination of appropriate amounts of prospective payments to hospitals for services furnished to inpatients.

• Works with the Prospective Payment Assessment Commission of PPS and reviews the Commission's recommendations on and basis for rates of payments.

• Develops, evaluates, and maintains policies pertaining to the appropriate methods for determining the amount of payments for cost items associated with inpatient hospital services but not yet within the prospective payment rates and develops policies for bringing such excepted cost items under PPS.

• Develops, evaluates, and maintains policies for determining and applying rates of increase and limitations to the costs of hospitals for services furnished to inpatients.

• Develops, evaluates, and maintains methods for classifying hospitals and hospital services to inpatients, including sole community hospitals, for the purpose of applying rates of increase and limitations on hospitals' costs and for determining prospective payments to hospitals.

• Develops, evaluates, and maintains criteria for exceptions to the established rates of increase and limitations on hospitals' cost for inpatient services and reviews fiscal intermediaries' recommendations on requests for exceptions.

• Prepares regulations, program guidelines, and instructions related to PPS and those excepted items or adjustments to the system that are paid on a cost-payment basis to hospitals for inpatient services.

• Works with other offices in the bureau, HCFA, the Department, and the Prospective Payment Assessment Commission to improve hospital efficiency and reduce Medicare expenditures.

• Review policies and operational guidelines and instructions developed by other components for their impact on the policies governing PPS and limitations on payment for hospital services to inpatients.

• Participates in the development and evaluation of proposed legislation pertaining to PPS and cost containment for hospital services to inpatients.

• Provides interpretations of established policies and other policy and technical assistance to regional offices, State agencies, Medicare contractors, hospitals, hospital associations, congressional staff, departmental offices, and others on policy issues relating to PPS and cost containment policies for hospital inpatient services.

• Assists in the Administration's professional relations and public information activities to foster understanding and acceptance of the PPS.

(3) Division of Payment and Reporting Policy (FKA13)

• Develops and evaluates national policies, regulations, and standards for payment of the costs incurred by providers of services and other classes of facilities under the health insurance program.

• Initiates and collaborates in the development and review of legislative proposals on general Medicare payment policies, interprets law (considering intent), and develops policy directives and basic payment policy decision statements which derive from such applicable law and which are reflective of the minimum requirements of such law (i.e., the broad parameters).

• Develops and issues implementing instructions consistent with overall Medicare payment policy, directives, and specifications.

• Reviews alternative payment and rate-setting systems for potential adaptation to the health insurance program.

• Establishes policies, principles, and guidelines related to circumstances requiring atypical payment practices.

• Plans, develops, and maintains a continuing program of surveillance and evaluation of HCFA general payment policies, and billing procedures at Central Office, regional offices, intermediary, and carrier levels which impact on Office functions in order to identify emerging problems and to develop and promulgate corrective policies and procedures.

• Formulates and evaluates national policies for all Medicare program provider financial filing and reporting requirements.

• Develops policies pertaining to the use of all cost reporting forms, schedules, and related instructions necessary for paying health care institutions.

• Develops policies pertaining to the validity of accounting policies and procedures.

• Develops and maintains a system of internal controls for the validation of policy decisions.

• Formulates the basic principles and policies for developing and applying limitations to the costs of health care.

• Develops and evaluates the criteria for exceptions to the limitations and reviews and makes decisions on the intermediary recommendations on providers' requests for exceptions.

(4) Division of Special Payment Programs (FKA14)

• Formulates and evaluates payment policies for services under the End-Stage Renal Disease (ESRD) program, ambulatory surgical centers and other special delivery systems, including capitation organizations, non-provider based comprehensive health centers, hospices and rural health clinics.

• Prepares regulations, manuals, program guidelines, and other general instructions in these policy areas.

• Establishes payment policies and procedures for ESRD services, transplantation, physician payment, kidney acquisition including payments, organ procurement, histocompatibility services, home and self-dialysis training, and other medical items and services related to the ESRD program.

• Establishes policies, procedures, and criteria for payment exceptions for ESRD facilities.

• Processes such requests and determines which ESRD facilities should be granted exceptions to national payment rates.

• Analyzes payment data, develops payment rates for ESRD services and other special payment delivery systems, and updates rates.

• Maintains continuing liaison with ESRD provider groups, industry associations, patient organizations, medical associations, and other parties that relate to special delivery systems.

• Participates in the development and evaluation of proposed legislation pertaining to the ESRD program and organ transplant issues.

• Formulates and evaluates national policies for the payment of special methods of health service delivery.

• Develops policies pertaining to determining the payment basis, including reasonable costs and charges, where appropriate, for the services of these facilities.

• Formulates the basic principles and policies for developing and applying limitations to the costs of health care.

e. Office of Coverage and Eligibility Policy (FKA2)

• Develops, evaluates, and reviews national policies and standards concerning the coverage and utilization effectiveness of items and services under the Medicare program provided by hospitals, skilled nursing facilities, hospices, End-Stage Renal Disease facilities, home health agencies, alternative health care organizations, comprehensive outpatient rehabilitation facilities, physicians, health

practitioners, clinics, laboratories, and other health care providers and suppliers.

• Serves as the principal organization within HCFA for evaluating the medical aspects of Medicare coverage issues and for health quality and safety standards.

• Develops, evaluates, and reviews national Medicare coverage issues concerning the reasonableness and necessity for medical and related services.

• Develops, evaluates, and reviews health and safety standards for providers and suppliers of health services under Medicare.

• Develops common medical coding standards and policy.

• Participates in the formulation and use of medical codes including: International Classification of Diseases—Ninth Revision—Clinical Modification, HCFA Common Procedure Coding System, and Diagnosis Related Groups.

• Develops, evaluates, and reviews national Medicare policies concerning the coverage of new and unusual items and services and those medical items and services which are excluded from coverage.

• Develops, interprets, and evaluates policies relating to the conditions under which aged and disabled individuals and End-Stage Renal Disease patients are eligible to have their health care covered under the Medicare program and the rights available to these beneficiaries.

• Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of Medicare coverage and eligibility policies to program contractors and the health care field.

• Identifies, studies, and makes recommendations for modifying Medicare coverage and eligibility policies and health and safety standards to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system.

• Conducts ongoing analyses of innovative treatment patterns, referral patterns, and activity that improve health care outcomes.

• Analyses and recommends legislative or other remedies to improve coverage, eligibility, health and safety standards, and utilization effectiveness.

(1) Division of Provider Services Coverage Policy (FKA21)

• Develops, evaluates, and reviews national Medicare policies and standards concerning the coverage of services and the conditions of participation for hospitals, skilled nursing facilities, home health agencies, hospices, and other providers of services.

• Develops, evaluates, and reviews national Medicare policies concerning the coverage of mental health, alcoholism and drug treatment, utilization review, and physician certification, and prior authorization requirements.

• Coordinates Medicare coverage policies and Peer Review Organization requirements.

• Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of program policies to program contractors and the health care field.

• Identifies, studies, and makes recommendations for modifying Medicare coverage policies and providers' health and safety standards to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system.

• Analyzes and recommends legislative or other remedies to improve coverage, health and safety, and utilization effectiveness.

(2) Division of Medical Services Coverage Policy (FKA22)

• Develops, evaluates, and reviews national Medicare policies and health and safety standards concerning the coverage of items and services which are provided by physicians, nonphysician practitioners, ambulatory surgical centers, health maintenance organizations, comprehensive medical plans, rural health clinics, comprehensive outpatient rehabilitation facilities, outpatient physical therapy/occupational therapy/speech pathology providers and other alternative health care organizations.

• Develops, evaluates, and reviews national Medicare policies and health and safety standards concerning the coverage of medical and other health services including supplies, drugs, rehabilitative services, eyeglasses, laboratory services, x-ray services, ambulance services, second opinions, new and unusual items and services, dialysis and transplant services for Medicare beneficiaries with End-Stage Renal Disease, and those medical items and services which are excluded from coverage.

• Develops, evaluates, and reviews national Medicare policies concerning reasonableness and necessity for services.

• Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of program policies to program contractors and the health care field.

• Identifies, studies, and makes recommendations for modifying Medicare coverage policies to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system.

• Recommends legislative or other remedies to improve coverage, health and safety, and utilization effectiveness.

• Coordinates with other components responsible for the Medicaid program, health and safety standards, program operations, quality control, and other parties and individuals, as appropriate.

(3) Division of Medicare Eligibility Policy (FKA23)

• Develops, interprets, and evaluates policies relating to the conditions under which aged and disabled individuals and End-Stage Renal Disease patients are eligible to have their health care covered under the Medicare program and the rights available to these beneficiaries.

• Prepares policy materials for issuance in program manuals and instructional materials, and for the development of regulations.

• Reviews eligibility aspects of special research and demonstration projects as needed.

• Participates in assessing the needs for legislation and makes recommendations accordingly.

• Develops and interprets policy related to entitlement aspects of part A and part B buy-in.

3. Office of Research and Demonstrations (FKB)

• Provides leadership and executive direction within HCFA for a wide range of health care financing research and demonstration activities.

• Develops, tests and evaluates new payment methods, coverage policies and delivery mechanisms in Medicare, Medicaid and other health care programs.

• Has primary responsibility for managing HCFA's Medicare and Medicaid demonstration waiver authorities including the Federal review, approval, and oversight of State health reform waivers.

• Develops new and innovative ways to reform the quality, efficiency, and cost effectiveness of Federal, State and private health care financing programs.

• Works closely with the Associate Administrator for Policy, other Bureau/Office Directors, and high level staff outside HCFA to insure that the Agency's objectives and long range planning in these areas are accomplished.

• Participates with departmental components in a wide range of

experimental health care delivery projects.

• Performs claims adjudication, payment, and data collection for demonstration projects.

• Undertakes research to facilitate informed program and policy decisions designed to make improvements in the health care delivery system.

a. Office of Demonstrations and Evaluations (FKB1)

• Plans and directs the development, implementation, monitoring and evaluation of demonstration projects designed to test the costs and effectiveness of alternative payment methods, delivery systems, benefit packages, or provider status in the Medicare and Medicaid programs.

• Develops and reviews innovative approaches to the delivery of HCFA health care programs; coordinates with State and local governments, providers, beneficiaries, researchers and program staff in the implementation of projects; and assesses and synthesizes the results of projects to determine their impact on the programs and participants.

• Recommends modifications to existing program policy and legislation.

• Provides technical advice and consultation to other Federal and external organizations on potential experimental projects and publishes results and analyses of experimental findings.

(1) Division of Long-Term Care Experimentation (FKB11)

• Directs and manages the development, implementation, monitoring, and evaluation of demonstrations and experiments which test innovative long-term care financing arrangements, delivery systems, and combinations of services provided to Medicare beneficiaries and Medicaid recipients.

• Conducts demonstrations involving health maintenance organizations, prospective payment of home health agencies, competitive bidding for home health agencies, and capitation experiments.

• Conducts and evaluates demonstrations which test alternative delivery systems and whether the coordination and management of an appropriate mix of health and social services directed at individual client needs will reduce institutionalization and costs without sacrificing quality of care.

• Provides technical support and advice to HCFA and departmental components in regard to long-term care issues.

• Makes available research findings to assist in policy formulation and program initiatives, and publishes analyses of findings resulting from demonstration projects.

(2) Division of Hospital Experimentation (FKB12)

• Directs and manages the development, implementation, monitoring, and evaluation of intramural and extramural hospital financing and payment studies and experiments such as prospective and incentive payment experimentation for hospitals.

• Directs and manages the study, development, testing, and evaluation of hospital alternative payment systems such as refinement in diagnosis-specific payment and capitated payment rates.

• Conducts studies and demonstrations on entire facilities or specific areas such as out-patient departments and hospital capital investment.

• Directs studies and demonstrations which focus on hospital-based and hospital-related activities including physician, home health, skilled nursing, independent laboratories, and other services that result in greater costs effectiveness.

(3) Division of Health Systems and Special Studies (FKB13)

• Directs and manages the development, implementation, monitoring, and evaluation of intramural and extramural financing and payment, organization, and operational studies related to health care delivery systems.

• Directs the development, testing, and evaluation of cost-effective alternatives to existing institutional and ambulatory care patterns.

• Directs the development and evaluation of cross-cutting special studies in such areas as combining long-term care and acute care financing, providing of durable medical equipment, managing end-stage renal disease, and minimizing fraud and abuse.

6. Office of Research (FKB2)

• Directs the development and conduct of research and evaluation studies concerning the impact of Federal financing programs on the health care industry, program beneficiaries, and health care providers, including physicians.

• Directs and designs analytical studies to be undertaken by internal staff and outside contractors/grantees in a wide variety of economic and financial aspects of health care delivery in the United States, including the structure of the drug, medical supplies and health insurance industries and the financing of capital investment.

• Provides technical support to HCFA and departmental components in research design, sampling design, mathematical and statistical analysis, and the application of economic analysis.

• Makes available research findings to assist in the formulation of payment and other policy questions and publishes results and analyses of these findings.

(1) Division of Beneficiary Studies (FKB21)

• Designs and conducts intramural and extramural research studies and surveys to test hypotheses relating to beneficiary utilization and to determine factors underlying patterns and trends in utilization of HCFA programs.

• Develops and conducts evaluations of HCFA programs to enable the Administrator, the Department and Congress to determine how well HCFA policies and actions affect the attainment of HCFA's goals to ensure that quality medical care is delivered to its beneficiary population in the most cost effective manner.

• Assesses the impact of HCFA programs on health care costs, programs expenditures, HCFA beneficiaries, providers of services and the total health care system.

• Designs and directs the development of special data bases and tabulations to support research and policy activities.

• Provides analyses on complex beneficiary data sets for the Medicaid program, health care planners and other users external to HCFA.

(2) Division of Payment and Economic Studies (FKB22)

• Conducts research to determine the influences which current and alternative payment methods have on the economic, financial and behavioral characteristics of providers (e.g., the effects on physician productivity under alternative methods of payment).

• Conducts research directed toward the development and application of new, improved methods, quantitative models and other technical tools for determining the costs and benefits to providers, patients, and financing programs associated with alternative payment schemes.

• Participates in monitoring grants and the grants award process in those areas related to hospital costs and physician payment.

• Provides technical assistance and makes findings from research available

to assist in policy formulation, recommendations and program initiatives.

• Conducts research on factors which affect the demand for and supply of services including supplies of staffpower and the structure and future of the health care delivery systems.

• Undertakes research to further the understanding of the organization of the health industry, including the drug industry, the insurance industry and the equipment producers.

• Assesses the likely implications of trends in these industries as they affect health care coverage either in benefits or beneficiary population.

• Examines the role of capital in the expansion and replacement of plant and equipment in the health care sector and the effects of alternative sources and costs of capital in this regard.

• Provides analysis of payment alternatives for major provider groups and makes recommendations for policy changes in payment activities.

• Assists in the implementation of payment changes.

(3) Division of Program Studies (FKB23)

• Directs the design and development of the Medicare and Medicaid statistical systems to provide ongoing data for the research and evaluation program.

• Consults with and provides technical direction to professional staff and management in the development of research data bases as a by-product of the administrative record system.

• Designs and develops the production of periodic statistical tabulations to assess the characteristics of the beneficiaries and the utilization and costs of program benefits.

• Designs and writes periodic analytical reports to disseminate data and to describe patterns and trends for program evaluation and policy direction.

c. Office of Operations Support (FKB3)

• Directs the research and demonstrations project grant, cooperative agreement and procurement programs.

• Directs and plans ongoing research publications and information resources programs.

• Performs claims adjudication, payment, and data collection for demonstration projects.

• Participates with departmental components in a wide range of experimental health care delivery projects.

• Provides a setting for testing proposed policies and procedures which impact on fiscal intermediary operations and provides the capacity for serving specialized providers.

• Directs the Office of Research & Demonstrations' correspondence, tracking, and control system and responds to ORDs' Freedom of Information requests.

• Coordinates the development of, and responses to, regulations related to ORD.

(1) Division of Research and Demonstrations Systems Support (FKB31)

• Serves as fiscal intermediary for experiments and demonstrations conducted under legislative authorities in the Social Security Act, Public Health Service Act, and related legislation.

• Also serves as fiscal intermediary for former direct-dealing providers who were terminated from the Medicare program and have final cost reports and bills yet to be processed.

• Performs a wide range of duties related to the development, implementation, and ongoing operation of the demonstrations.

• Provides technical advice and assistance prior to the start of the demonstrations and throughout the period of the experiment, to other bureaus and agencies in developing service definitions, payments protocols, contracts, and reporting mechanisms.

• Assists in the design and establishment of information systems for compiling demonstration payment and service data for evaluator use.

• Develops cost reporting and billing systems.

• Acts as liaison between governmental agencies, service contractors, and Medicare carriers and intermediaries participating in demonstration activities.

• Provides systems support to other components of the Office of Research & Demonstration (ORD). Performs other support duties as requested.

• Carries out project management; by directing project teams in the analysis, design, and implementation of management information systems which are ORD program-oriented.

(2) Division of Program Support (FKB32)

• Plans, organizes, and administers the extramural ORD research and demonstration (grants, cooperative agreements, and contracts) program assuring that both technical and administrative requirements are met.

• Plans and directs an ongoing publications dissemination and information resources program.

• Provides assistance in the coordination and production of major written documents, plans, and reports.

4. Office of the Actuary (FKC)

• Conducts and directs the actuarial program for HCFA and directs the development of and methodologies for macroeconomic analysis of health care financing issues.

• Performs actuarial, economic and demographic studies to predict HCFA program expenditures under current law and under proposed modifications to current law.

• Provides program estimates for use in the President's budget and for reports required by Congress.

• Studies questions concerned with financing present and future health programs, evaluates operations of the Federal Hospital Insurance Trust Fund and Supplementary Medical Insurance Trust Fund and performs microanalyses for the purpose of assessing the impact of various health care financing factors upon the costs of Federal programs.

• Develops and conducts studies to estimate and project national and area health expenditures.

• Analyzes trend data sources such as the Consumer Price Index to develop projections of health care costs.

• Analyzes data on physicians' costs and charges to develop payment indices and monitors expansion of service and inflation of costs in the health care sector.

• Publishes cost projections and economic analyses, and provides actuarial, technical advice and consultation to HCFA components, governmental components, Congress and outside organizations.

a. Office of Medicare and Medicaid Cost Estimates (FKC1)

• Prepares cost estimates for the Hospital Insurance (HI) program, the Supplementary Medical Insurance (SMI) program, and the Medicaid program for use in the President's budget.

• Evaluates the operations of the Medicare trust funds particularly relating to outlays and program solvency.

• Develops such variables as the Part B premium rates, the inpatient hospital deductible, the Part A premium rate for voluntary enrolles, and the physicians' economic index applicable to prevailing fees.

• Develops the payment rates for the annual update of the adjusted average per capita cost (AAPCC) ratebook, which is used to pay health maintenance organizations that enter into a risk contract with HCFA to provide benefits to Medicare enrolles.

• Provides cost estimates for the Medicaid program, including the development of cost estimates for

proposed changes in Medicaid or in programs affecting Medicaid, and overall Medicaid program costs for years after the current budget year.

• Serves as technical consultant throughout the Government on Medicare and Medicaid cost estimate issues.

(1) Division of Hospital Insurance (FKC11)

• Prepares cost estimates for the Hospital Insurance (HI) program for use in the President's budget.

• Evaluates operations of the Medicare HI trust fund concerning income and outgo, and the necessary tax rates for program solvency.

• Develops such variables as Part A inpatient hospital deductible and the Part A premium rate for voluntary enrolles.

• Computes estimates of the impact of modifications in program benefits and financing.

• Serves as technical consultant throughout the Government on Medicare HI cost estimate issues.

(2) Division of Supplementary Medical Insurance (FKC12)

• Prepares cost estimates for the Supplementary Medical Insurance (SMI) program for use in the President's budget.

• Evaluates operations of the Medicare SMI trust fund concerning income and outgo, the necessary premium, and actuarial rates for program solvency.

• Develops such variables as the Part B premium rate and the physicians' economic index applicable to prevailing fees.

• Computes estimates of the impact of modifications in program benefits and financing.

• Serves as technical consultant throughout the Government on Medicare SMI cost estimate issues.

(3) Division of Medicaid Cost Estimates (FKC13)

• Provides cost estimates for the Medicaid program, including the development of cost estimates for proposed changes in Medicaid or in programs affecting Medicaid, and overall Medicaid program costs for years after the current budget year.

• Develops forecasts of Medicaid expenditures for incorporation into the HCFA budget development process.

• Provides actuarial consultation to other components of HCFA concerning various proposals and programs affecting the future of the Medicaid program.

• Studies actuarial approaches and techniques, and develops data to assist in the development of program forecasts.

• Serves as technical consultant throughout the Government on Medicaid cost estimate issues.

b. Office of National Health Statistics (FKC2)

• Develops, maintains and makes analytical use of the National Health Accounts (NHA) which include annual estimates and publication of National Health Expenditures (NHE) and periodic estimates and publication of NHE by age groupings or by region.

• Provides technical support for HCFA regulatory processes, especially those related to payment systems or reform.

• Develops, analyzes and publishes, health sector models and associated estimates which allow assessments of historical relationships and projections of current law or evaluation of the impact of proposed changes to the current system.

• Conducts and evaluates surveys containing information relevant to the health care system.

(1) Division of Health Cost Analysis (FKC21)

• Maintains the National Health Accounts. Provides an interdisciplinary approach to data collection, manipulation and analysis, and interpretation of national, and regional health use, costs and payment sources, both public and private.

• Estimates and disseminates annual national health expenditures estimates, periodic estimates of health expenditures by region or State, and produces quarterly "health indicators" measures.

• Provides technical support for HCFA regulatory processes, especially those related to payment systems or reform.

• Provides technical analysis and data for Agency, Department, or Administration initiatives.

• Responds to requests for information and analysis on the health sector and its relationship to the general economy.

(2) Division of Survey Analysis (FKC22)

• Plans and manages the Medicare Current Beneficiary Survey. Provides all the in-house activities needed for survey management, data analysis, and coordination and information dissemination.

• Conducts and evaluates surveys containing information relevant to the health care system.

• Develops, maintains, and analyses the statistical reliability and representation of the Medicare Current Beneficiary Survey. Assures that sample replenishment reflects population and sub-group profiles.

• Develops and provides analysis of the survey methodology and techniques in conjunction with the survey contractor. Establishes an interdisciplinary approach to data collection, manipulation and analysis and interpretation.

• Provides technical analysis and data for Agency, Department, or Administration initiatives.

• Responds to requests for information and analysis on the health sector as it relates to survey data.

D. Associate Administrator for Operations and Resource Management (FL)

• The Associate Administrator for Operations and Resource Management (AAORM) is responsible for the effective direction, coordination and implementation of all aspects of Headquarters and regional program operations and resource management activities.

• The program operational functions include the Medicare financial management systems; the development, negotiation, execution and management of contracts with Medicare contractors; enforcement of health quality and safety standards for providers and suppliers of health care services; the administration of professional review and other medical review programs; the evaluation of contractors and State agencies against performance standards; and the statistically based quality control programs which measure the financial integrity of Medicare.

• The 10 Regional Administrators report to the AAORM through the Deputy Associate Administrator for Operations and Resource Management.

• The resource management responsibilities include developing and implementing HCFA's policies, rules and procedures in the areas of financial, personnel and contracts management, project grant administration, management evaluation and analysis and administrative services; the nationwide operation of a centralized Automated Data Processing (ADP) and telecommunications facility; establishing and maintaining computerized records supporting HCFA programs; developing and coordinating information and statistical plans and policies; and maintaining a statistical data system which will provide program accountability data to the Administrator, HCFA, Congress, and the public.

1. Office of the Attorney Advisor (FL–1)

• The Office of the Attorney Advisor is attached to AAORM for administrative issues but continues to report to the Administrator, HCFA, for substantive issues.

• The Attorney Advisor recommends initiation of "own motion review" of Provider Reimbursement Review Board decisions and of Medicare Geographical Classification Review Board (MGCRB) decisions.

• Evaluates cases under "own motion review" and recommends the disposition of such cases by the Administrator.

• Evaluates and makes recommendations for disposition of MGCRB decisions appealed to the Administrator.

2. Office of Planning and Support (FL–2)

• Develops and manages systems for integrating and focusing all Operations and Resource Management's efforts and capabilities toward achieving initiatives of the HCFA Administrator and the Associate Administrator for Operations and Resource Management (AAORM).

• Establishes and implements the integrated and coordinated AAORM-wide management planning, workplanning, and performance monitoring processes.

• Formulates policies and positions on management programs having AAORM-wide impact, including financial management; budget preparation and execution; resource utilization; and management and organizational analysis. Coordinates the preparation and execution of the AAORM-wide budget. Furnishes financial management advice to AAORM and provides liaison on AAORM fiscal matters with HCFA's Office of Financial and Human Resources.

• Coordinates and monitors the development of AAORM-wide automated data processing plans and information strategies. Designs, develops, and manages Operations and Resource Management-wide information systems.

• Develops and implements AAORM program and administrative delegations of authority.

• Ensures regional office input to the development, review and clearance of program policies, procedures, and instructions.

3. Office of Financial and Human Resources (FLA)

Provides HCFA-wide policy direction, coordination and control in the areas of budget, financial and accounting operations, personnel, management evaluation and analysis, administrative services, project grants, contracting and procurement, audit resolution, and workplanning. Develops and promulgates HCFA policy in these areas and executes these policies throughout HCFA; also assures consistency with departmental policy. Designs systems support for personnel management, financial management, procurement, and facilities management programs within HCFA. The Director serves as the Chief Financial Officer and the Deputy Ethics Counselor for the Agency.

a. Management Planning and Analysis Staff (FLA–1)

• Provides Agency-wide services, policy, direction, and coordination with respect to HCFA's management analysis, planning, and control programs including: workplanning, management analysis, productivity improvement, Privacy Act, internal controls, Office of Inspector General audit resolutions functions, advisory and assistance services certification, contracting of commercial and industrial activities, the administrative issuances system, memoranda of understanding and interagency agreements, delegations of authority, and reduction of paperwork programs.

• Conducts special studies and analyses concerning Agency-wide and cross-cutting OFHR issues and other broad-based administrative issues.

• Advises the OFHR Director in management analysis activities.

• Develops, reviews, analyzes, and maintains existing or proposed Agency-wide delegations of authority.

• Provides services, policy direction, and coordination regarding the HCFA paperwork reduction activities.

b. Office of Financial Management (FLA1)

• Provides financial and accounting services, leadership, and policy direction for HCFA's financial management program. Operates the Agency's accounting and financial reporting activities and processes all obligations and expenditure documents including employee payroll and travel costs.

• Prepares, justifies, and executes the HCFA program and administrative budget. Coordinates with officials at the Department and at the Office of Management and Budget to resolve budget issues. Provides advice and assistance to HCFA components in the development and justification of their annual budgets.

• Manages the HCFA financial and manpower resource allocation activities. Prepares reports and other resource allocation control mechanisms for the Director, OFHR, and other HCFA Senior Staff.

(1) Division of Accounting (FLA11)

• Plans, directs and operates the HCFA accounting, fiscal and financial reporting functions.

• Administers and operates the HCFA accounting system. Establishes policy for the allocation of costs among appropriations. Develops methodologies to determine costs by program, organization and source of funds.

• Performs accounting functions for all appropriations, fund warrants, apportionments, allotments and allowances. Processes all obligations and expenditure documents, including verification of entitlement for all commercial and intergovernmental financial transactions for the compensation and related cost of personnel (payroll), and for employee travel and transportation (domestic and foreign).

• Reviews time and attendance reports prior to transmittal to the Central Payroll Office, resolves employee leave and payroll problems, and conducts a time and attendance report preparation training program.

• Performs accounting for all grants issued to fund programs, and schedules payments by check to those grantees not funded through Departmental Federal Assistance Financing System (DFAFS).

• Reviews and reconciles grantees' advance accounts on the basis of verified expenditures.

• Monitors and reconciles data generated in Agency appropriations as a result of entries made in the Regional Accounting System.

• Provides cashier services, processes collections, and maintains accounts receivable control records.

• Develops accounting policy and procedures for HCFA.

(2) Division of Budget (FLA12)

• Consolidates, prepares, and executes HCFA's budget and operates HCFA's budget system. Serves as the central information point for all budgetary matters including interagency agreements impacting on HCFA's funding and transfer of funds to and from other agencies. Provides advice on the reporting of program and financial data necessary for the presentation and defense of budget requests.

• Provides advice, guidance, and assistance to HCFA components in the development of budget justification materials and analysis including current

services budgeting and other budgetary principles required by the Office of the Secretary, HHS, the Office of Management and Budget, and Congress. Provides technical direction to HCFA regional components on all budgetary matters.

• Develops budget control systems necessary to insure that appropriate measures are in place to prevent violations of the Anti-Deficiency Act.

• Maintains and monitors an allotment and allowance system sufficient to pinpoint responsibility and accountability for Federal funds.

• Provides staff expertise in the review and analysis of budgetary, operational, legislative, or regulatory proposals by HCFA operating components. Reviews these proposals to determine the fiscal impact on, and consistency with, HCFA and departmental management and programmatic objectives.

• Develops financial management policy as it relates to HCFA's programmatic objectives. Certifies the cost impact of all proposed program and demonstration waivers.

• Reviews financial data and makes recommendations as to the effectiveness of the waiver and potential termination or nonrenewal actions.

• Directs the allocation of HCFA's staffing resources among HCFA components, issues employment ceilings, and directs HCFA's manpower management system. Assures the validity of cost allocation data and monitors adherence to financial management policies among HCFA components.

c. Office of Human Resources (FLA2)

• Provides services, leadership, direction, and control with respect to personnel and related services within HCFA.

• Serves as the principle advisor to the Director of the Office of Financial and Human Resources on the operation of HCFA's personnel system, including recruitment and placement, position classification, personnel management evaluation, performance appraisal, employee development and training, employee relations, ethics functions, and labor relations.

• Administers the Agency special emphasis placement and executive personnel programs.

• Serves in a leadership role in providing authoritative advice and assistance to management officials in carrying out their position management responsibilities.

• Provides for an employee counseling service for employees in HCFA Central Office.

• Provides services, policy direction, and coordination with respect to the organizational analysis activities.

• Provides direct service and establishes policy for other HCFA components with respect to health and activities related to health matters.

(1) Division of Information and Organizational Management (FLA21)

• Coordinates all personnel information management activities for the Office of Human Resources. Administers and operates the Department's automated personnel/payroll system, Improved Management of Personnel Administration through Computer Technology (IMPACT), as it applies to HCFA components.

• Develops human resource functional requirements for and access to HCFA's Comprehensive Personnel System. Provides systems support and technical assistance on all other automated data processing and office automation activities that relate to human resources functions.

• Plans, directs, and implements a comprehensive HCFA position classification and position management program for all positions GS–15 and below in the Central and Regional Offices. Inputs data into the automated personnel system and prepares statistical information and reports relating to the position management and classification program.

• Conducts the HCFA-wide organizational analysis program. Studies HCFA's organizational and functional arrangements and develops plans for assimilating new or modified functions into the HCFA organization.

• Conducts in-depth analyses of new legislation affecting HCFA for the purposes of determining the affect on HCFA's organizational structure. Develops recommendations for organizational changes, and submits proposals to upper management's consideration.

(2) Division of Performance Management and Development (FLA22)

• Provides leadership, direction, and control with respect to HCFA's employee training and career development activities, performance management, and awards programs in both headquarters and the regions.

• Provides management advisory service concerning the regulatory and procedural aspects of implementing the assigned programs.

• Serves as an Agency representative in dealing with employee/management/union organizations, the Department of Health and Human Services, and other Federal agencies on the issues concerning the Division's programs.

• Plans, coordinates, and executes a wide range of major studies and projects involving performance management, employee development, and awards issues of Agency-wide magnitude.

(3) Division of Staffing and Employee Services (FLA23)

• Provides service to all central office HCFA components in the areas of recruitment, in-service staffing, selective placement, and pre-employment investigations, and personnel security clearances for all types of appointments and all occupational classes and levels of work (except Senior Executive Service, Schedule C, and related appointments).

• Provides advice, guidance, and consultation to HCFA supervisory and management officials on such issues as optimal staffing mixes, recruitment sources, and qualification factors.

• Interprets regulations, guides, directives, and bulletins related to staffing and personnel services.

• Establishes and maintains the employment data base for routine and special reports and statistical studies related to the employee population.

• Plans and controls the central system for all personnel and payroll employee transaction processes, (except U.S. Savings Bonds), serves as the official custodian for all personnel folder clearances, confidential reports, employment agreements and other related areas.

• Plans, administers, and evaluates HCFA-wide employee benefits, health, and wellness program activities.

• Provides general employee counseling on such matters as retirement, life insurance, health plans, workers' compensation claims, and unemployment compensation claims.

• Serves as the central HCFA reference point for inquiries, guidance, and interpretation on employee benefits, health, and wellness matters.

• Processes insurance claims and annuity applications for retirees and survivors of deceased employees. Processes the full range of employee benefit and payroll transaction documents, with the exception of U.S. Savings Bonds.

• Directs programs for occupational health services, employee health enhancement, physical fitness, and blood assurance programs. Plans and administers the Agency's contract for the Employee Assistance Program.

• Directs and administers HCFA's child care initiative. Directs the Agency's Voluntary Leave Transfer and

Video Display Terminal Eye Care Programs.

• Under direction of the HCFA Deputy Ethics Officer, plans and administers the entire ethics program for both central and regional offices. Reviews financial disclosure reports prior to departmental submittal and coordinates outside activity requests and approvals.

• Directs and coordinates all Agency medical determinations related to employability issues, such as fitness for duty and reasonable accommodation.

d. Office of Acquisitions and Grants (FLA3)

• Provides procurement services for other HCFA components including project grant, contract, and small purchase solicitation, award, and administration; cost and advisory function; and procurement-related training. Monitors the annual HCFA contract plan and prepares and submits required reports.

• Solicits, negotiates, analyzes, and coordinates proposal evaluation and prepares and awards contracts. Provides HCFA cost advisory and audit services on pre-award and post-award grant and procurement actions to ensure conformance to legal and regulatory requirements.

• Performs all HCFA cost/price analysis and evaluation required for the review, negotiation, award administration, and close-out of grants and contracts. Provides field audit capability during the pre-award and close-out phases of contract and grant activities.

• Coordinates and acts as liaison with the Defense Contract Audit Agency, Department of Health and Human Services (HHS) Audit Agency, Office of the General Counsel, and other HHS agencies to obtain required audit support and resolution.

• Coordinates and/or conducts training for contracts and grant personnel and project officers in HCFA components. Provides services, policy direction, and coordination with respect to HCFA's advisory and assistance services contracting.

(1) Division of Health Standards Contracts (FLA31)

• Provides acquisition services in support of HCFA's Peer Review Organization (PRO) and End-Stage Renal Disease (ESRD) contracts, including guidance and assistance to the Health Standards and Quality Bureau.

• Solicits, negotiates, analyzes, and coordinates proposal evaluations and prepares awards documents.

• Conducts post-award coordination, administration (including progress report and voucher monitoring), modifications, and all contract closeout functions.

• Provides guidance and assistance to incumbent and prospective contractors.

• Assists in the direction of related procurement preference programs wherever applicable.

• Participates in monitoring PRO/ESRD annual contract plans and prepares and submits required reports.

• As required, on specific PRO/ESRD contract actions, serves as liaison and provides information and documentation to the Department, Congress, and other Government agencies.

• Develops PRO/ESRD specific policies and procedures and provides guidance to PRO/ESRD program offices.

(2) Division of Contracts and Grants (FLA32)

• Provides contracting support, guidance, and assistance to all HCFA components and prospective contractors. Issues policy and procedural guidance to program staff in contracts and grants areas.

• Assists in the direction of related small, disadvantaged, 8(a), (minority contracts), labor surplus area, and women-owned business contracting efforts. Provides HCFA project (discretionary) grants and cooperative agreements services.

• Solicits, analyzes, and coordinates proposal evaluations and negotiates, prepares, and awards contracts. Directs the post-award coordination, administration and modification, and participates in the close-out of contracts.

• Serves as the HCFA liaison with the Department's Office of Procurement, Assistance and Logistics, the Office of the General Counsel, other Department of Health and Human Services' components, Congress, other Government agencies, and private parties in contract, grant, and cooperative agreement matters.

• Monitors the annual contract plans and assists in the preparation and submittal of required reports. Provides HCFA project (discretionary) grants and cooperative agreements services.

• Receives applications, operates the application referral system, reviews the system for compliance with law, policies, and cost principles, performs site visits, obtains clearances, negotiates and issues grant awards, maintains funds control records and master grant files.

• Provides HCFA small purchasing services, guidance, and assistance to all HCFA components.

e. Office of Administrative Services (FLA4)

• Provides services, policy direction, coordination, and broad operational control of HCFA's voice telecommunication services, administrative services, single-site planning, printing and distribution services, conference management, records and mail services, facilities management, space management, property management, real property management, and related support services.

• Conducts extensive analyses in the areas of facilities management, property management, real property management, environmental safety and security, and space planning for HCFA's single site.

• Determines the overall impact, budget and administrative, of changes in the areas of facilities management, property management, real property management, environmental safety and security, and space planning.

• Coordinates and handles graphics services for the Agency.

(1) Division of Facilities Management (FLA41)

• Provides direct services and establishes policy for other HCFA components with respect to facilities management, real property management, space management, supplies, space acquisition, management and maintenance, conference facilities, and parking.

• Develops comprehensive budget estimates for and management of centralized facilities management funds.

• Conducts extensive analyses in the areas of facilities management, space management, real property management, property management, environmental safety and security, printing and distribution management for HCFA's single site.

• Analyzes and determines the budget and administrative impact of changes in the areas of facilities management, space management, real property management, property management, environmental safety and security, printing and distribution management.

• Coordinates all Information Resources Center activities.

(2) Division of Safety and Property Management (FLA42)

• Provides direct service and establishes/implements policies and procedures for the HCFA personal property and supply management programs.

• Maintains and operates the warehouse and the computerized

property management and accountability system.

• Provides direct service and establishes/implements policies and procedures for environmental safety nationwide, emergency preparedness, civil defense, tort claims, and accident and fire prevention.

• Conducts special studies and analyses in the areas of personal property and supply management, and environmental safety and security.

(3) Division of Telecommunications and Graphics Services (FLA43)

• Manages all activities associated with the operation of HCFA's nationwide voice telecommunications system.

• Conducts extensive research, studies, and analyses associated with voice telecommunications activities in HCFA.

• Develops policies and procedures for nationwide implementation and operation of various voice telecommunications systems in HCFA.

• Develops policies, standards, and procedures for HCFA's graphics management program.

• Provides graphics services to the Agency.

• Serves as the Agency's liaison on all matters concerning graphics policy and the acquisition of graphics supplies and services.

(4) Division of Printing and Distribution Services (FLA44)

• Provides printing, reprographic, distribution, and forms management services for HCFA.

• Conducts research, planning, and analyses to determine Agency needs for photocopying equipment and printing services.

• Develops policies, standards, and procedures for HCFA's printing, reprographics, forms, and distribution programs.

• Obtains printing, binding, and distribution services from private vendors under contracts negotiated and entered into by the Government Printing Office (GPO).

• Manages and maintains centralized program (except for research and demonstrations) for the distribution, printing, and reproduction of forms and other printed materials.

• Manages HCFA's acquisition, leasing and utilization of copying equipment.

• Provides HCFA liaison on all forms, distribution, and printing matters with the HHS, the Government Printing Office and the Congressional Joint Committee on Printing.

4. Bureau of Program Operations (FLB)

• Provides direction and technical guidance for the nationwide administration of the Medicare health care financing programs.

• Develops, negotiates, executes, and manages contracts with Medicare contractors.

• Manages the Medicare financial management system and national budgets for Medicare contractors.

• Establishes national policies and procedures for the procurement of claims processing and related services from the private sector.

• Defines the relative responsibilities of all parties in the health care financing operations and designs the operational systems which link these parties.

• Directs the establishment of standards of performance for contractors. Compiles operational and performance data for recurring and special reports to reflect status and trends in program operations effectiveness.

• Prepares recommendations regarding terminations, awards, penalties, non-renewals, or other appropriate contract actions.

• Establishes national policy and procedures for the recovery of overpayments.

• Directs the processing of Part A beneficiary appeals and issues instructions and guidance for resolving beneficiary overpayments.

• Following coordination with pertinent HCFA components, notifies carriers and fiscal intermediaries of findings resulting from quality control programs.

• Makes recommendations to the Associate Administrator for Operations and Resource Management regarding financial penalties authorized and determined appropriate under regulations.

• Assists Medicare contractors in improving the management of Federally required quality control programs.

• Identifies significant trends and priority problems through comprehensive analyses of program operations and performance and evaluates findings surfaced through various assessment programs.

• Develops and conducts comprehensive analyses and studies of selected areas of policy and operations to evaluate the appropriateness, cost effectiveness, or other impact resulting from the implementation of law, regulations, policies, or operational procedures and systems.

• Develops recommendations for specific policy or operational improvements based on assessment findings.

• Coordinates, monitors, and evaluates all corrective action initiatives resulting from program assessment findings.

• Develops program-wide policies, regulations, procedures, guidelines, and studies dealing with program oversight and improvement.

• Coordinates the preparation of manuals and other policy issuances required to meet the instructional and informational needs of providers, contractors, State Agencies, Regional Offices, Peer Review Organizations, the Social Security Administration, and other audiences directly involved in the administration of HCFA programs.

a. Executive Secretariat (FLB–1)

• Coordinates, for the Bureau Director, matters concerning bureau policy in the administration of the Medicare program.

• Directs studies to identify problems in such areas as inconsistencies of interpretation and application of Medicare legislation, regulations and policy. Recommends solutions to such problems and initiates necessary corrective action.

• Directs the management of the bureau's assignment control system including the receipt, review, coordination, and control of all correspondence, assignments, written congressional and public inquiries, and the preparation of responsive replies for the signature of the Secretary of Health and Human Services, Administrator of HCFA, the Bureau Director, and other high level management officials.

• Serves as the primary focal point for the bureau on operational as well as administrative inquiries, including telephone inquiries from Presidential Staffs, congressional offices, other Government agencies, private institutions, and individuals seeking information concerning the various regulations and policies of the bureau.

• Establishes and maintains contact with HCFA's Executive Secretariat in the Office of Executive Operations, the Congressional Liaison Office, the Office of the General Counsel, and with other HCFA components and Federal departments and agencies, to obtain or provide information and coordinate correspondence replies.

• Provides bureau-wide guidance and technical assistance on related procedures and standards for content of memoranda and correspondence.

b. Issuances Staff (FLB–3)

• The Director, Issuances Staff assures the exchange of important information among HCFA components and the Office of the Secretary.

• Prepares or coordinates the preparation of written documents in order to assist the Director, Bureau of Program Operations in resolving HCFA program and administrative policy issues.

• Coordinates the preparation of manuals and other policy issuances required to meet the instructional and informational needs of providers, contractors, State agencies, regional offices, Peer Review Organizations, the Social Security Administration, and other audiences directly involved in the administration of HCFA programs.

• Manages the HCFA system for developing regulations, setting regulation priorities, and corresponding work agendas.

• Serves as the HCFA **Federal Register** contact point.

c. Office of Contracting and Financial Management (FLB1)

• Administers contracts with private organizations to perform various aspects of Medicare program operations falling under the bureau's area of responsibility.

• Develops, negotiates, maintains, and modifies primary contracts and agreements with intermediaries, carrier, and other organizations authorized under Title XVIII of the Social Security Act.

• Provides direction and guidance to Central Office and Regional Office staff on Medicare intermediary and carrier contracts and contracting activities under the bureau's area of responsibility.

• Establishes policies and procedures to be used by all Medicare intermediary and carrier contractors in the procurement of equipment, facilities management, software, and other services.

• Establishes the policies and procedure by which Medicare intermediary and carrier contractors and regional offices prepare and submit periodic budget estimates.

• In consultation with other HCFA and bureau components, develops and negotiates the national budget for Medicare contractors, including workload estimates.

• Controls and manages the Medicare cash flow and related banking activities.

• Reviews periodic contractor expenditure reports to evaluate Medicare intermediary and carrier budget execution and determines the allowability of costs.

• Prepares analysis of Medicare intermediary and carrier expenditure trends and patterns.

• Reviews regional office and contractor performance in determining the correct amount of provider, physician, and supplier overpayments, and assists contractors in negotiations related to the acceptability of techniques for determining the amount of an overpayment and the methods of recovery.

• Prepares cases when compromises are not appropriate and overpayments are collectable and assists the HCFA Claims Collection Officer in preparing such cases for disposition.

• Prepares manual instructions concerning the procedures for the recovery of provider, physician and supplier overpayments.

• Designs, implements, and maintains a Medicare overpayment tracking system.

• Plans, directs, and coordinates operational policy and procedures for the establishment and maintenance of premium billing and collection.

• Develops plans for possible transitions between new and current contractors, and manages transition activities in coordination with the regional offices.

• Plans, develops, and directs Medicare intermediary and carrier operating contracting experiments.

(1) Division of Acquisitions and Contracts (FLB11)

• Develops, maintains, negotiates, and modifies all agreements with intermediaries, and contracts with carriers as authorized under Title XVIII of the Social Security Act.

• Develops procedures for the award, non-renewal, termination, extension, and amendment of Medicare contracts.

• Represents the bureau in processing contractor claims resulting from changes in contract requirements or other disputes involving the selection or non-selection of contractors.

• Directs contract-related surveys requested by both the Executive and Legislative Branches of the Federal Government.

• Directs and guides Central Office and Regional Office staff on contracts and contract procurement and maintains an oversight role on regional activity in the areas of Title XVIII contracting.

• Coordinates Fiscal Intermediary Group and Carrier Representative Group activities.

• Serves as a HCFA resource in regard to technical Medicare contracting issues concerning matters.

• Reviews the Bureau's contractors' requests for change orders and adjustments in price, determines where liquidated damages should be assessed against contractor and takes proper action.

• Develops and directs policy regarding regional intermediary concept such as for Home Health Agencies.

• Develops necessary regulations and other issuances dealing with Medicare contract administration.

• Provides liaison with contractor management.

• Provides leadership in litigation activities related to contract disputes.

(2) Division of Financial Management (FLB12)

• Provides leadership in developing, implementing, and evaluating policies and procedures for the Medicare contractor budget process.

• Formulates and approves the national budget for Medicare contractor administrative costs.

• Develops, implements, and monitors cash management letter-of-credit procedures for contractors and servicing banks.

• Develops, implements, and monitors fund control for the Medicare contractor administrative costs.

• Sets requirements and procedures for contractors and regional offices to prepare and submit periodic budget estimates and reports.

• Participates in negotiations and approval of all related price adjustments and reviews periodic contractor expenditure reports to evaluate budget execution and determination of the allowability of costs.

• Designs, maintains, and as necessary, prepares specifications to revise the Medicare financial administration and benefit payment systems.

• Analyzes contractor administrative cost data and trends.

• Directs and prepares instructions to guide regional office performance to assure consistency in implementation of financial policy.

(3) Division of Contractor Planning and Management (FLB13)

• Plans, develops, and directs contracting experiments that involve HCFA contractors, agencies, and separate contracts with commercial organizations.

• Develops plans for possible transitions between new and current contractors and provides oversight of these transition activities in coordination with the regional offices.

• Assists, manages, monitors, and provides oversight of contractor transition activities in coordination with the regional offices, and carries out plans for transition between new and old contractors.

• Evaluates implementation proposals associated with Medicare

electronic data processing (EDP) facility management procurement, software acquisitions, and major systems changes and testing.

• Provides technical assistance to regional offices with respect to Medicare EDP procurements and reviews, proposed hardware and software modifications, and equipment upgrades.

• Incorporates current procurement and operating policy as well as lessons learned from prior transitions into the implementation sections of Request for Proposals and subsequent transitions.

• Evaluates Medicare claims processing contracting arrangements, formulates plans for improvement, and carries out these improvement plans.

(4) Division of Account Management and Collection (FLB14)

• Directs the nationwide administration of the institutional and physician and supplier recovery activity.

• Develops regulations, policies, procedures, guidelines, and recommendations for regional offices and HCFA contractors to assure timely and accurate provider overpayment identification, interest assessment, collection, and reduction of incidence of overpayment.

• Assures that the accounting practices, recovery procedures, and collection activities of regional offices and contractors properly and sufficiently implement the providers overpayment recovery policies, procedures, and regulations of HCFA, the Department of Health and Human Services, the General Accounting Office, the Department of Justice, and all applicable Federal statutes.

• Plans, develops, and issues operational policy, specifications, requirements, procedures, and instructional material to administer Third Party agreements for enrollment and premium payments for States, Office of Personnel Management (OPM), third party groups, professional organizations, carriers and intermediaries, and Social Security Administration, the Medicare Lock-Box premium collection for Medicare beneficiaries, and the direct billed beneficiaries.

• Assists in the negotiation and modification of agreements for third party and direct billing premium collection operations. Manages lock-box contracts for collection of State buy-in and third party group premiums, and for collection of direct billed beneficiary premiums.

• Resolves premium collection problems for States, OPM, third party groups and beneficiaries.

• Develops procedures and provides training and assistance to regional offices for the review and evaluation of the institutional provider, physician, supplier, and beneficiary overpayment recovery, and third party systems.

• Serves as the Agency systems manager for premium collection requirements.

d. Office of Medicare Benefits Administration (FLB2)

• Oversees the operations and administration of various Medicare program areas including Medigap, Medicare Secondary Payer (MSP), audit and payment management, benefit integrity, entitlement, medical review, and utilization analysis.

• Develops, implements, and administers MSP and Medigap operational policy. Analyzes and evaluates specific operating policy and procedures in the MSP and Medigap programs and initiates proposals to better achieve program objectives.

• Reviews, analyzes, and prepares recommendations regarding approval or disapproval of State regulatory programs for Medicare supplemental health insurance to ensure compliance with the Social Security Act. Conducts the mandatory Certification Program in those States not having an approved regulatory program.

• Develops, implements, and monitors the Medicare SELECT direct contracting option for medical necessity determinations.

• Reviews State regulatory programs for Medicare supplemental insurance and Medicare supplemental health insurance policies for compliance with the Social Security Act.

• Develops national MSP budget and annual savings goals, enforces MSP provisions and supports MSP litigation and post pay activities.

• Plans and develops methods to improve and enhance the audit and payment management functions and makes recommendations for improvements in the management of the audit program. Analyzes regulations, executive orders, policies, and legislative proposals and assesses their financial impact on the audit budget.

• Develops, implements, and maintains programs and systems to ensure that Medicare benefits are paid within the meaning of applicable law, regulations, and program policy and to ensure that internal or external allegations of fraudulent or abusive behavior are promptly acknowledged, developed, and disposed of including referral to the Office of Inspector General.

• Directs the development and issuance of specifications, requirements, procedures, forms, and instructional material to implement and maintain operational systems for Part A and Part B medical review and utilization analysis.

• Develops the national budget for intermediary and carrier medical review activities, linking programmatic expectations with funding requirements and available resources.

• Implements new legislation impacting on the medical review processes and/or Medicare covered services.

• Serves as the Agency systems manager for entitlement requirements.

(1) Division of Utilization Analysis (FLB21)

• Directs the development of analytical studies, tools, and methodologies, for assessing health care utilization, beneficiary episodes of care, quality of care, patterns, and trends to improve the effectiveness of the medical review program.

• Directs the development and issuance of specifications, requirements, procedures, forms, and instructional material to implement and maintain operational systems for Part A and Part B medical review and utilization analysis.

• Designs edits and specifications for contractor medical review screens, systems and reports, including nationally mandated screens and reports, and conducts ongoing analysis of the effectiveness of national requirements.

• Utilizes the National Claims History Database to analyze and compare utilization patterns and to assess national trends in the provision of care to the Medicare population.

• Develops the national budget for intermediary and carrier medical review activities linking programmatic expectations with funding requirements.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on the Medical Review and Utilization Review (MR/UR) program. Implements new legislation affecting MR/UR and develops program safeguards for new and revised procedures.

• Provides contractors with analytical techniques for analysis of provider specific data, development of cost effective review methodologies, and clarification of Medicare policies. Monitors development and use of contractor MR/UR policies and implementation of MR directives and provides training and technical support to contractors.

• Directs contractor workgroups to develop, enhance, and maintain the most effective MR/UR program.
• Assists with the development of contractor performance standards to assess the effectiveness of the contractor's MR/UR program.
• Provides technical support and assistance to the bureau, other HCFA and non-HCFA components on contractor MR/UR programs.
• Serves as liaison with representatives of the health care industry on MR/UR issues to obtain expert input into policy development, to promote understanding of the MR/UR program, and to ensure that HCFA's MR/UR processes are compatible with health practices.

(2) Division of Entitlement and Benefit Coordination (FLB22)

• Develops, implements, and administers Medicare Secondary Payer (MSP) operational policy for coordinating Medicare benefits with other health insurance benefits. Analyzes and evaluates specific operating policy and procedural problems in the benefit coordination program and initiates proposals to better achieve program objectives.
• Plans and directs operational liaison and outreach activities, including public relations, publications, conferences, and presentations.
• Develops national MSP budget and annual performance objectives and priorities. Analyzes contractors' MSP expenditures and goal performance.
• Participates in the design, performance, and analysis of evaluations of contractor MSP performance assessment.
• Enforces MSP provisions and supports MSP litigation and post pay activities.
• Monitors regional office and contractor operations on negotiation, waiver, and compromise of liability settlements where Medicare has a claim for recovery of prior conditional payments.
• Designs and conducts special projects to improve national coordination of Medicare benefits with other health coverage.
• Develops and monitors the ongoing operations of a data match of the Internal Revenue Service and Social Security Administration data to identify MSP cases. Coordinates MSP operations with HCFA and non-HCFA governmental components and with other payers and their representative organizations, particularly State insurance departments and the National Association of Insurance Commissioners and like organizations.
• Develops operational policy and instructional material for the establishment and maintenance of Medicare entitlement.
• Conducts studies and demonstrations to improve the systems, methods, and procedures for establishing and maintaining entitlement information. Develops and recommends entitlement related legislative and policy proposals.
• Develops procedures for issuing and reissuing health insurance cards, monitoring records maintenance and correction, and processing voluntary and other identification problems from the Medicare claim process.
• Serves as the Agency systems manager for entitlement requirements.

(3) Division of Audit and Payment Management (FLB23)

• Analyzes regulations, executive orders, policies, and legislative proposals and assesses their financial impact on the audit budget. Develops the plan, necessary audit programs, guidelines and instructions for the implementation of current and future legislation, regulations, and court orders.
• Plans and develops methods to improve and enhance the audit function and makes recommendations for improvements in management of the audit program, including the identification and implementation of automated data processing programs in the desk review, audit, and settlement activities.
• Develops rationale for the audit and payment management portion of the current and future national contractor budgets. Establishes and monitors return ratio requirements for provider audits to assure maximum return on investment expenditures.
• Reviews and analyzes Contractor Auditing and Settlement Reports to determine the effectiveness of contractor audit and payment performance and compliance with established audit guidelines, priorities, funding limitations, and workload objectives.
• Researches and responds to all Office of Inspector General and General Accounting Office payment and financial audit reports and studies. Prepares position papers and reports offering alternative methods of resolution.

(4) Division of Medigap Operations (FLB24)

• Develops, implements, and administers Medigap operational policy.
• Analyzes State laws and regulations for Medicare supplemental health insurance to ensure compliance with the Social Security Act.
• Conducts the mandatory Certification Program in those States not having an approved regulatory program. Reviews and analyzes Medicare supplemental health insurance policies for compliance with the Social Security Act and recommends that certification be granted or denied.
• Develops, implements, and monitors the Medicare SELECT direct contracting option for medical necessity determinations.
• Conducts periodic operational reviews of State regulatory programs for continued operational compliance the Social Security Act. Monitors States' application and enforcement of standards; i.e., simplification standards, anti-duplication standards, loss ratios and premium standards, pre-existing conditions and medical underwriting limitation standards.
• Provides liaison with governmental entities (both Federal and State) regulating other payers for health care and their representative organizations, particularly State insurance departments and the National Association of Insurance Commissioners and like organizations. Serves as liaison with internal HCFA and departmental components, the General Accounting Office, and the Office of Inspector General on Medigap issues.
• Provides service, advice, guidance, and consultation directly, and through joint efforts with other HCFA components and Medicare contractors, to States, other Government entities, employers, insurers, providers, physicians, beneficiaries, and their representative organizations, to insure the Medigap program is understood.
• Prepares and assists in preparation of various reports to Congress on Medigap related issues.
• Coordinates the Medigap Federal penalty provisions referenced in the Social Security Act.

e. Office of Program Operations Procedures (FLB3)

• Develops and administers the specification, requirements, methods, systems, standards, procedures, and budget guidelines to implement and maintain the operational systems for the Medicare program including detailed definitions of the relative responsibilities of providers, contractors, HCFA, and the beneficiaries of the Medicare program.
• Reviews and evaluates systems, systems plans and proposals, and Automated Data Processing acquisition and modifications involving carriers and intermediaries.

• Develops and promulgates specification and requirements for contractor processing of beneficiary and provider appeals.

• Develops specifications and recommends budget necessary for more effective methods to process Medicare claims.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on claims processing and appeals activities including the development of cost estimates for the implementation of such proposals.

• Develops and maintains forms and electronic formats used by intermediaries and carriers to process claims.

• Develops, maintains, and disperses a quarterly task management plan which reviews contractor budget workload and initiatives.

(1) Division of Claims Processing Procedures (FLB31)

• Directs the development and issuance of specifications, requirements, procedures, and instructional material to implement and maintain operational systems for processing Medicare claims and defining their applications to Medicare carriers, Medicare intermediaries, providers, physicians, other independent medical professionals, suppliers of service, beneficiaries, and HCFA.

• Maintains the intermediary and carrier instructional manuals including the Common Working File (CWF) interface instructions for processing claims from Medicare providers, physicians, other independent medical professionals, and suppliers of services.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on Medicare claims processing operations.

• Implements new legislation impacting on Medicare claims processing operations.

• Develops the discharge data set specifying required information to be provided by intermediaries to Peer Review Organizations (PRO) in support of PRO medical review activities.

• Maintains liaison with representatives of the health care industry to ensure the HCFA processes are compatible with the industry's administration practices.

• Develops bill processing edits for intermediaries, carriers, and the CWF processing of Medicare claims.

• Develops instructions for and maintains and monitors supplier numbering clearinghouse.

(2) Division of Claims Processing Requirements (FLB32)

• Prepares general systems plans and develops requirements for the detailed design and programming for claims processing modules to be used by Medicare contractors.

• Plans, conducts, and evaluates studies aimed at long-range improvements in electronic claims processing systems, methods, and procedures as they relate to the administration of the Medicare program and integration of operations within the framework of HCFA policies, goals, and objectives to promote efficiency and cost effectiveness.

• Develops programs to promote acceptance and usage of electronic claims processing, electronic funds transfer, and electronic remittance advice.

• Develops cost estimates for proposed legislation and regulations.

• Participates in the review and evaluation of systems-related applications project.

• Participates in the government-wide national disaster planning initiative and review of Medicare contractors' systems security.

• Develops and maintains billing forms and formats used by intermediaries and carriers.

• Serves as HCFA focal point with American National Standards Institute on electronic claims processing formats used by the health insurance industry.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on claims processing activities, including the development of cost estimates for the implementation of such proposals.

• Develops budget guidelines and cost estimates for Medicare claims processing activities.

• Develops, maintains, and disperses a quarterly workload plan as it relates to budget initiatives.

(3) Division of Appeals and Communications (FLB33)

• Plans, develops, and issues operating policy, specifications, procedural requirements, and other materials to implement, maintain, or revise the appeals process for Part A and B claims.

• Develops, monitors, and approves formats and messages for the Medicare Explanation of Medicare Benefits.

• Plans, conducts, and evaluates studies to streamline and make more effective the appeals process and to develop both long-range and short-range improvements in systems, methods, and procedures relating to beneficiary and provider communications.

• Initiates improvements and develops procedures for providing beneficiary and provider services for telephone, written, and personal contacts by Medicare contractors and other field facilities.

• Develops standard language for use by Medicare contractors in communicating with beneficiaries and providers.

• Reviews proposed policy, payment, and legislative proposals to evaluate the operational impact on the appeals process for Part A and Part B claims.

• Identifies management's information needs for data relating to Administrative Law Judge's (ALJ) decisions concerning both Part A and B claims and initiates appropriate actions for establishing or modifying the reporting and information systems to satisfy these needs (i.e., ALJ database, reversal reports, and decision reports).

• Develops procedures for conforming with the Privacy Act including maintaining a system of records for the **Federal Register**, clearing requests for information, and developing agreements with the States on releasing information.

(4) Division of Operational Systems Development (FLB34)

• Designs, develops, and manages, at the national level, activities required to enhance systems for improvement of the Medicare eligibility systems, Part A and Part B claims processing systems, and the Medicare program database.

• Prepares systems plans and develops policies for the design, implementation, and evaluation of shared systems and standardized modules for use by Medicare carriers, intermediaries, and hosts.

• Directs the design, development testing, and implementation of innovative system enhancements to the Common Working File (CWF) shared claims processing systems resulting in improvements to the national Medicare claims payment process.

• Provides national analysis and planning for changes to CWF and standard systems as required by legislative initiatives.

• Evaluates HCFA-wide systems plans for their impact on functions related to Part A and Part B of Medicare.

• Integrates systems changes within the framework of HCFA policies, goals, and objectives in an efficient and cost effective manner and coordinates system changes with other HCFA components, the Social Security Administration, HCFA regional offices, provider groups, and other affected organizations.

f. Office of Quality and Evaluation (FLB4)

• Designs and implements evaluation programs to assess and improve the overall effectiveness and quality of Medicare contractor operations.

• Designs, develops, implements, monitors and, as necessary, revises performance standards for measuring and evaluating all aspects of Medicare contractor operations.

• Develops and applies policies, standards, and guidelines for quality assurance programs to provide uniform and comparative evaluation of contractor performance in areas of program eligibility and payment, bill and claim payment, audit, beneficiary services, and other contractor activities.

• Designs and monitors systems of internal controls and standards for Medicare contractors to ensure the Medicare program is adequately safeguarded against inappropriate expenditures.

• Develops, conducts, and/or directs Central Office and/or regional office participation in quality assurance reviews and studies of selected areas of contractor operations and evaluates policy and operations to improve program operations and implement policy and legislative directives.

• Designs, establishes, and maintains reporting and information management systems for Medicare contractor program operations and administrative data.

• Provides data and systems analysis support for the production and interpretation of program operations and performance indicators.

• Serves as the focal point for Medicare intermediary and carrier contractor performance for the contracting officer.

(1) Division of Quality Programs (FLB41)

• Develops, implements, directs, and operates national quality assurance programs to determine the effectiveness and quality of Medicare contractors' operations, including claims payment, and payments to institutional providers.

• Evaluates the quality of contractor audits/settlements of cost-based, prospective, and alternate payment systems, and oversees chain providers' home office costs.

• Assures uniform national assessment of Medicare contractors' compliance with claims payment performance standards and program requirements.

• Develops and publishes guides and requirements for the direction on Medicare payment evaluation and quality assurance programs.

• Establishes, develops, implements, and operates a comprehensive system for analyzing quality assurance program results and for evaluating and assuring adherence to requirements for operating Medicare claims payment quality assurance and evaluation programs.

• Reviews established Medicare payment quality assurance and evaluation programs and implements appropriate enhancements reflecting operations, legislative, and administrative changes.

• Identifies inaccurate or inconsistent performance, and reviews and approves corrective action planning and monitoring.

(2) Division of Standards (FLB42)

• Develops, operates, and manages a program of qualitative and quantitative standards and requirements for Medicare contractors, including the development and implementation of contractor performance evaluation programs for intermediaries, carriers, Regional Home Health Intermediaries, and Common Working File Host.

• Quantifies and describes acceptable levels of performance by which Medicare contractors are evaluated.

• Negotiates with regional offices, contractors, providers, other HCFA components, and national public and private professional organizations to arrive at proposed or revised performance standards or requirements prior to their formal issuance.

• Assures that new program and performance standards and subsequent modifications are incorporated into the performance evaluation programs and related reports.

• Reviews program instructions and makes recommendations to issuing components to ensure guidelines contain effective safeguards and standards for ensuring accurate implementation.

• Analyzes all quantitative and qualitative standards and program requirements to assess their operational validity and makes recommendations for appropriate changes.

• Serves as the focal point for Medicare intermediary and carrier contractor performance for the contracting officer.

• Designs, develops, implements, and operates a national system for collecting and reporting results of performance as measured against established standards.

• Initiates, interprets, evaluates, and maintains data on each Medicare contractor in terms of compliance with performance requirements.

• Designs, develops, and conducts special projects and/or coordinates with other HCFA components on the conduct of special projects which have an impact on contractor performance evaluation.

(3) Division of Program Evaluation (FLB43)

• Conducts in-depth evaluations of selected programmatic areas to determine whether established policy and operational criteria are effectively and accurately met.

• Conducts special surveys in critical areas, identifying problems and barriers to problem resolution, and develops and recommends alternative solutions to promote program quality.

• Analyzes trends and identifies problems or potential problems requiring program action.

• Initiates, interprets, evaluates, and maintains data on each Medicare contractor in terms of compliance with program initiatives and performance requirements, administrative expenditures, and implementation of program and operating policies, systems, and procedures.

• Develops, conducts, and/or directs Central Office and/or regional office participation in quality assurance reviews and studies of selected areas of contractor operations to improve operations.

• Uses statistical databases and applications to analyze, evaluate, and make recommendations towards improving program operations, including operational efficiency.

(4) Division of Reports and Information Management (FLB44)

• Designs, establishes, and maintains reporting and information management systems for Medicare contractor program operations and administrative data.

• Reviews contractors' reporting systems for consistency and the ability to transmit the required information and prepares the appropriate reporting requirements.

• Prepares written interpretations and analyses of operating data to provide other bureau components with information necessary in conducting program and performance evaluations.

• Develops the specifications for an automated operational data system for Medicare contractor program operations.

• Prepares recurring and special reports on the status and trends in program administration and operational effectiveness.

• Provides technical assistance to regional offices and contractors on reporting requirements.

• Monitors systems of internal controls for use by Medicare contractors

to ensure the Medicare program is adequately safeguarded against inappropriate expenditures.

• Directs the bureau's microcomputer activities including: providing technical assistance to the bureau components applications, developing automation strategy based on long term needs and new initiatives, documenting requirements and coordinating design, development, end user training, and implementation activities with the Bureau of Data Management and Strategy.

5. Bureau of Data Management and Strategy (FLC)

• Serves as the focal point for the management of HCFA's information resources.

• Provides Agency-wide information management, decision support, automated data processing (ADP), and data communication services essential to the management and administration of HCFA programs.

• Provides technical information planning and developmental review of HCFA data collection initiatives.

• Collects, analyzes, and disseminates data on beneficiary eligibility, enrollment entitlement, and medical utilization.

• Collects and maintains data on Medicare contractor claims processing workloads and maintains contractor quality assurance and performance evaluation systems.

• Manages statistical data systems on HCFA programs to support policy and program decisions.

• Coordinates the development of special purpose statistical data bases and tabulations required for assessing 1) the impact of proposals which change health care financing programs, 2) the characteristics of HCFA beneficiaries and 3) the utilization and cost of program benefits.

• Provides applications software support to HCFA headquarters and Regional Offices in administrative/program management systems.

• The Director serves as HCFA's Principal IRM Official and is responsible for overseeing the Agency's IRM programs including those of the Medicare contractors, Peer Review Organizations, and End Stage Renal Disease Networks.

• Directs the HCFA ADP systems security program including its application to Medicare contractors.

• Develops common coding standards and quality assurance monitoring mechanisms.

• Negotiates and administers agreements and provides ADP liaison between HCFA users and other external organizations for the provisions of ADP capacity and support services.

• Provides support and data handling capability to control/examine, audit, investigate, and process/release a variety of provider billing, query, enrollment, and premium billing correspondence and transactions.

a. Office of Information Resources Management (FLC1)

• Plans, organizes, and coordinates the activities required to maintain a HCFA-wide Information Resources Management (IRM) program including the management of funds to support IRM operations and information systems development activities.

• Formulates and executes the HCFA IRM common expense budget and Information Technology Systems plans and budgets in conjunction with HCFA-wide budgetary submissions to the Department.

• Develops and maintains a process to administer, document, and monitor the software and hardware changes planned and implemented within HCFA.

• Provides systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with HCFA policies, standards, information plans, and department requirements.

• Develops, coordinates, and directs the HCFA automated data processing (ADP) Systems Security Program to ensure the protection of HCFA systems and ADP equipment.

• Designs, evaluates, and performs analyses related to HCFA-wide data administration and database administration improvement projects.

• Negotiates and administers agreements and provides ADP liaison between HCFA users, the Social Security Administration, and other external organizations for the provision of ADP capacity and support services.

• Formulates strategies, prepares procurement documents, and performs contract administration activities for major contractual agreements in support of Agency IRM requirements.

(1) Division of Information Systems Management (FLC11)

• Directs the planning, design, and maintenance of information systems development standards and database administration policies and standards, including review of work products for compliance with standards, and the support of the Standards Board activities.

• Plans, directs, and coordinates the development and maintenance of a project management and software metrics program to monitor, evaluate, and improve the information systems development processes for HCFA. Directs the establishment and maintenance of the HCFA IRM systems inventory.

• Directs and coordinates the performance of post-implementation reviews for Agency systems to validate that all systems components are maintained concurrently with the operational systems.

• Formulates strategies and performs contract administration activities for major software contractual agreements across all phases of the information systems development life cycle.

• Formulates strategies and performs contract administration activities for major IRM contractual agreements.

(2) Division of ADP Planning and Resources Management (FLC12)

• Plan, develops, and implements HCFA-wide policies, procedures and analyses related to IRM planning and ADP resource management.

• Formulates and assures compliance with HCFA's IRM Plan and associated long range strategic and operational plans. Formulates and executes the HCFA Information Technology System (ITS) 5-year plan and the HCFA ADP common expense budget.

• Develops, implements, and maintains a HCFA-wide financial management program to fund and support IRM operations and information systems development activities, all HCFA equipment and related IRM/ADP services.

• Administers the HCFA project management program and performs Agency-wide resource accounting functions to assess and monitor ADP resource utilization.

• Develops, coordinates, and directs the HCFA ADP Systems Security Program.

• Negotiates and administers agreements between HCFA users and other external organizations for the provision of ADP/IRM support services.

• Coordinates HCFA's participation in the Federal Information Processing Standards Program and administers HCFA's ADP/IRM Contract Administration Program.

b. Office of Statistics and Data Management (FLC2)

• Performs strategic planning to enhance program data and analysis to meet program policy development and program assessment requirements.

• Develops, disseminates and monitors data release policies for HCFA.

• Identifies, documents, and measures the trends in the reliability of

program decision support data and information needed to support HCFA's policy development, research, and program assessment goals.

• Represents the Agency as the primary contact with the Department, other Federal agencies, the health care community, and the public for the use and release of HCFA program data.

• Plans, organizes, and coordinates data development and information analysis activities required to identify, develop, implement, and document decision support and statistical analysis processes.

• Provides decision support information and analysis to meet the Agency's research, actuarial, legislative, economic, and policy analysis; and the objectives of the Department's Medical Treatment Effectiveness initiative.

(1) Division of Payment Policy Support (FLC21)

• Develops strategic short- and long-range plans to acquire the data necessary to meet program payment policy development and assessment requirements.

• Organizes and analyzes data to develop the information systems necessary to support the Agency's and the Department's needs for HCFA program data in support of payment policy analysis and related research.

• Defines, develops, and implements quality assurance procedures covering decision support processes to measure and improve the reliability and usefulness of program data for decision support and statistical analysis. Develops statistical analyses and trend data to monitor data reporting and data reliability.

• Provides technical data analysis and processing support required to develop payment rates to advise Senior HCFA management of the information necessary to evaluate the effectiveness of current and proposed health care financing systems, the implications of experimental financing methods on providers and physicians, the cost aspect of the effectiveness of care being received by beneficiaries, and the monetary effects of new legislation on alternative reimbursement methodologies.

(2) Decision Support Division (FLC22)

• Develops strategic short- and long-range plans to define, acquire, and measure the reliability of the data and information necessary to support intramural and extramural health services research to advance the Department's mission. Reviews legislation to define the program decision support activities needed to implement and monitor legislatively-mandated health services research initiatives and program changes.

• Defines, develops, and implements quality assurance programs to measure trends and improve the reliability and usefulness of Medicare program data.

• Plans, organizes, and coordinates activities required to define the sources, uses and reliability of HCFA data to support research, program administration and evaluation, actuarial and statistical initiatives, and the Department's needs for HCFA program data in health services, medical effectiveness and epidemiologic research.

• Performs liaison function to advise researchers, program analysts, and actuaries on the sources, uses and limitations of program data. Provides technical data analysis and processing assistance required to effectively use HCFA program data for decision support.

• Analyzes and organizes information analysis describing the Medicare and Medicaid programs and national health care expenditures and develops information dissemination systems necessary to support the Agency's need for Medicare and Medicaid program data.

• Develops and maintains the sample data sets necessary to support beneficiary-based program surveys and assessments, including support to the Medicare Beneficiary Health Status Registry, the Current Beneficiary Survey, and the Medicare History Sample, and the Peer Review Organizations.

• Participates in the development and establishment of data standards used for HCFA programs, including beneficiary enrollment, uniform billing, uniform coding systems, and common reporting systems (e.g., Common Working File).

(3) Division of Special Programs (FLC23)

• Develops strategic short- and long-range plans to define and acquire institutional financial data and special medical data on specific Medicare populations.

• Analyzes and organizes data to develop the information systems necessary to support the Agency's and the Department's special program data and information requirements.

• Designs, develops, implements, and operates special program data collection and processing systems, e.g., Hospital Cost Report Information System (HCRIS) and End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS), to identify and meet special program data and information needs.

• Defines, develops, and implements quality assurance programs pertaining to special program systems to improve the reliability and usefulness of program decision support and statistical data.

• Identifies and implements processes and procedures that will take maximum advantage of the multi-tier data processing architecture, as well as to maximize the efficient use of the mainframe to process large scale special program applications.

• Represents the bureau as primary contact for special program data collection and use issues within the Department and with outside groups.

c. Office of Program Systems (FLC3)

• Handles the receipt, control, edit, quality assurance, and basic monitoring of common working file claims data and input data relating to program management systems, including development and maintenance of ADP application telecommunications software providing access and front end quality control.

• Performs the planning, organization, and coordination activities required to build and control HCFA's National Claims History databases (NCHDB) for both the Medicare and Medicaid programs and related hardware requirements.

• Implements and maintains the centralized provider survey, certification (including clinical labs), and billing databases which provide on-line query and reply capabilities through a national telecommunications network.

• Provides standard and ad hoc data files and reports on health standards and quality data, intermediary and provider statistical and reimbursement data, and information regarding chain ownership data.

• Designs, implements, maintains, and ensures the continuing operations of software applications which provide access and array NCH and Program Management (PM) data in accordance with the ongoing program management needs of HCFA.

• Develops short- and long-range NCHDB and PM IRM plans to ensure that the proper hardware and software is available to meet the Agency's NCH and PM operations support needs and to support budget development and life cycle planning.

• Defines and coordinates an NCHDB and PM quality assurance program to ensure that the databases are reliable for use in program development and evaluating ongoing program operations.

• Designs, implements, and maintains a number of computer systems that are used by HCFA to monitor the performance of the fiscal intermediary contracting community.

(1) Division of Program Management Systems (FLC31)

• Handles the receipt, control, edit, quality assurance, and basic monitoring of input data relating to program management systems.

• Implements and maintains the centralized provider survey, certification (including clinical labs), and billing databases which provide on-line query and reply capabilities through a national telecommunications network.

• Provides standard and ad hoc data files and reports on health standards and quality data, intermediary and provider statistical and reimbursement data, and information regarding chain ownership data.

• Maintains and enhances the systems that enable HCFA to monitor the quality of claims processing in carrier and intermediary sites.

• Designs, implements, maintains, and ensures the continuing operations of software applications which array Program Management (PM) data in accordance with the ongoing program management needs of HCFA.

• Negotiates user requirements and develops design alternatives, systems specifications, test, conversion and implementation plans, operation plans (e.g., HDC support requirements), and documentation for PM and related applications.

• Defines and coordinates a PM data quality assurance program including the development of process controls, edits and statistical measures to ensure that the databases are reliable for use in program development and evaluating ongoing program operations.

• Manages PM database administration activities directed toward ensuring the integrity of the databases.

• Participates in the development and establishment of data standards used for HCFA programs, including uniform billing, uniform coding systems and common reporting systems.

(2) National Claims History Division (FLC32)

• Manages and directs the receipt, control, editing, quality assurance, and basic monitoring of the common working file claims and program liability data.

• Performs the planning, organization, technical consultation, and coordination activities required to design, develop, document control, and ensure the integrity of HCFA's National Claims History database (NCHDB) for the Medicare program and related hardware requirements.

• Defines systems accesses, interfaces, and operational requirements to ensure the efficient development and use of the NCHDB for program purposes.

• Negotiates user requirements and develops design alternatives, systems specifications, test, conversion and implementation plans, operation plans (e.g., HDC support requirements), and documentation for the NCHDB and related applications.

• Defines and coordinates an NCHDB and beneficiary record quality assurance program including the development of process controls, edits, and statistical measures to ensure database validity and integrity for use in program development and evaluating ongoing program operations. Defines and coordinates a beneficiary record quality assurance program to ensure the consistency of data maintained at the Common Working File sites with the enrollment databases.

• Manages NCH database administration activities directed toward ensuring the integrity of the databases.

• Participates in the development and establishment of data standards used for HCFA programs, including uniform billing, uniform coding systems, and common reporting systems.

(3) Division of Medicaid Statistics (FLC33)

• Manages and directs the receipt, control, edit, quality assurance, and basic monitoring of input data relating to the Medicaid Statistical Information System (MSIS) and the HCFA–2082.

• Performs the planning, organization, technical consultation, and coordination activities required to design, develop, document control, and ensure the integrity of HCFA's National Claims History database (NCHDB) for the Medicaid program and related hardware requirements.

• Provides standard and ad hoc data files and reports on Medicaid data.

• Designs, implements, and maintains the Medicaid drug information databases.

• Develops, implements and maintains ADP application telecommunications software to provide access and front end quality control for the various systems maintained in the branch.

• Designs, implements, maintains, and ensures the continuing operations of software applications which array Medicaid data in accordance with the ongoing program management needs of HCFA.

• Develops short- and long-range Medicaid IRM plans to ensure that the proper hardware and software is maintained to meet the Agency's PM operations support needs.

• Negotiates user requirements and develops design alternatives, systems specifications, test, conversion and implementation plans, operation plans (e.g., HDC support requirements), and documentation for Medicaid and related applications.

• Defines and coordinates a Medicaid data quality assurance program including the development of process controls, edits, and statistical measures to ensure that the databases are reliable for use in program development and evaluating ongoing program operations.

• Identifies and implements processes and procedures that will take maximum advantage of HCFA's multi-level data processing architecture; e.g., taking advantage of the microcomputers to put data and application development at the desk-top where appropriate, as well as to maximize the efficient use of the mainframe to process large-scale applications.

d. Office of Enrollment Systems (FLC4)

• Performs the planning, organization, and coordination activities required to build and control HCFA's Medicare Enrollment database (EDB) and related hardware requirements and software applications.

• Designs, implements, maintains, and ensures the continuing operations of software applications which develop EDB data in accordance with the ongoing program management needs of HCFA, including the ADP operations to prepare bills for the receipt and processing of Medicare premium remittances and the generation of Health Insurance cards.

• Defines and negotiates user requirements, design alternatives, systems specifications, test, conversion and implementation plans, operation plans and documentation for the EDB and related applications.

• Defines and coordinates an EDB quality assurance program, including the development of process controls, edits, and statistical measures to ensure that the database is reliable for use in program operations and development.

• Coordinates operational and program development requirements for data about Medicare Enrollment with other components within HCFA, the Department, other Federal agencies and local governments, the private sector and the public. This includes support

for the Common Working File by maintaining and providing accurate and timely information regarding beneficiary enrollment status for Medicare claims processing purposes.

(1) Division of Enrollment Applications (FLC41)

- Responsible for the integration and coordination of all EDB database design, development, and management activities.
- Assures the viability of the databases including maintenance, backup, recovery, on-line access, etc.
- Responsible for the integration of the EDB database(s) with other database systems; planned/proposed systems software efforts; and overall IRM policies.
- Provides a technical review point within the Office of Enrollment Systems to insure adequate control, testing, validation, and documentation of all applications database software within the office.
- Receives, controls, edits, and validates transactions which affect HCFA's authoritative record of enrollment in the Medicare program.
- Coordinates operational and program development requirements for data about Medicare Enrollment with other components within HCFA, the Department, other Federal agencies and local governments, the private sector and the public. This includes support for the Common Working File by maintaining and providing accurate and timely information regarding beneficiary enrollment status for Medicare claims processing purposes.

(2) Division of Capitation and Collection Systems (FLC42)

- Bills and collects Medicare premiums from the direct-paying beneficiary population and from third-party payers such as State agencies, private groups and the Office of Personnel Management.
- Insures that premium-related entitlement data received from other sources (such as the Social Security Administration) is validated and applied properly to HCFA's authoritative database of Medicare enrollment information.
- Enables and records enrollment in and disenrollment from health maintenance organizations and other group health plans.
- Computes the individual capitation amounts due for each beneficiary enrolled in a group health plan, and communicates that information to other automated processes that provide for paying the plans.
- Notifies beneficiaries of their enrollment in group health plans, and supports solicitation of beneficiary participation in managed health care delivery systems.

(3) Division of Medicare Operations Support (FLC43)

- Oversees clerical operations and manages work requests to resolve data errors.
- Oversees the receipt, resolution, and response to correspondence concerning Health Insurance questions from a wide variety of sources including beneficiaries, Congressional Offices, Social Security Offices, States, the Railroad Retirement Board (RRB) and others.
- Directs review of Part B payment records and reconciliation related to Medicare billing exceptions and a multitude of exceptions created between SSA, HCFA, and RRB exchange of data.
- Provides clerical support to process accretions and deletions for State Buy-In and third party beneficiaries; ensures investigation of Medicare premium problem cases.
- Directs the processing of applications for enrollment of individuals to receive Supplemental Medical Insurance benefits.
- Coordinates the planning, design, and implementation of major work processes involving outside components. Resolves problems related to Medicare insurance with other HCFA components, regional offices, and SSA components.

e. Office of Information Technology (FLC5)

- Provides applications software support to HCFA headquarters and regional offices in administrative management systems.
- Serves as focal point for the personal computing and office information systems technology used throughout the agency.
- Develops short and long range plans for administrative, personnel, and financial systems.
- Manages all aspects of the Agency's investment in microcomputing technology.
- Develops and manages the Agency's ADP training program.

(1) Division of Administrative Systems (FLC51)

- Provides applications software support to HCFA headquarters and regional offices in administrative management systems.
- Provides applications software services to other HCFA components in the development of administrative systems, including those utilizing microcomputer technology. Responsible for the macro design and evaluation of prototype administrative systems.
- Develops short and long range plans for administrative, personnel, and financial systems.
- Develops approriate standards and guidelines to govern the development and ongoing support of administrative systems.

(2) Division of Office Automation Systems (FLC52)

- Serves as focal point for the personal computing and office information systems technology use throughout the Agency.
- Develops the acquisition strategy for personal computing hardware, software, and services in HCFA-both central and regional offices.
- Manages all aspects of the Agency's investment in microcomputing technology.
- Develops the Agency strategy for acquisition and use of office information systems technology including the HCFA-wide office automation and electronic mail capabilities.
- Develops user requirements, plans, and implements use of office information systems technology including text management, imaging, and executive information systems.
- Develops and manages the Agency's ADP training program.

f. Office of Computer Operations (FLC6)

- Directs the planning, budgeting, evaluation, procurement, operation, maintenance, control, and security of all centralized automated data processing (ADP) and data communications (DC) equipment and services for HCFA's Data Center (HDC) which includes: DC activities and equipment; centralized large-scale computers; nationally distributed departmental minicomputers; vendor supplied operating systems; utility software; OCO utilization of the Facilities Management Contract; and various intra/inter Agency agreements.
- Advises the bureau and HCFA executive staff on ADP and DC issues and concerns and represents HCFA in dealings with Federal and non-Federal agencies and organizations in these areas.
- Serves as the Agency's final technical authority for the approval of the purchase, lease, and maintenance of all ADP and DC equipment and systems.
- Manages the HDC and DC resource planning function to ensure the availability of resources for Agency approved projects.
- Develops HDC and DC plans and policies and provides program direction

to HCFA staff and contractor support organizations to ensure that the Agency mission is efficiently and effectively met.

(1) Division of Data Center Services (FLC61)

- Directs the planning, budgeting, operation, maintenance control, and security for the HCFA Data Center (HDC) data processing resources and related support facilities (backup power, environmental systems, fire protection, etc.).
- Develops standards and policies for efficient use of the HDC. Effects these policies and standards through software and hardware controls.
- Manages, evaluates, installs, and maintains HDC operating systems software, utility software products, and data base management systems.
- Plans, organizes, schedules, and controls activities required to maintain a contingency and disaster recovery plan for the HDC.
- Develops HDC operations policies, operational plans, and technical guidelines, and provides program direction to contractor support organizations to ensure that the Agency mission is efficiently and effectively met.
- Develops and maintains the HCFA-wide accounting and chargeback system for HDC and DC users, determining and/or recommending the allocation of resources to the user community. Oversees the resource billing to non-HCFA users of the HDC.

(2) Division of Data Communications and Distributed Services (FLC62)

- Directs and manages HCFA's data communications (DC) and minicomputer systems at central and regional HCFA sites, including the Agency-wide installations/relocations of microcomputer, minicomputer, and DC equipment.
- Manages the evaluation and implementation of minicomputer hardware, operating system, and utility software products. Establishes workload planning and controls and schedules services to be provided.
- Assists in the evaluation and implementation of application software and other office automation products for operation on the minicomputer systems.
- Conducts studies to determine DC network requirements and provides technical advice and consultation to the DC user community.
- Directs and manages the HCFA Data Center (HDC) action desk providing on-line assistance for resolving HDC user problems.
- Develops DC, minicomputer, and action desk operating plans and policies and provides program direction to contractor support organizations to ensure that the Agency mission is efficiently and effectively met.

6. Office of the Regional Administrators (FLD(I–X))

- The Office of the Regional Administrator manages regional operation in each of the Health Care Financing Administration's (HCFA) 10 regions.
- The Regional Administrators provide executive leadership and guidance on behalf of the Associate Administrator for Operations and Resource Management to HCFA components at the regional level.
- Implements national policy at the regional level.
- Assures the effective administration of HCFA programs including Medicare, Medicaid, Peer Review Organizations (PROs), HMOs/CMPs, quality control, and certification of institutional providers in a major geographical area.
- Participates in the formulation of new policy and recommends changes in existing national policy for HCFA programs.
- Develops and implements a professional relations program within the region for all HCFA programs and serves as the principal HCFA contact for all professional organizations such as hospital and medical associations.
- At the regional level, takes action to implement HCFA national initiatives undertaken to integrate HCFA program operations and is responsible for coordination of HCFA programs with other departmental components and Federal agencies.
- Coordinates with the Department's Regional Director to assure effective relationships with State and local governments. Manages all administrative activities for HCFA components and coordinates such activities with the Regional Administrative Support Center.
- Initiates and directs the implementation of special regional and headquarters projects affecting HCFA programs.
- Directs regional responsibilities relating to experimental and demonstration projects.
- Oversees a beneficiary services program within the region for HCFA programs.
- Provides regional perspective to the Administrator, Associate Administrators, Bureau Directors, and Staff Office Directors in the development of HCFA policies, programs, and objectives.

a. Division of Health Standards and Quality (FLD(I–X)A)

- Assures that health care services provided under the Medicare and Medicaid programs are furnished in the most effective and efficient manner consistent with recognized professional standards of care.
- Interprets and implements health safety standards and evaluates their impact on utilization and quality of health care services.
- Determines approval and denial of all provider and supplier certification actions under the Medicare program.
- Initiates and implements remedial actions, including termination of agreements against health care facilities not in compliance with Medicare requirements.
- Makes final determination on all initial and supplemental budget requests submitted by State survey agencies.
- Monitors and evaluates State activities related to Medicare and Medicaid survey and certification.
- Oversees, monitors, and evaluates Peer Review Organizations (PROs), including recommendations for contract renewal, extension, and modification.
- Recommends approval or withholding of monthly voucher payments to PROs.
- Authorizes investigation of complaints received from the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.
- Coordinates State survey agency activities related to sanctions and civil money penalties.

b. Division of Medicaid (FLD(I–X)B)

- Provides Federal leadership to State agencies in program implementation, maintenance, and regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act.
- Assures the propriety of Federal Medicaid expenditures and, where appropriate, takes action to disallow claims.
- Consults with and provides guidance to States on appropriate matters including the interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States.
- Provides consistent policy guidance to States on Medicaid program administration and the amount, duration, scope, and payment for health services under the State program.
- Monitors State agency Medicaid activities by conducting periodic

program management and financial reviews to assure State adherence to Federal laws and regulations.

• Reviews, approves, and maintains official State plans and State plan amendments for medical assistance.

• Reviews, approves or recommends for disapproval, and monitors State institutional payment plans and systems (after central office concurrence for hospitals and long term care facilities).

• Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed.

• Defers payment action on questionable State claims for allowability.

• Issues orders suspending Federal financial participation on unallowable State Title XIX payments and defends disallowance actions at Departmental Appeals Board.

• Plans, directs, and coordinates the review and approval of Medicaid State agency data processing systems, proposals, modifications, operations, and contracts.

• Implements Title XIX special initiatives, such as Maternal and Child Health, Acquired Immune Deficiency Syndrome, Prepaid Health Plans, Health Maintenance Organization contracts, and other special or experimental programs and operations of major management initiatives.

• Performs Medicaid eligibility quality control reviews over State Medicaid eligibility and inspection of care practices to assure their ongoing compliance with Medicaid laws and regulations.

c. Division of Medicare (FLD(I–X)C)

• Directs Medicare program administration through working relationship with contractors, providers, physicians, the Social Security Administration regional offices, the Administration on Aging, the Office of Inspector General, and other local and national organizations and individuals, as required.

• Directs the review and evaluation of the effectiveness of the Medicare program.

• Directs activities in support of the Managed Care Program including technical support and oversight of Health Maintenance Organizations, and other prepaid contractors.

• Monitors all aspects of contractor performance including claims processing, coverage decisions, overpayment identification and collection, Medicare secondary payor, provider payment and audit, payment to physicians and suppliers, and electronic media claims.

• Coordinates ongoing contractor fiscal management activities, including subcontracting.

• Negotiates and approves Medicare contractor budget modifications.

• Evaluates Medicare contractor performance and prepares annual contractor evaluation report.

• Manages beneficiary, provider, and public information programs.

• Recommends renewals, non-renewals, recessions, and terminations of Medicare contracts.

7. Health Standards and Quality Bureau (FLE)

• Provides leadership and overall programmatic direction for implementation and enforcement of health quality and safety standards for providers and suppliers of health care services and evaluates their impact on the utilization, quality and cost of health care services.

• Plans, develops and establishes procedures and guidelines for administering and evaluating the nationwide Medicare and Medicaid survey and certification program.

• Monitors and validates the process for certifying that participating providers and suppliers are in compliance with established conditions and standards.

• Responsible for implementation and operation of professional review and other medical review programs.

• Administers a comprehensive system for assessment of individual professional and medical review organizations to determine compliance with program requirements and to document the effectiveness and impact of their activities.

• Establishes specifications for information and data reporting, collection and systems requirements for the survey and certification, professional review and other medical review activities.

a. Management Resources Staff (FLE–1)

• Directs and manages the bureau's management and administrative operations including facilities management, space utilization, records, publications, travel, correspondence, printing, mail distribution, regulations and issuances control, equipment management, supply operations, facilities maintenance, safety, security, telephone systems and parking.

• Plans, directs, and administers the Wang office automation activities for all Associate Administrator for Operations & Resource Management bureaus including access to shared and local data bases, and other office information activities.

• Plans, directs and coordinates the bureau's correspondence and public inquiries activities and all related paperwork management functions.

• Administers the bureau's personnel utilization and position management programs as well as the bureau's training and staff development programs.

• Develops annual and long-range administrative budgets and operating plans for the Health Standards and Quality Bureau.

• Reviews and processes requests for procurement or purchase and provides required contract support, service and consultation.

• Initiates and develops financial data and analytical reports on operations.

• Allocates and reprograms approved funds within the Bureau policies and guides to assist program divisions in formulating budget estimates.

• Develops, implements and maintains a management planning and control program for the bureau to ensure the efficient and effective utilization of available resources including: (a) bureau-wide workplanning and work measurement systems, (b) organization and operational analysis studies and (c) coordination and control of a variety of planning, reporting and monitoring systems required by the Office of Management and Budget, Department of Health and Human Services and other HCFA components.

• Researches and evaluates new management concepts and techniques for improving the bureau's management practices and operations.

b. Office of Peer Review (FLE1)

• Coordinates implementation of peer review and other medical review organizations.

• Develops and interprets policies related to the conduct of peer review at various levels of care.

• Develops and implements operational procedures and instructions relating to fiscal management of peer review programs, including the principles of payment for review, development of program related budgets, accounting procedures, reports management, statistical reporting, geographic variations of medical treatments, and auditing requirements applicable to such peer review organizations.

• Develops, implements, and maintains data systems in support of the Office of Peer Review data requirements for the management of the peer review program and contracts.

• Establishes guidelines relating to the oversight of peer review and other medical review organizations.

• Evaluates and provides advice and assistance to regional offices in overseeing fiscal and program management activities.

• Directs and oversees the End-Stage Renal Disease program and the Uniform Clinical Data Set function.

(1) Division of Program Operations (FLE11)

• Provides overall programmatic and technical management of contracts and any other financial agreements with organizations conducting medical reviews including establishment of expenditure levels, final approval of funding requests and resolution of audit findings.

• Provides program guidance and assistance to regional office staff in performance of their responsibilities.

• Develops and monitors plans for funding of Peer Review Organizations (PROs).

• Defines reporting requirements for PROs and other medical review entities.

• Develops, implements and administers a comprehensive system for assessment of individual PROs to determine compliance with program requirements and to document the effectiveness and impact of their activities.

• Initiates and designs studies to analyze data provided through the Office of Peer Review data systems on routine and as needed bases.

(2) Division of Review Programs (FLE12)

• Develops and interprets review methodologies and systems for all programs related to Peer Review Organizations' review of medical necessity, reasonableness, quality, and appropriateness of services (e.g., ancillary, inpatient, outpatient, or suppliers of practitioner care) reimbursed under Titles XVIII and XIX of the Social Security Act.

• Develops and interprets policies related to the conduct of peer review at various levels of care.

• Communicates and interprets HCFA's medical review policies to peer and other medical review organizations and provides or arranges for the provision of technical assistance.

• Develops and interprets operational policies for the involvement of physicians and other health care professionals in the conduct of peer review.

• Develops, with other Office of Peer Review components, criteria for objective setting and the application of norms, criteria and standards of peer review.

• Develops criteria for evaluation of peer review.

• Develops and interprets medical review policies regarding the impact of review on technical issues such as waiver of liability, inappropriate level of care, "grace days," and denials of payment based on medical necessity and substandard quality with attendant reconsiderations and appeals.

• Monitors legislative, regulatory and operational developments related to medical review.

• Identifies and initiates necessary changes resulting from such developments.

• Develops legislative agenda and proposals related to statutory changes in medical review policies or procedures.

• Serves as a technical resource within the bureau for resolving medical review issues and providing assistance on other program decision areas.

(3) Division of Systems Management (FLE13)

• Establishes national policies for collection and processing of peer review data and directs and monitors the End Stage Renal Disease (ESRD) Network program.

• Designs, operates, monitors, maintains and, as necessary, revises the Peer Review Organization (PRO) Management Information System (PMIS), which includes a variety of data in support of the Office of Peer Review (OPR) and regional office medical review branch Automatic Data Processing (ADP) requirements.

• Responsible for the central office and regional Dispersed Terminal Network which is used to access other HCFA data systems.

• Designs, tests, and implements new component subsystems using both personal computers and mainframe hardware; develops data input and output requirements, as well as specifications for the modification of systems processes to adapt to new forms, policies, procedures, and subsystems.

• Develops and installs the necessary procedures for report and quality control, including screening, editing, logic, and consistency.

• Analyzes and designs methodology for submission of data to OPR ADP systems.

• Designs, tests, implements, and maintains automated software systems, manual systems, and data bases with emphasis on assuring the accuracy of reported information and retrieval capabilities supportive of program and management information needs.

• Consults with other components to identify existing or planned data systems strategic to management and program activities.

• Plans and develops new systems to generate management and analytical information from PRO deliverables and other data sources and meet the needs of management.

• Performs the Systems Security Officer functions for HSQB.

• Provides technical assistance in implementing and maintaining ADP systems to other components and the ROs through conducting regional workshops and training sessions; developing technical assistance materials; and maintaining ongoing liaison with affected systems personnel.

• Responds to special nonroutine requests for PMIS data from congressional committees, general public, professional organizations, and other government offices.

• Manages the interface of OPR data with external components and organizations to ensure the compatibility of data systems with HCFA data policy, as articulated by the Bureau of Data Management and Strategy.

• Directs and reviews all aspects of the ESRD Network program including quality assurance initiatives, data gathering, contractor performance, organ procurement, fiscal procedures, liaison with Congress and outside organizations, and technical assistance to the ESRD organizations.

(4) Division of Program Assessment and Information (FLE14)

• Oversees a variety of research techniques to review the quality of care activities in health care settings.

• Directs the development of strategies for improving the assessment of quality of health care through research and analytical techniques.

• Directs and monitors the research, assessment, and dissemination of information on the quality of care.

• Develops data and information dissemination protocols to provide feedback to the public and the professional medical community on the quality of care provided to Medicare beneficiaries.

• Maintains liaison with other HCFA components, the Department of Health and Human Services, Congress, and external professional and medical organizations.

c. Office of Survey and Certification (FLE2)

• Develops and establishes procedures and oversees the implementation and enforcement of health and safety standards for providers and suppliers of health services under Medicare and Medicaid.

• Administers and monitors the nationwide Medicare and Medicaid provider and supplier certification program.

• Develops procedures/guidelines for regional certification responsibilities under Medicare and Medicaid.

• Monitors and validates the application of health and safety standards and the adherence to Medicare and Medicaid policies by State survey agencies and other approved accrediting bodies.

• Monitors and evaluates regional performance of oversight responsibilities in survey and certification.

• Reviews the validity and effectiveness of existing standards.

• Develops and analyzes national data on the administration of the Medicare and Medicaid standards and certification program and develops methods for improvement.

• Conducts surveyor training, informational and other initiatives for improving the performance of State survey agencies and the providers and suppliers under the Medicare and Medicaid program.

(1) Division of Long-Term Care Services (FLE21)

• Directs and coordinates activities that implement, enforce and monitor health quality and safety standards and other health care procedures for long term care facilities under Medicare and Medicaid.

• Coordinates and applies regulations, procedures and guidelines for the improvement of standards enforcement and validation processes.

• Reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality and cost of long-term care services and initiates new or revised instructions or standards, as necessary.

• Reviews and maintains guidelines and instructions for interpretation, implementation and enforcement of health quality and safety standards by the regional offices and State survey agencies.

• Prepare provider participation materials and instructions.

• Develops survey and certification forms utilized by State survey agencies in the survey and certification process.

• Monitors the enforcement of health quality and safety standards and compliance with established policy by State survey agencies and accrediting organizations whose standards and enforcement processes are deemed to meet Federal requirements for the Medicare and Medicaid programs.

• Maintains liaison with professional groups and standards setting organizations.

• Serves as the focal point for responding to regional office, State agency, congressional, organizational and individual inquiries relating to application of health and safety requirements and certification procedures for participating providers.

(2) Division of Systems Management and Data Analysis (FLE22)

• Maintains Section 1864 Agreements and oversees regional office (RO) 1864 negotiations and approval.

• Responsible for financial operations, including funding requirements and budget justifications, of the Medicare and Medicaid State certification program.

• Designs, tests and manages the centralized Medicare/Medicaid Automated Certification System (MMACS) to provide program related and health management information on all providers and suppliers participating in the Medicare and Medicaid programs.

• Develops data input and output requirements and specifications for modification of computer processing activities.

• Provides technical assistance and training to central and RO personnel on the operation of MMACS equipment, use of forms, and utilization of data output.

• Develops new approaches for survey and certification on the basis of needs identified through MMACS data, RO direct surveys, comments from State survey agencies and other program areas.

• Tests improvements in the State agencies (SAs) certification process including modification of reporting procedures, utilization of personnel and use of financial incentives.

• Develops procedures for evaluating the effectiveness of RO performance and oversight of State survey agency performance.

• Collects and analyzes data derived from MMACS for use by ROs and SAs in pinpointing specific certification problems and for development of criteria and procedures to assess the quality of care being provided by Medicare and Medicaid providers.

• Collects, analyzes and studies data provided from the MMACS data system on a routine and special basis for use by ROs and SAs to identify specific certification and health and safety problems.

• Develops criteria and procedures through data analysis to assess the quality of care being provided by Medicare and Medicaid providers.

(3) Division of Program Operations (FLE23)

• Reviews State agency (SA) performance by conducting onsite reviews and assisting regional offices in program and administrative reviews.

• Reviews SA certification process with a view to improve management of the survey and certification process.

• Performs special studies to improve the survey and certification process and prepare guidelines and instructions for regional office (RO) and SA use.

• Develops procedures for the administration of provider agreements and revises, as needed, the State Operations and Regional Office Manuals.

• Maintains a system of communications to SAs and ROs relating to provider survey and certification and SA management.

• Develops and conducts surveyor training and other initiatives for improving the performance of State survey agencies and the providers and suppliers under the Medicare and Medicaid programs.

• Updates existing training materials to state of the art techniques.

(4) Division of Laboratory Standards and Performance (FLE24)

• Directs and coordinates activities that implement, enforce, and monitor the provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and the Medicare laboratory program.

• Prepares regulation specifications for laboratory standards including comment review and summaries.

• Prepares and implements interpretive guidelines, survey procedures, forms, and related sections of the Regional Office Manual and the State Operations Manual.

• Reviews and recommends approval for proficiency testing programs and monitors their performance.

• Reviews and recommends approval for accreditation and State licensure programs and monitors their performance. Develops and administers the cytology proficiency testing program, as required.

• Assists in the design of data systems and in the evaluation of CLIA data. Conducts studies and prepares reports to Congress on laboratory, proficiency testing, and accreditation program performance.

• Prepares and participates in CLIA surveyor training.

• Responds to regional office, State survey agency, congressional, organizational, and individual inquiries relating to the application of laboratory

requirements and certification procedures.

- Executes and participates in a comprehensive interagency agreement with the Public Health Service to exchange technical information in the management of CLIA.
- Manages procurement related to the CLIA survey process.
- Provides liaison and support to other HCFA components, HHS components, and other governmental agencies such as the Department of Defense and the Veterans Administration on issues to implement and operate CLIA, including the survey process, user fees, appeals process, application procedures, forms development, data collection, regulatory issues relating to payment and compliance, and other related issues.
- Represents HCFA in presentations and meetings with outside interested individuals and organizations on CLIA matters involving laboratory standards and performance.

(5) Division of Hospitals, Home Health, and Ambulatory Services (FLE25)

- Directs and coordinates activities that implement, enforce, and monitor health quality and safety standards and other health care procedures for acute care providers and suppliers under Medicare and Medicaid. These providers and suppliers include hospitals, rural health clinics, End-Stage Renal Disease facilities, physical therapists in independent practice, and home health agencies, etc.
- Coordinates and applies regulations, procedures, and guidelines for the improvement of standards enforcement and validation processes.
- Reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality, and cost of provider and supplier services and initiates new or revised instructions or standards, as necessary.
- Reviews and maintains guidelines and instructions for interpretation, implementation, and enforcement of health quality and safety standards by the regional offices and State survey agencies.
- Prepares provider and supplier participation materials and instructions.
- Develops survey and certification forms and procedures utilized by State survey agencies in the survey and certification process.
- Monitors the enforcement of health quality and safety standards and compliance with established policy by State survey agencies and other accrediting organizations whose standards and enforcement processes are deemed to meet Federal requirements for the Medicare and Medicaid programs.
- Conducts liaison with other government organizations, professional groups, and standards setting organizations.
- Serves as the focal point for responding to regional office, State Agency, congressional, organizational, and individual inquiries relating to the application of health and safety requirements and certification procedures for participating acute care providers and suppliers.

Dated: March 16, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–7346 Filed 3–28–94; 8:45 am]

BILLING CODE 4120–01–P

HEALTH RESOURCES AND SERVICES ADMINISTRATION

[PN 2193]

RIN–0905–ZA12

Availability of Funds for Grants To Provide Comprehensive Health Promotion, Disease Prevention, and Primary Health Care Services to Native Hawaiians

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of Available Funds

SUMMARY: The Health Resources and Services Administration announces the availability of approximately $3,143,000 for grants to qualified entities to provide comprehensive disease prevention and primary health services to Native Hawaiians. These grants will be awarded under the provisions of the Native Hawaiian Health Care Improvement Act of 1992. Up to five grants may be awarded at a funding level ranging from $450,000 to $700,000 annually, depending on the number of persons targeted to be reached by the programs and the comprehensiveness of the programs. The project period will be three years.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program is related to the priority area of improving access to health services in underserved areas and the priority area of clinical preventive services and educational community-based programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

ADDRESSES: Application kits (PHS form 5161–1 with revised DHHS Form 424, as approved by Office of Management and Budget under control number 0937–0189) and additional information regarding business management may be obtained from and completed applications should be mailed to: Ms. Alice H. Thomas, Chief, Office of Grants Management, Bureau of Primary Health Care, 4350 East West Highway, Rockville, MD 20857, 301–594–4235.

DATES: To receive consideration, grant applications must be received by June 1, 1994. Applications will be considered as meeting the deadline if they are either (1) received on or before the established deadline date or (2) postmarked no later than the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Ms. Joan Holloway, Director, Division of Programs for Special Populations, Bureau of Primary Health Care, 4350 East West Highway, Rockville, MD 20857, 301–594–4420.

SUPPLEMENTARY INFORMATION:

Background:

Funding under this grant program is intended to improve the health status of Native Hawaiians living in Hawaii by providing primary health care and health education. The services of these programs will be developed around outreach and referral components to remove or circumvent existing barriers to health care. The integration of traditional health healer concepts with western medicine is encouraged. It is anticipated that the primary care and health promotion and disease prevention components will be integrated into one system of care and that existing health resources of the community will be used to the greatest extent possible.

Number of Awards

A maximum of five awards will be made. Awards will be made for the following service areas:

(1) An entity serving individuals on Kaua'i, from which individuals on Ni'ihau shall also be served;

(2) One entity serving individuals on O'ahu;

(3) One entity serving individuals on Moloka'i from which individuals on Lana'i shall also be served;

(4) One entity serving individuals on Maui; and

(5) One entity serving individuals on Hawai'i.

Eligible Applicants

An entity is considered qualified if it is a Native Hawaiian health care system. To qualify as a Native Hawaiian health care system, the entity must:

(1) Be organized under the laws of the State of Hawaii;

(2) Provide or arrange for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable;

(3) Be a public or nonprofit private entity;

(4) Have Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health care services;

(5) Be recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs, or portions of programs, authorized by the Native Hawaiian Health Care Improvement Act for the benefit of Native Hawaiians; and

(6) Be certified by Papa Ola Lokahi as having the qualifications and the capacity to provide the services and meet the requirements under the grant the Native Hawaiian health care system receives from the Secretary.

Project Requirements

Recipients of funds are required to provide the following services:

(1) Outreach services to inform Native Hawaiians of the availability of health services;

(2) Education in health promotion and disease prevention of the Native Hawaiian population by, wherever possible, Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators;

(3) Services of physicians, physician assistants, nurse practitioners or other health professionals;

(4) Immunizations;

(5) Prevention and control of diabetes, high blood pressure, and otitis media;

(6) Pregnancy and infant care; and

(7) Improvement of nutrition.

In addition to the mandatory services listed above, the following services may be provided:

(1) Identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians;

(2) Collection of data related to the prevention of diseases and illnesses among Native Hawaiians; and

(3) Other health promotion, disease prevention, and primary care services.

Use of Funds

Grants may not be awarded unless the entity agrees that it or the State of Hawaii will make available, directly or through donations to the entity, non-Federal contributions toward such costs in an amount equal to but not less than $1 for each $5 of Federal funds provided. Non-Federal funds may be in cash or in kind, fairly evaluated, including plant, equipment or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions. This requirement may be waived if the entity is a nonprofit private entity, and if the Secretary determines, in consultation with Papa Ola Lokahi, that it is not feasible for the entity to comply with the requirement. Grant funds may not be used to pay for (1) inpatient services; (2) cash payments to intended recipients of health services; or (3) purchasing or improving real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment. The entity may not expend more than 10 percent of amounts received under the grant for administering the grant. Other requirements and limitations are set forth in 42 U.S.C. 11701, *et seq.*

Criteria for Evaluation

An objective review of applications for grant support will consider the adequacy of the following:

(1) Assessment of community need;

(2) Program of proposed services;

(3) Collaboration and coordination with other organizations;

(4) Management and staffing plan;

(5) Budget; and

(6) Evaluation plan.

Preference will be given to Native Hawaiian health care systems and Native Hawaiian organizations.

Other Grant Information

All grants to be awarded under this notice are subject to the provision of Executive Order 12372, as implemented by regulations at 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States and local governments for assistance under certain Federal programs. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline. The granting agency does not guarantee to accommodate or explain its response to State process recommendations it receives after that date.

In addition, all grants to be awarded under this notice are subject to the Public Health System Reporting Requirements, approved by the Office of Management and Budget (OMB) #0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (1) a copy of the face page of the application (SF 424); and (2) a summary of the project (PHSIS), not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided and description of the coordination planned with the appropriate State or local health agencies.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.163.

Dated: February 16, 1994.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–7245 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–15–P

Health Resources and Services Administration

[PN 2194]

RIN–0905–ZA13

Availability of Funds for Special Projects of National Significance Under the Ryan White CARE Act

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that up to $2.5 million under the Special Projects of National Significance (SPNS) program is available in fiscal year 1994 funds. Applicants can apply for two-year project periods under one of either of the following categories: *Category A:* Model Dissemination to assure wider dissemination of successful SPNS models through training, technical assistance, adaptation or actual replication of these programs; or *Category B:* Model Refinement to refine and more rigorously evaluate (e.g., using quasi-experimental designs) successful models, or to further develop and evaluate promising aspects of successful models. These grants are authorized by section 2618 (a) of the Public Health Service Act and the funds are appropriated under Public Law 103–112.

The SPNS program is designed to demonstrate and test innovative and potentially replicable HIV service delivery models. Therefore, crucial factors in appraising proposals will include the following as determined by the category for which funding is sought: Documentation through evaluation findings of model effectiveness; potential for replication; program refinements with the potential to have a strong impact on service delivery; and the ability of programs to carry out dissemination. Proposals that seek funding for only continuation of present project activities or only for the support of oral/written presentation of evaluation findings will not be considered for review.

Healthy People 2000 Objectives:

The Public Health Services urges applicants to address a specific objective of the Healthy People 2000 in their work plan. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00473–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: (202) 783–3238).

SUPPLEMENTARY INFORMATION:

Program Purpose

The primary purpose of the SPNS program is to advance knowledge and skills in the delivery of health and support services to people with HIV disease. This is accomplished through funding and technical support of projects that demonstrate and evaluate service delivery models which meet the SPNS program objectives and target one of the Special Project Categories described below. The objectives under this subsection are as follows: (1) To assess the effectiveness of different models of care; (2) to support innovative program design; and (3) to promote replication of effective models.

Availability of Funds

Section 2618, subsection (a) of the Public Health Services Act provides for "Special Projects of National Significance." The provision permits the Secretary to allocate up to ten percent of the funds provided for part B of Title XXVI to award direct grants to public and non-profit private entities to carry out the objectives of the statute. Approximately $2.5 million is available in FY 1994, for up to ten projects to be funded at about $250,000 each. The budget and project periods for approved and funded projects will begin October 1, 1994. Project periods may be requested for up to two years. Grants to support projects beyond the first budget year will be contingent upon the availability of funds and satisfactory progress in meeting the project's objectives. Applicants are required to submit, in the initial application, budgets for each proposed project year.

Eligible Applicants

State and local governments and private, non-profit organizations who have demonstrated, documented, and completed a program evaluation of an innovative HIV service delivery model during the last three to five years. The model must be in operation at the time of application and intend to remain operating during the project period requested by the applicant. Current SPNS grantees with similar service delivery models are encouraged to submit a joint application as a consortia.

Description of Categories

Applicants can submit a proposal for only one of the subcategories described under Category A or B.

Category A—Model Dissemination

1. Provision of technical assistance (TA) to another or several organization(s) for replication of an innovative and previously evaluated HIV service delivery model. This TA would involve assessing the feasibility in a particular community for the model, assisting in identifying key roles and key players, and providing a framework for implementation and evaluation. It would include developing a consultation plan for addressing unanticipated problems or concerns related to the replication, and for training on specific tasks or aspects of the replication. For example, this might include setting up referral systems, designing data collection instruments for evaluation, or modifying services to meet differing needs of the target population(s). It is anticipated that the TA will be delivered in the form of site visits and/or regional workshops and training programs, which can include the assistance of national AIDS organizations and/or AIDS Education and Training Centers (AETCs).

2. Replication of an evaluated HIV service delivery model by the model developer in another geographic area(s) or with another population(s). While it is assumed that replication of the model will require some adaptation (for example, to tailor the model to the differing needs of another area or population) it is anticipated that these adaptations will be minor.

The organizational entity that developed the model must direct and oversee all activities related to the replication. Additional project management may be provided by the agencies serving as replication sites. The preferred evaluation strategy will be a comparison between the original project and the replication sites to determine differences in effectiveness of the model between geographic areas and/or populations being served. Funds awarded for model replication cannot be used by the applicant for the provision of services associated with existing project activities. It is anticipated that the budgetary requirements of the applicant organization will be for services at the replication site, administration of the project and the program evaluation.

3. Development of a major instructional component within an evaluated HIV service delivery project to enhance knowledge and build capacity in other agencies for replication and/or adaptation. Teaching programs can be established to allow agencies and/or individuals wanting to set up similar projects to consult with staff, visit

agencies linked to the project, and participate directly in service delivery and evaluation activities. A plan must be developed for notifying providers, particularly those in other municipalities and States, of the instructional opportunities available through this project. Travel funds may be budgeted to facilitate instructional activities, as well as limited funds to continue the current activities of the SPNS project.

4. Provision of technical assistance to organizations that want to change their delivery and approach to HIV-related services through partial replication of an evaluated HIV service delivery model. The HIV service delivery project team will assess the transferability of the knowledge, skills, and specific model elements they have developed as a result of implementing and evaluating the model. The project team will work actively with organizations to assist them in adapting and incorporating aspects of the model into its HIV-related services in a manner appropriate to the organization's structure, environment, and clientele.

Category B—Model Refinement

1. Refine an evaluated HIV service delivery model based on information and data collected from the current project and conduct a rigorous evaluation of the refined HIV service delivery model. Use of a quasi-experimental design that compares the refined model with at least one other model or form of intervention is preferred.

2. Refinement of an innovative aspect of an evaluated HIV service delivery model. The project will focus on and further evaluate a promising component of an evaluated HIV service delivery model with the same or a different population. This aspect should include a service component that is not traditionally funded and is innovative in design.

Review Criteria

Applications submitted to the SPNS program for Model Dissemination and Refinement grants will be reviewed and rated by an objective review panel. Criteria for the technical review of applications will include the following factors:

Factor 1 (10 points) Adequacy of justification of need for the proposed program within the community and target population to be served by the project.

Factor 2 (15 points) Effectiveness of the evaluated HIV service delivery model and it potential significance on HIV service delivery through replication and/or adaptation.

Factor 3 (25 points) Comprehensiveness of the program plan as described in broad and clearly stated goals, time-limited and measurable objectives for each goal, activities for each objective, and a time line that shows the scheduled production of materials/products that corresponds to milestones stated in the objectives and program evaluation.

Factor 4 (10 points) Competency of the applicant organization in fiscal and program management as evidenced through (a) the consistency between the proposed level of effort being and the budget justification; (b) skill level and time commitment required in the personnel specifications; (c) the level of resources being proposed to conduct a quality evaluation of the project; and (d) appropriate handling of confidential medical, social service, and epidemiological data of clients served.

Factor 5 (10 points) Extensiveness of coordination and collaboration with related HIV activities within the project's catchment area.

Factor 6 (Category A: 10 points; Category B: 20 points) Appropriateness and feasibility of the evaluation plan proposed by the applicant.

Factor 7 (Category A: 20 points; Category B: 10 points) Expertise in producing and distributing information about the current HIV service delivery model, including skills in professional writing, training, and technical assistance.

Other Grant Information

Date Applications Due: Grant applications must be received in the Grants Management Office by the close of business May 31, 1994 to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications received after the deadline will be returned.

Allowable Costs: The basis for determining allocable and allowable costs to be charged to PHS grants is set forth in 45 CFR part 74, subpart Q and 45 CFR part 92 for State, local or tribal governments. The four separate sets of cost principles prescribed for public and private non-profit recipients are: OMB Circular A–87 for State, local or tribal governments; OMB Circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations. Reporting and Other Requirements: A successful applicant under this notice will submit semi-annual activity summary reports in accordance with provisions of the general regulations which apply under 45 CFR part 74, subpart J, "Monitoring and Reporting of Program Performance," with the exception of State and local governments to which 45 CFR part 92, Subpart C reporting requirements apply. Also, grantees must be prepared to cooperate with HRSA, and its contractors, by participating in multi-site evaluation studies sponsored by the SPNS Program.

Public Health System Reporting Requirements: This program is subject to the Public Health System Reporting Requirements which have been approved by the Office of Management and Budget under No. 0937–0195. Under these requirements, any community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to keep State and local health officials apprised of proposed health services grant applications submitted from within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the administrator of the State and local health agencies and to the State and local AIDS program director in the area(s) to be impacted by the proposal: (a) A copy of the face page of the application (SF 424); and, (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served; (2) a summary of the services to be provided; and, (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to this program.

Executive Order 12372: The Special Projects of National Significance Grant Program has been determined to be a program subject to the provisions of Executive Order 12372, concerning intergovernmental review of Federal Programs, as implemented by 45 CFR 100.13. Under urgent conditions, the Secretary may waive any provision of this regulation. The Secretary has waived 45 CFR 100.13 due to the compelling need to get funds to grantees.

OMB Catalog of Federal Domestic Assistance: Number for the Special Projects of National Significance is 93.928.

FOR FURTHER INFORMATION CONTACT: Additional technical or program information may be obtained from Mr. George Sonsel, SPNS Branch, Office of Science and Epidemiology, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, room 7A–19, Rockville, MD 20857. The telephone number is (301) 443–9976 and the FAX number is (301) 592–2511. Grant applications, guidance materials, and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this Notice may be requested from Ms. Glenna Wilcom, Grants Management Officer, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, room 7–15, Rockville, MD 20857. The telephone number is (301) 443–2280 and the FAX number is (301) 594–6096. Applicants for grants will use Form PHS 5161–1, approved under OMB Control No. 0937–0189. Completed applications should be sent to the Grants Management Officer.

Dated: February 17, 1994.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–7340 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, 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 (47 FR 39409–24, August 31, 1982, as amended most recently in pertinent part at 59 FR 10135, March 3, 1994, is amended to reflect the consolidation of the management policy and program support functions within the Office of Operations and Management, Office of the Administrator, Health Resources and Services Administration (HRSA).

Under HB–10, Organization and Functions, amend the functional statements for the Office of Operations and Management (HBA4) as follows:

(1) Delete the function statements for the Division of Program Support (HBA42) and the Division of Management Policy (HBA48) in their entirety; and

(2) Add the following functional statement immediately after the functional statement for the Division of Fiscal Services (HBA47):

Division of Management Services (HBA4C). Provides Agencywide leadership and direction in the areas of management policies and procedures, manpower management, and property management and serves as the Executive Officer for the Office of the Administrator. Specifically: (1) Provides advice and guidance for the establishment or modification of organizational structures, functions, and delegations of authority; (2) conducts and coordinates the Agency's issuances, records, reports, forms, and mail management programs; (3) negotiates solutions in intra- and interagency management problems; (4) conducts Agencywide management improvement programs; (4) conducts Agencywide management improvement programs; (5) conducts management and information studies and surveys; (6) coordinates the Agency's participation in the Department's management tracking systems; (7) administers the Agency's Ethics Program; (8) oversees and coordinates the implementation of legislation, directives and policies relating to the Privacy Act; (9) plans, directs, and coordinates administrative management activities and services including personnel, financial, materiel management, and general administrative services for the Office of the Administrator; (10) provides liaison with the Office of the Assistant Secretary for Health on financial, personnel, organization, supply, and other management concerns of the Office of the Administrator; (11) acts for the Associate Administrator for Operations and Management concerning space, parking and communications management for the headquarters and represent him/her in matters relating to the management of the Parklawn Building complex; and (12) advises on and coordinates administration-wide policies and procedures required to implement General Services Administration and departmental regulations governing materiel management, including transportation, motor vehicle, and utilization and disposal of property.

Under Section HB–40, Delegations of Authority. All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this consolidation will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this consolidation.

This consolidation is effective upon date of signature.

Dated: March 22, 1994.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 94–7341 Filed 3–28–94; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–943–01–4110–03–257D; MIES 42899, MIES 42900]

(Michigan): Proposed Reinstatement of Terminated Oil and Gas Leases

Under the provisions of Public Law 97–451, petitions for reinstatement of oil and gas leases MIES 42899 and MIES 42900, Oscoda County, Michigan, were timely filed by Atlantic Richfield Company (Lessee) and were accompanied by all required rentals and royalties accruing from August 1, 1993, the date of termination.

No valid leases have been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. Payment of $1,000 in administrative fees ($500 for each lease) has been made.

Having met all the requirements for reinstatement of the leases as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the leases effective August 1, 1993, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Johnson at (703) 440–1528.

Dated: March 18, 1994.

Carson W. Culp, Jr.,

State Director.

[FR Doc. 94–7298 Filed 3–28–94 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Risk Assessment and Management Committee Meeting

AGENCY: Department of the Interior; U.S. Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Risk Assessment and Management Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee meeting will continue development of the draft risk assessment process.

DATES: The Risk Assessment and Management Committee will meet from 9 a.m. to 3 p.m. on Tuesday, April 5, 1994.

ADDRESSES: The Risk Assessment and Management Committee meeting will be held at the U.S. Fish and Wildlife Service Building, room 200B, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD (301) 436–8939.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Assessment and Management Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD 20782 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: March 23, 1994.

Noreen Clough,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director, Fisheries.

[FR Doc. 94–7242 Filed 3–28–94 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Big Thicket National Preserve; Revision of Preserve Boundary at Beech Creek Unit

Section 2 of the Act of July 1, 1993 (107 Stat. 229) provides that after advising the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives, in writing, the Secretary of the Interior may make minor revisions of the boundaries of the preserve when necessary by publication of a revised drawing or other boundary description in the **Federal Register**. It is desired to make such a minor revision in the boundary of the 5,089 acre Beech Creek Unit by adding a 99.92 acre parcel located adjacent to the northwest portion of the unit. This addition will serve to complete the capture of a significant tributary of Beech Creek entirely within the unit. It will also add the final area of substantial wetlands that adjoin the unit. The owner, Champion International Corporation, has made a formal request for the Government to acquire this property because they have been unable, over a period of 15 years, to gain legal access to the tract to manage and harvest the timber as they do their other properties. It is considered that the wetlands and biological resources contained within this 99.92 acre addition will make a worthwhile contribution to the preserve. The specific lands proposed for addition are described as follows:

Tract No. 102–09

All that certain tract or parcel of land lying and situate in the County of Tyler, Texas, being 99.92 acres, more or less, out of the William Prescott Survey, A–517, and being more particularly described as follows:

Beginning at a concrete monument marking the Northeast corner of the William Prescott Survey, A–517, from which a Government marker bears South 03° 44′ 48″ East 2.00 feet, said Point of Beginning having Texas State Plane Coordinates, Central Zone, North 451,465.20 and East 3,921,202.40 for the Northeast corner of this tract;

Thence with the East line of the William Prescott Survey, A–517, South 03° 44′ 48″ East a distance of 1,557.20 feet to a concrete monument marking the Northwest corner of the W. C. Hooker Survey A–360 and the Southwest corner of the John B. Dodd, Survey, A–215, from which a Government marker bears South 04° 21′ 12″ East 2.00 feet;

Thence continuing with the East line of the said Prescott Survey, South 04° 21′ 12″ East 202.72 feet to a concrete monument marking the Southwest corner of Lot 1 out of said Dodd Survey, from which a Government marker bears North 86° 37′ 55″ East 2.00 feet;

Thence with the Boundary Line of Big Thicket National Preserve and continuing with the East line of said Prescott Survey, South 04° 21′ 12″ East 497.27 feet to a Point for the Southeast corner of this tract;

Thence continuing with said Boundary Line South 86° 02′ 03″ West 1930.95 feet to a Point for the Southwest corner of this tract;

Thence continuing with said Boundary Line North 03° 56′ 05″ West 2,257.16 feet to an iron pipe on the North line of the said Prescott Survey, for the Northwest corner of this tract, from which a Government marker bears South 86° 02′ 37″ West 2.00 feet;

Thence with the North line of said Prescott Survey, North 86° 02′ 03″ East at 1,254.84 feet a Government marker, a total distance of 1,930.95 feet to the Point of Beginning.

All bearings are based on Texas State Plane Coordinate System—Central Zone.

Containing 99.92 acres of land, more or less.

Therefore, notice is hereby given that in accordance with the Act of July 1, 1993, the boundary of the Beech Creek Unit of Big Thicket National Preserve is revised as described above, and as shown on Big Thicket National Preserve land acquisition status map, segment 102. This map is on file and available for inspection in the office of the National Park Service, Department of the Interior; the Office of the Southwest Region, National Park Service; and the Office of the Superintendent, Big Thicket National Preserve.

Dated: January 13, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–7257 Filed 3–28–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 19, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significant of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 13, 1994.

Carol D. Shull,

Chief of Registration, National Register.

Arkansas

Logan County

Smith Hospital, N terminus of Express St., Paris, 94000369.

California

Alameda County

Bachelder, Thomas Foxwell, Barn, 1011 Kilkare Rd., Sunol, 94000359.

Orange County

Artz Building, 150–158 W. Main St., Tustin, 94000364.

Farmers and Merchants Bank of Fullerton, 122 N. Harbor Blvd., Fullerton, 94000360.

Connecticut

Tolland County

Loomis—Pomeroy House, 1747 Boston Tpk., Coventry, 94000370.

Delaware

Sussex County

Bridgeville Historic District, Roughly bounded by Market, Main and Edgewood Sts., School House Ln., Maple Alley and the Penn Central RR tracks. Bridgeville, 94000361.

Florida

Brevard County

Indian Fields (Archeological Resources in the Upper St. Johns River Valley MPS), Address Restricted, Titusville vicinity, 94000358.

Persimmon Mound (Archeological Resources in the Upper St. Johns River Valley MPS), Address Restricted, Rockledge vicinity, 94000357.

Escambia County

First Christian Church, 619 E. Gadsden St., jct. of 7th Ave. and Gadsden, Pensacola, 94000350.

Leon County

Fort Braden School, Old Jackson Bluff Rd., 18 mi. W of Tallahassee, Tallahassee vicinity, 94000347.

Palm Beach County

Hatch's Department Store, 301–307 Clematis St., West Palm Beach, 94000348.

Northwood, Old, Historic District, Roughly bounded by Broadway, N. Dixie Hwy. and 26th and 35th Sts., West Palm Beach, 94000368.

Sarasota County

Kennedy, Dr. Walter, House, 1876 Oak St., Sarasota, 94000349.

Illinois

Lake County

LADY ELGIN Shipwreck, Address Restricted, Chicago vicinity, 94000362.

Iowa

Monroe County

Brick Gothic House, 1.25 mi. S. of Albia, 0.75 mi. E of IA 5, 0.5 mi. W of T35. Albia vicinity, 94000351.

Minnesota

Hennepin County

Rand Tower, 527–529 Marquette Ave., Minneapolis, 84003937.

Missouri

Jackson County

Liquid Carbonic Company Building, 2000 Baltimore St., Kansas City, 94000365.

New York

Kings County

Eighth Avenue (14th Regiment) Armory (Army National Guard Armories in New York State MPS), 1402 Eighth Ave., Brooklyn, 94000367.

Puerto Rico

Vieques Municipality

Casa de Jaime Puig Lemoine, 161 65 de Infanteria St., Isabel Segunda vicinity, 94000363.

Texas

Harris County

Clarke & Courts Building, 1210 W. Clay Ave., Houston, 94000354.

Utah

Grand County

Dalton Hells CCC Camp—Moab Relocation Center, US 191, approximately 13 mi. N of Moab, Moab vicinity, 94000366.

West Virginia

Greenbrier County

Blue Bend Forest Camp, 4 mi. W of WV 92 on Alvon—Blue Bend—Anthony Rd., Co. Rt. 16/2, Alvon vicinity, 94000352.

Hopkins Mountain Historic District, Along FS Rd. 139, Hopkins Mountain Rd., 4 mi. W of WV 92, N of Alvon—Blue Bend—Anthony Rd., Co. Rd. 16/2, Alvon vicinity, 94000353.

Inorder to assist in the preservation of the following property, the commenting period has been waived:

Utah

Utah County

Dallin House, 253 S. 300 East, Springville, 94000346.

[FR Doc. 94–7258 Filed 3–28–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32464]

H. Peter and Linda C. Claussen—Continuance in Control Exemption—Piedmont & Atlantic Railroad Co., Inc.

H. Peter and Linda C. Claussen (the Claussens) have filed a notice of exemption to continue in control of Piedmont & Atlantic Railroad Co., Inc. (PARR), upon PARR becoming a class III rail carrier.

PARR, a noncarrier, has concurrently filed a notice of exemption in Piedmont & Atlantic Railroad Co., Inc.—Lease and Operation Exemption—L & S Holding Company d/b/a Laurinburg & Southern Railroad Co. and Yadkin Valley Railroad Company, Finance Docket No. 32462, to sublease and operate approximately 101.7 miles of rail line owned by Southern Railway Company, leased by Laurinburg and Southern Railroad Company (LSR), and operated by Yadkin Valley Railroad Company (YVRR).[1] The trackage consists of two rail segments entirely within North Carolina extending: (1) 63.2 miles from milepost K–37.0 at Rural Hall in Forsyth County to milepost K–100.2 at North Wilkesboro in Wilkes County; and (2) 38.5 miles from milepost CF–0.0 at Mount Airy in Surry County and milepost CF–38.5 near Brook Cove in Stokes County.[2] The notice became effective on March 3, 1994.[3]

The Claussens own and control the following nonconnecting class III rail carriers: Albany Bridge Company, Inc. (operating in Georgia); Gulf and Ohio Railways, Inc. (operating in Mississippi as the Mississippi Delta Railroad and in Georgia as the Atlantic & Gulf Railroad); Wiregrass Central Railroad Company, Inc. (operating in Alabama); and H & S Railroad Company, Inc. (operating in Alabama).

The Claussens state that: (1) The properties operated by these railroads

[1] LSR originally acquired the lease and YVRR the operating authority in Laurinburg and Southern Railroad Company, et al.—Lease and Operation Exemption—Southern Railway Company, Finance Docket No. 31526 (ICC served Nov. 7, 1989).

LSR and YVRR are two of four active rail carriers [the other two are Robeson County Railroad Corporation (RCR) and Nash County Railroad Corporation] and two inactive rail carriers (Saltville Railroad Corporation and Franklin County Railroad Corporation) that were recently merged into Laurinburg Oil Company (Laurinburg), in a corporate family transaction. Laurinburg Oil Company—Merger Exemption—Laurinburg and Southern Railroad Company, Robeson County Railroad Corporation, Yadkin Valley Railroad Company, and Nash County Railroad Corporation, Finance Docket No. 32426 (ICC served Jan. 13, 1994). The merger also involved the Red Springs and Northern Railroad Company, a division of RCR. After the merger, Laurinburg's name was changed to L & S Holding Company (L&S), and the four active railroads operated as separate divisions of L&S.

[2] In two other concurrently filed notices of exemption, the Rocky Mount & Western Railroad Co., Inc. (RMWR), another noncarrier controlled by the Claussens, is acquiring a nonconnecting rail line from L & S Holding Company d/b/a Nash County Railroad Corporation; and the Claussens correspondingly seek to continue in control of RMWR when it becomes a class III rail carrier. Rocky Mount & Western Railroad Co., Inc.—Acquisition and Operation Exemption—L & S Holding Company d/b/a Nash County Railroad Corporation, Finance Docket No. 32463; and H. Peter and Linda C. Claussen—Continuance in Control Exemption—Rocky Mount & Western Railroad Co., Inc., Finance Docket No. 32465.

[3] Under 49 CFR 1150.32(b), notices of exemption become effective 7 days after filing. Here, the effective date is calculated from February 24, 1994, when petitioners' additional submission was received.

do not connect with each other or with the lines being acquired from PARR and RMWR; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or with any railroad in the corporate family; and (3) the transaction does not involve a class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Adam M. Mycyk of Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Decided: March 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–7337 Filed 3–28–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 139X)]

Norfolk and Western Railway Company—Abandonment Exemption—In Madison and St. Clair Counties, IL, et al.

Norfolk and Western Railway Company (N&W) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon approximately 23.38 miles of rail line in Madison and St. Clair Counties, IL, and the city of St. Louis, MO. The lines to be abandoned are segments which extend: (1) Between milepost A–9.13 at Wanda, IL, and milepost A–13.0 at Bluffs Junction, IL;[1] (2) between milepost A–20.5 at Troy, IL, and milepost A–37.04 at Bridge Junction, IL; (3) between milepost 2.20 at Branch Street Yard, MO, and milepost 3.35 at Venice, IL; and (4) between milepost O.O at Venice, IL, and milepost 1.82 at McKinley, Junction, IL.

N&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the 2-year period; and (4) it has met the notice requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8(c) (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies).

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on April 28, 1994, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 8, 1994.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to Conrail's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

N&W has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 1, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–7339 Filed 3–28–94; 8:45 am]

BILLING CODE 7035–01–P

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[1] The notice of exemption erroneously stated that this line segment was 4.0 miles long. The correct distance is 3.87 miles. N&W has acknowledged the error and concurs in this correction.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of the exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept late-filed trail use requests as long as it retains jurisdiction to do so.

[Finance Docket No. 32462]

Piedmont & Atlantic Railroad Co., Inc.—Lease and Operation Exemption—Laurinburg & Southern Railroad Co., et al.

Piedmont & Atlantic Railroad Co., Inc. (PARR), a noncarrier, has filed a notice of exemption to sublease and operate approximately 101.7 miles of rail line owned by Southern Railway Company, leased by Laurinburg and Southern Railroad Co., Inc. (LSR), and now being operated by Yadkin Valley Railroad Company (YVRR).[1] The trackage consists of two rail segments in North Carolina extending: (1) 63.2 miles from milepost K–37.0 at Rural Hall in Forsyth County, to milepost K–100.2 at North Wilkesboro in Wilkes County; and (2) 38.5 miles from milepost CF–0.0 at

[1] LSR originally acquired the lease and YVRR the operating authority in Laurinburg and Southern Railroad Company, et al.—Lease and Operation Exemption—Southern Railway Company, Finance Docket No. 31526 (ICC served Nov. 7, 1989).

LSR and YVRR are two of four active rail carriers [the other two are Robeson County Railroad Corporation (RCR) and Nash County Railroad Corporation] and two inactive rail carriers (Saltville Railroad Corporation and Franklin County Railroad Corporation) that were recently merged into Laurinburg Oil Company (Laurinburg), in a corporate family transaction. Laurinburg Oil Company—Merger Exemption—Laurinburg and Southern Railroad Company, Robeson County Railroad Corporation, Yadkin Valley Railroad Company, and Nash County Railroad Corporation, Finance Docket No. 32426 (ICC served Jan. 13, 1994). The merger also involved the Red Springs and Northern Railroad Company, a division of RCR. After the merger, Laurinburg's name was changed to L & S Holding Company (L&S), and the four active railroads operated as separate divisions of L&S.

Mount Airy in Surry County, to milepost CF–38.5 near Brook Cove in Stokes County.[2] The notice became effective on March 3, 1994.[3]

Any comments must be filed with the Commission and served on: Adam M. Mycyk of Weiner, Brodksy, Sidman & Kider, P.C., 1350 New York Avenue, NW., suite 800, Washington, DC 20005–4797.

This notice is filed under 49 CFR 1150.21. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–7338 Filed 3–28–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32393]

Southern Electric Railroad Company; Acquisition and Operation Exemption; Southern Electric Generating Company

On March 7, 1994, Southern Electric Railroad Company (SERC), filed a notice of exemption under 49 CFR 1180.2(d)(3) and 49 CFR 1180.4(g), to acquire from Southern Electric Generating Company (SEGCO),[1] all of SEGCO's rights and obligations to provide common carrier service over the approximately 7.5-mile rail line between CSX Transportation Inc.'s (CSXT) main line near Westover, AL, and the Ernest C. Gaston Steam Electric Generating Plant near Wilsonville, in Shelby County, AL (Gaston Line).[2] SERC maintains that it will obtain an exclusive, permanent easement to conduct rail operations over and maintenance of the assets of SEGCO, but not the physical assets themselves, which SEGCO states it wishes to retain.[3]

SERC asserts that CSXT currently provides all service over the Gaston Line and will continue to provide service over the line under the agreement. SERC asserts further that it will substitute itself for SEGCO in the operating agreement with CSXT and in other similar agreements.[4] The parties intend to consummate the proposed transaction on or before December 31, 1994.

SERC, Alabama Power Company (APC),[5] and Georgia Power Company (GPC) are subsidiaries of The Southern Company (Southern), a public utility holding company. APC and GPC each own 50% of the stock of SEGCO.

Because the parties are members of the same corporate family, and the transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family, the transaction qualifies for the class exemption at 49 CFR 1180.2(d)(3).

The purpose of the transaction is to allow Southern to consolidate all of its rail functions within one subsidiary, SERC. Southern wishes to enhance administrative efficiencies for all rail lines serving its operating electric utility affiliates by centralizing in SERC the administration of operations for all of the rail lines Southern controls.

To ensure that all employees who may be affected by the transactions are given no less than the minimum protection under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William A. Mullins, 601 Pennsylvania Ave., NW., suite 640, North Building, Washington, DC 20004.

Decided: March 23, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland Jr.,

Secretary.

[FR Doc. 94–7335 Filed 3–28–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–97X]

Texas Mexican Railway Company, Naval Base Short Line Discontinuance Exemption—in Nueces County, TX

The Texas Mexican Railway Company (Tex-Mex) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances to discontinue service over a 13.26-mile rail line beginning at milepost 3.07 (Station 165) and

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[2] In a related notice of exemption, H. Peter and Linda C. Claussen (the Claussens) seek to continue to control PARR when it becomes a class III rail carrier. H. Peter and Linda C. Claussen—Continuance in Control Exemption—Piedmont & Atlantic Railroad Co., Inc., Finance Docket No. 32464. Additionally, in two other concurrently filed notices of exemption, the Rocky Mount & Western Railroad Co., Inc. (RMWR), another noncarrier controlled by the Claussens, is acquiring a nonconnecting rail line from L & S Holding Company d/b/a Nash County Railroad Corporation; and the Claussens correspondingly seek to continue in control of RMWR when it becomes a class III rail carrier. Rocky Mount & Western Railroad Co., Inc.—Acquisition and Operation Exemption—L & S Holding Company d/b/a Nash County Railroad Corporation, Finance Docket No. 32463; and H. Peter and Linda C. Claussen—Continuance in Control Exemption—Rocky Mount & Western Railroad Co., Inc., Finance Docket No. 32465.

[3] Under 49 CFR 1150.323(b) notices of exemption become effective 7 days after filing. Here, the effective date is calculated from February 24, 1994, when petitioner's additional submission was received.

[1] SERC and SEGCO were granted exemptions to construct lines of railroad in *Southern Electric Railroad Company—Construction Exemption—Jefferson County, AL*, Finance Docket No. 31972 (ICC served Mar. 17, 1992) (*Jefferson County*), *Southern Electric Railroad Company—Construction Exemption—Effingham County, GA*, Finance Docket No. 32195 (ICC served Jan. 12, 1993) (*Effingham County*), and *Southern Electric Generating Co.—Petition for Exemption—Construction of a Rail Line in Shelby County, AL*, Finance Docket No. 31498 (ICC served Sept. 19, 1989). SERC and SEGCO are, therefore, carriers subject to Commission jurisdiction.

[2] SERC states that none of its lines connects with the Gaston Line. The parties previously proposed to accomplish the same result proposed here by having SEGCO convey to SERC all of its rights, title, and interest in the Gaston Line, followed by SERC's conveying the property back to SEGCO, subject to SEGCO's retention of an exclusive easement interest for purposes of rail carrier operations and rail line maintenance. A notice of exemption was filed and published, *Southern Electric Railroad Company—Corporate Family Transaction Exemption—Southern Electric Generating Company*, Finance Docket No. 32281 (ICC served May 5, 1993), but the transaction was never consummated because of tax and other regulatory reasons.

[3] SERC cites *South Orient Railroad Company, Ltd.—Acquisition and Operation Exemption—Line of The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 31971 (ICC served Sept. 2, 1992), in which the Commission determined that it did not have jurisdiction over the transfer of the fixed assets of rail line, but that it did have jurisdiction over the transfer of the common carrier obligation. The Commission determined there that a notice of exemption should be published to provide for the transfer of the operations.

SERC asserts that it is constructing other lines, but that it will not itself operate any of those lines, each of which will be operated as a separate entity through operation agreements with nonaffiliated carriers. See *Jefferson County* and *Effingham County*. SERC asserts that the present transaction does not involve a Class I carrier, that none of its lines connects with the Gaston Line, and that its purchase of SEGCO's common carrier obligation and accompanying permanent operating easement are not part of a series of anticipated transactions that would connect the rail lines with each other. SERC maintains that the transaction, therefore, would also qualify for an exemption under 49 CFR 1180.2(d)(2).

[4] SERC does not believe that it needs to obtain Commission authority to substitute itself for SEGCO in the operating agreement between SERC and SEGCO which was granted in *CSX Transportation, Inc.—Operating Exemption—Line of Southern Electric Generating Company*, Finance Docket No. 31500 (ICC served Aug. 1, 1989). SERC indicates, however, that if the Commission does not agree, it will promptly file for such authority.

[5] APC is the only current shipper on the Gaston Line.

continuing to the Corpus Christi Naval Air Station in Nueces County, TX.[1]

Tex-Mex has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. On behalf of Tex-Mex, the City of Corpus Christi has filed and certified that the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 28, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 8, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 1994, with: Office of the Secretary, Case Control Branch, Intestate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to: (1) petitioner's representatives, Charles H. White, Jr. or Cynthia C. Crawford, Galland, Kharasch, Morse & Garfinkle, P.C., 1054 31st Street NW., Washington, DC 20007; and (2) City of Corpus Christi, Juan Garza, City Manager, P.O. Box 9277, Corpus Christi, Texas 78469–9277.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

On behalf of Tex-Mex, the City of Corpus Christi has filed an environmental report which addresses the discontinuance's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 8, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 24, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–7378 Filed 3–28–94; 8:45 am]

BILLING CODE 7035–01–P

[1] In a decision served November 19, 1993, the Commission rejected Tex-Mex's original notice of exemption because no environmental information was submitted. Subsequently, the City of Corpus Christi filed supplemental environmental documents on behalf of Tex-Mex that cured the defect in the notice.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice Solicitation of Proposals for the Evaluation of the Gang Resistance Education and Training (G.R.E.A.T.) Program

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Solicitation of proposals for the Evaluation of The Gang Resistance Education and Training (G.R.E.A.T.) Program, sponsored jointly by the National Institute of Justice and the Bureau of Alcohol, Tobacco, and Firearms.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

To obtain copies of the Solicitation *Evaluation of the Gang Resistance Education and Training (G.R.E.A.T.) Program*, call the National Criminal Justice Reference Service, 1–800–851–3420, Box 6000, Rockville, MD 20850.

DATES: The deadline for receipt of proposals is close of business on May 9, 1994.

FOR FURTHER INFORMATION CONTACT:

Winifred L. Reed, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 307–2952.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The National Institute of Justice, in partnership with the Bureau of Alcohol, Tobacco and Firearms (AFT), is soliciting proposals for the evaluation of the Gang Resistance Education and Training (G.R.E.A.T.) program. The G.R.E.A.T. program was begun by the ATF in 1991 in cooperation with various agencies in Phoenix, Arizona. The program brings law enforcement officers into elementary schools in gang-prone areas to teach students about the destructive consequences of gang membership.

Subsequent to the Phoenix effort, the ATF teamed with the Phoenix Police Department and the Federal Law Enforcement Training Center to train more than 400 police officers to teach the G.R.E.A.T. curriculum in elementary and middle schools. In 1993, ATF entered into cooperative agreements with three metropolitan areas that receive funding for the G.R.E.A.T. initiative, with additional funding approved for fiscal year 1994.

In order to assess the implementation and effectiveness of this initiative, a rigorous evaluation will be conducted, sponsored jointly by the ATF and the National Institute of Justice.

Carol Petrie,

Acting Director, National Institute of Justice.

[FR Doc. 94–7344 Filed 3–28–94; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Amendment to the Charter

Notice is hereby given that after consultation with the General Services Administration, it has been determined that the Commission on the Future of Worker-Management Relations, whose charter will expire May 23, 1994 is hereby extended for a duration of six months (November 23, 1994). This action is necessary and in the public interest. The Commission will report to both the Secretary of Labor and the Secretary of Commerce.

The Commission will study and advise the respective Secretaries on, among other things, how to enhance workplace productivity through labor-management cooperation and employee participation.

Specifically, the Commission will be asked to address the following questions:

(1) What (if any) new methods or institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?

(2) What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay? and

(3) What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?

The Commission will consist of approximately ten individuals drawn from the academic community, workers, management and the general public.

The Commission will function solely as an advisory body and in compliance with the terms of the Federal Advisory Committee Act. Its charter is being filed at this time in accordance with approval by the General Services Administration Secretariat pursuant to 41 CFR 101–6.2015(a)(2).

Signed at Washington, DC, this 24th day of March, 1994.

Robert B. Reich,

Secretary of Labor.

Ronald H. Brown,

Secretary of Commerce.

[FR Doc. 94–7382 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–23–M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date

New

Employment and Training Administration
Evaluation of the 1992 Job Training Partnership Act Amendments
One-time
State or local governments
30 respondents; 14 hours per response; 420 total hours

This study of the Job Training Partnership Act (JTPA) Amendments will identify and assess major organizational, administration, and operational designs, processes and problems relating to early implementation of the JTPA amendments.

New

Assistant Secretary for Administration and Management
Customer Satisfaction Survey Generic Clearance of Regulated Entities
On occasion

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations 50,000 respondents; 15 minutes per response; 12,500 total hours The Department of Labor is seeking a generic clearance of regulated entities for customer satisfaction surveys in accordance with the requirements of Executive Order 12862, Setting Customer Service Standards.

Reinstatement

Occupational Safety and Health Administration
Designation of Competent Person, OSHA 73
1218–0011
Reporting and Recordkeeping
300 respondents; 5 minutes per response; 24 total hours; 1 form

The OSHA 73 is needed to help ensure that shipyard personnel do not enter confined spaces that contain oxygen deficient, toxic, or flammable atmospheres. Qualified personnel must test these spaces and this form serves as the employers designation of selected employees who through training, skill and ability, are deemed competent to conduct such tests. Shipyards, barge cleaners, and repair facilities are affected.

Reinstatement

Mine Safety and Health Administration
Fire Protection—Escape and Evaluation Plan

1219–0051

On occasion

Businesses or other for-profit; Small businesses or organizations 637 respondents; 3.88 hours per response; 2,474 total hours Requires coal mine operators to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of existing work areas.

Extension

Bureau of Labor Statistics

Local Area Unemployment Statistics Reports 6, 8, 13–15

1220–0043

Form No.	Affected public	Respondents	Frequency	Average time
LAUS 6	State Governments	52	Monthly	30 minutes.
LAUS 8	State Governments	52	10 per yr	2.0 hours.
LAUS 13	State Governments	52	3 per yr	1.0 hour.
LAUS 14	State Governments	52	3 per yr	1.0 hour.
LAUS 15	State Governments	52	2 per yr	4.0 hours.

2,080 total hours.

These reports provide essential technical management information regarding the quality, accuracy, consistency, and conformance to BLS standards of the data and procedures used in LAUS estimation.

Extension

Employment Standard Administration

Wage Statement

1215–0148; WH 501R and 501R (Spanish)

Individuals or households; Farms; Businesses or other for profit; Non-profit institutions; Small businesses or organizations 1.5 million recordkeepers; 26 records filed per recordkeeper; ½ minute per record; 325,000 total hours.

The Migrant and Seasonal Agricultural Worker Protection Act requires employers of agricultural workers to maintain records of certain payroll information given to each worker.

Signed at Washington, D.C. this 24th day of March, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–7383 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–23–P

Employment and Training Administration

[TA–W–29,028]

Kaiser Aluminum and Chemical Corp.; Negative Determination on Reconsideration

On December 13, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former worker of the Trentwood Works of Kaiser Aluminum and Chemical Corporation in Spokane, Washington. The notice was published in the **Federal Register** on November 9, 1993 (58 FR 59491).

The Department's initial denial was based on the fact that the decreased production or sales criterion was not met during the relevant period to the petition.

Investigation findings show that sales and production increased in the first eight months of 1993 compared to the same period in 1992.

The company submitted additional customer information for aluminum coil, sheet and plate and claimed that Russian and European producers have penetrated the American market with reduced aluminum prices.

New findings on reconsideration show that customers purchasing aluminum from the Trentwood Works either increased their purchases from Trentwood or their import reliance for aluminum coil, sheet and plate increased but accounted for a negligible portion of Trentwood sales in 1993.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by increased imports but only to those who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive products which contributed importantly to declines in sales or production and employment in the period relevant to the petition. Accordingly, foreign competition and reduced prices, in themselves, would not form a basis for a worker group certification.

Company officials stated that Trentwood will restructure its operations because of over-capacity in the aluminum can sheet business and declining markets in the aerospace business.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the Trentwood Works, Kaiser Aluminum and Chemical Corporation in Spokane, Washington.

Signed at Washington, DC, this 21st day of March 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–7379 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the appendix to this notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC., provided such request is filed in writing with the Director of OTAA not later than April 8, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than April 8, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of March, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	State receipt date	Petition No.	Articles produced
Owens-Brockway (Wkrs)	Huntington, WV	3/7/94	NAFTA–00041	Beer and wiskey bottles.
American Manufacturing Company, Inc. (Wkrs).	Anniston, AL	3/8/94	NAFTA–00042	Cordage or rope.
Cooper Industries (USA)	Canonsburg, PA	3/8/94	NAFTA–00043	Power transformers (large power, others).
Gerber Products, Inc. (Wkrs)	Reedsburg, WI	3/8/94	NAFTA–00044	Infant feeding and safety products.
Johnson Controls (Wkrs)	Bennington, VT	3/9/94	NAFTA–00045	Automotive batteries.
Sears Logistics Services, Inc. (Wkrs)	Philadelphia, PA	3/10/94	NAFTA–00046	Building material and household goods.
Concurrent Computer Corporation (Wkrs)	Oceanport, NJ	3/11/94	NAFTA–00047	Computer system power supply units.
Gould Electronics, Inc. (IBEW)	Newburyport, MA	3/11/94	NAFTA–00048	Industrial fuses.
Rowe, International (UAW)	Whippany, NJ	3/14/94	NAFTA–00049	Vending machines.
Eaton Corporation (Co.)	Arden, NC	3/14/94	NAFTA–00050	Limit and prox switches; Photoele. sensors.
Valeo Climate Control (UAW)	Fort Worth, TX	3/14/94	NAFTA–00051	Automotive air conditioners and heaters.
Creative Ceramics Corporation (Wkrs)	Eagle Pass, TX	3/16/94	NAFTA–00052	Assemble wooden bases on figurines.
Simpkins Industries (UPIU)	Russell, MA	3/16/94	NAFTA–00053	Paper products: Cupstack and waxpaper.
National Steel Pellet Company (USOA)	Keewatin, MN	3/17/94	NAFTA–00054	Taconite pellets.
North Dakota Grocers Association (Wkrs)	Bismarck, ND	3/17/94	NAFTA–00055	Boxes of coupons.
Bristol Consolidators, Inc. (IBT)	Greenville, PA	3/17/94	NAFTA–00056	Storage/transportation of supplies/products.
J.E. Morgan Apparel (Co.)	Wadesboro, NC	3/17/94	NAFTA–00057	Sweatshirts, pants, shorts, tee shirts.

[FR Doc. 94–7380 Filed 3–28 8:45 am]
BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–28; Exemption Application No. D–9414, et al.]

Grant of Individual Exemptions; Cascade West Sportswear, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Cascade West Sportswear, Inc. Profit Sharing Plan (the Plan) Located in Puyallup, Washington

[Prohibited Transaction Exemption 94–28; Exemption Application No. D–9414]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain limited partnership units (the Units) from the Plan to Cascade West Sportswear, Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Units is established by an appraiser independent of the Plan and the Employer;

2. The Employer pays the greater of $131,560 or the current fair market

value of the Units plus an "opportunity loss" of no less than $171,000;

3. The sale is a one-time transaction for cash; and

4. The Plan pays no commissions or other expenses in relation to the sale.

Written Comments

The Department received a written comment from a Plan participant in response to the notice of proposed exemption. The applicant reviewed the comment letter and responded that the letter appears to not relate to the transaction described in the proposal. According to the applicant, the letter concerns the decision made in 1992 to terminate the Plan. The applicant notes that the participant's account remains 100 percent vested and that the account will share in the proceeds of the sale of the Units and in the "opportunity loss" payment in the same manner as all other Plan participants and beneficiaries.

The Department has considered the entire record, including the comment letter and the applicant's response to the letter, and has determined to grant the exemption as it was proposed.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1994, at 59 FR 2622.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Residential Funding Corporation (RFC), Residential Funding Mortgage Securities, Inc. (RFMSI), Residential Funding Mortgage Exchange Corporation (RFMEC), Residential Funding Securities Corporation (RFSC), GMAC Auto Receivables Corporation (GMAC Auto), General Motors Acceptance Corporation (GMAC), GMAC Mortgage Corporation (GMAC Mortgage) and GMAC Mortgage Securities II, Inc. (GMAC Mortgage Securities; together, the Applicants) Located in Minneapolis, Minnesota (RFC, RFMSI, RFMEC and RFSC), Wilmington, Delaware (GMAC Auto), New York, New York (GMAC), and Elkins Park, Pennsylvania (GMAC Mortgage and GMAC Mortgage Securities)

[Prohibited Transaction Exemption 94–29; Exemption Application Nos. D–9112 and D–9113]

Exemption

I. Transactions

A. Effective June 9, 1992, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective June 9, 1992, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective June 9, 1992, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective June 9, 1992, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust;

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; and

(c) With respect to which (i) one of the Applicants or any of their affiliates is the sponsor, and an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent; or (ii) one of the Applicants is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Code; and

(b) That is issued by and is an obligation of a trust with respect to which (i) one of the Applicants or any of its affiliates is the sponsor, and an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR section 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Any of the Applicants;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with any of the Applicants;

(3) Any member of an underwriting syndicate or selling group of which any of the Applicants or a person described in (2) is a manager or co-manager with respect to the certificates; or

(4) An entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 9, 1994 at 59 FR 6051.

Effective Date: This exemption is effective for transactions occurring on or after June 9, 1992.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 23rd day of March, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–7269 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9623]

Proposed Exemption; Hensel Phelps Construction Co. Profit Sharing Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and

(2) The nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Hensel Phelps Construction Co. Profit Sharing Plan (the Plan) Located in Greeley, Colorado

[Application No. D–9623]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of certain real property (the Property) by the Plan to Hensel Phelps Construction Co. (the Employer), a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expenses in the proposed transaction; (3) the Plan receives as consideration the greater of either the fair market value of the property as determined by an independent appraiser on the date of the Sale, or receives all the funds expended by the Plan in acquiring and maintaining the Property; and (4) the trustee of the Plan has determined that the proposed Sale is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with total assets of $19,877,932 and approximately 394 participants and beneficiaries, as of November 30, 1993. The fiduciaries of the Plan consist of the Employer and Bank One, Greeley, N.A., located in Greeley, Colorado (the Trustee).

The Employer implements its responsibilities as fiduciary through the appointment of the Administrative Committee, which currently consists of the Employer's President and Chief Executive Officer, the Vice President-Finance, and the Vice President-General Counsel. The Administrative Committee responsibilities, *inter alia*, are to appoint and monitor activities of the Trustee and arrange for the payment of benefits by the Plan. The Trustee has complete discretionary authority and responsibility for investing and reinvesting the assets of the Plan.

The Employer is a Delaware corporation that is headquartered in Greeley, Colorado with district offices in Santa Clara and Irvine, California; Austin, Texas; and Little Rock, Arkansas. It is a 56-year-old employee-owned company that specializes in commercial and industrial construction and has approximately 1,600 employees. During the fiscal year which ended May 31, 1993, the Employer generated revenues of $645,597,000.

2. The Property is a condominium designated as Unit 34 in Writer Square Condominiums located at 1512 Larimer Street, Denver, Colorado. The Property was appraised at the request of the Trustee by an independent appraiser, Gary L. Berz, SRA, of Berz Appraisal Group, Ltd., located in Lakewood, Colorado, who determined the fair market value to be $260,000, as of June 24, 1993. The Property is described by Mr. Berz to consist of 2,624 square feet with 6 rooms, which include 3 bedrooms and 2.5 bathrooms. Parking facilities are provided underground for two vehicles. Outer construction is brick. The location of Writer Square Condominiums is described by Mr. Berz to be on busy downtown streets with zoning classification for business-residential units.

The Employer served Writer Square, Inc., Englewood, Colorado, as construction manager for the construction of Writer Square Condominiums, which included the Property. Final payment by Writer Square, Inc. to the Employer for its services as construction manager was made to the Employer on October 23, 1981.

3. On March 18, 1983, at the direction of IntraWest Bank of Greeley, Greeley, Colorado, as trustee of the Plan at that time with discretionary authority, the Plan issued a loan for $275,000 to Rudy and Betty J. Marich to enable them to purchase the Property from Writer Square, Inc.[1] The loan was secured by a first deed of trust, paying 12.5 percent per year on the outstanding balance. The monthly payments on the loan were $2,998.48, with the entire outstanding balance due on June 1, 1990. When the Marichs defaulted on the final payment on June 1, 1990, the successor trustee of the Plan agreed to refinancing the loan with the same terms and conditions, except the final payment on the outstanding balance would be due May 15, 1992.

Again the Marichs defaulted on the loan and the Plan commenced foreclosure proceedings to acquire title to the Property. At the foreclosure sale on December 28, 1993, the Plan bid an amount to cover the current balance due on the revised loan, including interest, attorney's fees and foreclosure costs, in order to obtain clear title to the Property upon the expiration of the 75 day redemption period on March 13, 1994.

4. Upon obtaining clear title to the Property the Plan proposes to sell the Property to the Employer for the greater of either the fair market value of the Property on the date of the Sale as determined by a qualified, independent appraiser, or for the total amount of the funds the Plan expended in acquiring and maintaining the Property. The applicant represents that the Plan will not suffer any loss nor incur any expenses from the proposed transaction. The applicant further represents that by the Employer acquiring the Property, the Plan will avoid the impact of any future negative yields and fluctuations in the rental and market values of the Property and costs associated with leasing or selling the Property. Also, the applicant represents that the Sale will provide the Plan with liquid assets that can be placed in more diversified investments.

The Trustee of the Plan represents that, as of February 22, 1994, the adjusted cost to the Plan for acquiring and maintaining the Property is $338,622.73; and the Trustee represents that this figure will be updated on the date of the Sale of the Property. The Trustee further represents that an appraisal by Mr. Berz was made of the Property on February 21, 1994, that determined the fair market value of the Property to be $325,000. In addition, the Trustee represents that a residential rental in Denver, Colorado is an asset that is an atypical investment for a profit sharing plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because (a) the proposed Sale will be a one-time transaction for cash; (b) the Plan will receive as consideration for the Sale the greater of either the fair market value of the Property as determined by an independent appraiser on the date of the Sale, or will receive all of the funds expended by the Plan in acquiring and maintaining the Property; (c) the Plan will not suffer any losses nor incur any expenses in effecting the proposed transaction; (d) the proposed transaction will enable the Plan to diversify its assets to more liquid investments and avoid economic risks associated with ownership of the Property; and (e) the Trustee has determined that the proposed Sale is appropriate for the Plan and is in the

[1] The Department notes that the decisions to issue and reissue a loan to the Marichs are governed by fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard the Department herein is not proposing relief for any violations of Part 4 of the Act which may have arisen as a result of the issuance and reissuance of the loan by the Plan.

The applicant represents that the Marichs are not parties in interest with respect to the Plan.

best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 23rd day of March, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–7270 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–29–P

[Application Nos. D–9337 and D–9415]

Smith Barney Shearson (SBS), Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption to modify and replace prohibited transaction exemption (PTE) 92–77 involving Shearson Lehman Brothers, Inc. (Shearson Lehman).

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would replace PTE 92–77 (55 FR 45833, October 5, 1992). PTE 92–77 permits the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan; collectively the Plans) in the Trust for TRAK Investments (the Trust) established by Shearson Lehman, in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service (the TRAK Program). In addition, PTE 92–77 permits the provision, by the Consulting Group Division of Shearson Lehman (the Consulting Group), of investment advisory services to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary) which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets. These transactions are described in a notice of pendency that was published in the **Federal Register** on April 3, 1992 at 57 FR 11514. PTE 92–77 is effective as of April 3, 1992.

If granted, the proposed exemption would replace PTE 92–77, which as discussed below, expired by operation of the law. The new proposed exemption would permit the replacement of Shearson Lehman with a newly-merged entity known as "Smith Barney Shearson, Inc." It would also permit the adoption of a daily-traded collective investment fund (the GIC Fund) for Plans providing for participant directed-investments (the Section 404(c) Plans). The proposed exemption would provide conditional relief that is identical to that provided by PTE 92–77. In addition, the proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to, Plans participating in the TRAK Program.

DATES: Written comments and requests for a public hearing should be received by the Department on or before the expiration of 60 days from the publication of this proposed exemption in the **Federal Register**. If granted, the proposed exemption will be effective July 31, 1993 for transactions that are covered by PTE 92–77. With respect to transactions involving the GIC Fund, the proposed exemption will be effective as of the date the grant notice is published in the **Federal Register**.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* Application Nos. D–9337 and D–9415. The applications pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would replace PTE 92–77. PTE 92–77 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed by SBS pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures (the Procedures) set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No.

4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed replacement exemption is being issued solely by the Department.

As stated briefly above, PTE 92–77 allows Shearson Lehman to make the TRAK Program available to Plans that acquire shares in the Trust subject to certain conditions. Specifically, PTE 92–77 provides exemptive relief from section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, with respect to the purchase or redemption of shares in the Trust by Plans investing therein. In addition, PTE 92–77 provides exemptive relief from the restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, with respect to the provision, by the Consulting Group of Shearson Lehman, of investment advisory services to an Independent Plan Fiduciary of a Plan participating in the TRAK Program which may result in such fiduciary's selection of a Portfolio in the TRAK Program for the investment of Plan assets.

Subsequent to the granting of PTE 92–77, Shearson Lehman informed the Department that it had signed an asset purchase agreement with Primerica Corporation (Primerica) and Smith Barney Harris Upham & Company, Inc. (Smith Barney), an indirect, wholly owned subsidiary. The terms of the agreement provided for the sale of substantially all of the assets of Shearson Lehman and its Asset Management Divisions (collectively, the Shearson Divisions) to Smith Barney.[1] The transaction was completed on July 31, 1993. As a result of the transaction, most of the assets and business of the Shearson Divisions were transferred to Smith Barney which, upon merger with Shearson Lehman, was renamed "Smith Barney Shearson." (Smith Barney Shearson is denoted herein as SBS.) Shearson Lehman received cash and an interest-bearing note from SBS. As further consideration for the asset sale, SBS agreed to pay future contingent amounts based upon the combined performance of SBS and certain other Shearson Divisions acquired from Shearson Lehman. Shearson Lehman also assigned to the American Express Company (American Express) the right to receive 2.5 million shares of certain convertible preferred stock issued by Primerica and a warrant. As consideration for the assignment, American Express agreed to pay Shearson Lehman for the stock and the warrant based on their value as of March 12, 1993, the date of the Asset Purchase Agreement. At present, SBS offers the TRAK Program to investors through one or more of its subsidiaries or divisions.

Since PTE 92–77 was granted, SBS informed the Department that it wished to modify the exemption in order to improve the TRAK Program and make it more responsive to the needs of investors. Specifically, SBS proposes to add to the Portfolios currently available under the TRAK Program, the GIC Fund, which is designed to invest primarily in guaranteed investment contracts (the GICs), synthetic GIC products and/or units of other GIC collective funds. The GIC Fund will not differ in any material respects from the Government Money Investments Portfolio which generally permits daily redemptions of its shares. In addition, the GIC Fund will operate in a manner that is consistent with the requirements of PTE 92–77. SBS believes it is important to offer the GIC Fund to Section 404(c) Plans because these Plans may prefer to offer participants this type of investment option instead of the Government Money Investments Portfolio presently offered to such Plans under the TRAK Program. Therefore, SBS requests exemptive relief in order that the GIC Fund may be added to the Portfolios that are available under the Trust.

The proposed GIC Fund will be a collective trust fund established and maintained by Smith Barney Shearson Trust Company (SBS Trust), a wholly owned subsidiary of Primerica. The GIC Fund will invest primarily in a portfolio of GICs with varying maturities issued by highly-rated insurance companies, and/or units of other collective funds invested in GICs. The GIC Fund may also invest in asset-backed investment products designed to offer risk and return characteristics similar to those of GICs (i.e., synthetic GIC products). In addition, the GIC Fund may hold short-term, low risk securities where the investment of all fund assets in GICs and/or units of other GIC collective funds is not feasible.

SBS Trust will serve as the trustee of the GIC Fund. SBS Trust will employ a sub-adviser (the Sub-Adviser) which is independent of SBS and its affiliates to make recommendations on purchases of GICs and/or units of other GIC collective funds. Currently, SBS Trust employs Morley Capital Management (Morley Capital) of Lake Oswego, Oregon as the Sub-Adviser of the GIC Fund. SBS Trust will also employ Boston Company Investors Services Group (ISG), a business group of The Boston Company to provide custody and valuation services and The Shareholder Services Group, Inc. (TSSG), an entity which is indirectly owned by American Express, as transfer agent. Both ISG and TSSG are not affiliated with SBS.

SBS represents that the GIC Fund will not pay a management or other similar fee to it or SBS Trust. (SBS Trust's fees for general trust services provided to a Section 404(c) Plan is included in such plan's investment advisory or "outside" fee.) A management fee may be paid to Morley Capital or any other Sub-Adviser which is independent of SBS and its affiliates. The GIC Fund will pay ISG, as custodian and provider of fund valuation services, a fee for such services, and TSSG, as transfer agent, a fee of $8.50 to $9.50 per Section 404(c) Plan, plus out-of-pocket expenses. With respect to the fees paid to SBS and its affiliates, the GIC Fund will not differ materially from the Government Money Investments Portfolio in that it will not pay a management or other similar fee to SBS or SBS Trust.

SBS will describe the GIC Fund in the prospectus (the Prospectus) and promotional materials it furnishes to Section 404(c) Plan participants who are interested in investing in the GIC Fund. Such disclosures will reflect, in all material respects, the information discussed above.

Because of the foregoing material changes to the factual representations supporting PTE 92–77, the Department has determined that the prior exemption was no longer effective as of July 31, 1993, the date Shearson Lehman sold the assets described above to SBS. Thus, the Department is of the view that PTE 92–77 would be unavailable for use by SBS and its subsidiaries with respect to the subject transactions.

Accordingly, the Department has decided to publish a new exemption which, if granted, would replace PTE 92–77. Under the replacement exemption, all references to Shearson Lehman would be replaced with references to SBS. In addition, the replacement exemption would incorporate the new GIC Fund, SBS Trust, ISG and TSSG. Further, the replacement exemption would have an effective date of July 31, 1993 for transactions described in PTE 92–77. With respect to transactions involving

[1] Shearson Lehman's other primary division, Lehman Brothers, which is responsible for securities underwriting, financial advisory, investment and merchant banking services and commodities trading as a principal and agent, has been retained by Shearson Lehman. It has been renamed "Lehman Brothers Inc."

the GIC Fund, the replacement exemption would become effective as of the date of the grant of the notice of pendency.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first class mail to each Plan which invests in the TRAK Program. The notice will contain a copy of the notice of proposed exemption as published in the **Federal Register** and an explanation of the rights of interested persons to comment on and/or request a hearing with respect thereto. Such notice will be sent to the above-named parties within 30 days of the publication of the proposed exemption in the **Federal Register**. Written comments and hearing request are due within 60 days of the publication of the proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) In addition to transactions involving the GIC Fund, the proposed exemption, if granted, will be applicable to the transactions previously described in PTE 92–77 only if the conditions specified therein are met.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed replacement exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the Procedures cited above, the Department proposes to replace PTE 92–77 as follows:

Section I. Covered Transactions

(a) The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase or redemption of shares by Plans in the SBS-established Trust in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service.

(b) The restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply to the provision, by the Consulting Group, of investment advisory services to an Independent Plan Fiduciary of a participating Plan which may result in such fiduciary's selection of a Portfolio in the TRAK Program for the investment of Plan assets.

The proposed exemption is subject to the following conditions that are set forth in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program will be approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of SBS and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates will constitute no more than reasonable compensation.

(c) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares shall remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary will be implemented only at the express direction of such independent fiduciary.

(g) The Consulting Group will generally give investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Section 404(c) Plan, the Consulting Group will provide investment advice that is limited to the Portfolios made available under the Plan.

(h) Any Sub-Adviser that acts for the Trust to exercise investment discretion over a Portfolio will be independent of SBS and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by SBS and/or its affiliates, the percentage of that Portfolio's net assets invested in such securities will not exceed one percent.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Government Money Investments Portfolio and the GIC Fund Portfolio for which the Consulting Group and SBS Trust will retain no investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan will receive the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, SBS and its

subsidiaries and the compensation paid to such entities.

(B) Upon written or oral request to SBS, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan relating to participation in the TRAK Program.

(D) Upon written request of SBS, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of a section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by an SBS Financial Consultant (the Financial Consultant) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) Copies of PTE 92–77 and documents pertaining to the proposed replacement exemption.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this section.

(3) With respect to a section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary will be required to represent in writing to SBS that such fiduciary is (a) independent of SBS and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to SBS that such fiduciary is (a) independent of SBS and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report which will include financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing, Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants will meet periodically with Independent Plan Fiduciaries of section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that will enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of the (a) percentage of each Portfolio's brokerage commissions that are paid to SBS and its affiliates and (b) the average brokerage commission per share paid by each Portfolio to SBS and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than SBS and its affiliates, both expressed as cents per share.

(m) SBS shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SBS and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than SBS shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (n) below.

(n)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of this section shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (n) shall be authorized to examine the trade secrets of SBS or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An "affiliate" of SBS includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with SBS. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(b) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of SBS and its affiliates and is either—

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares of a Section 404(c) Plan,

(2) A participant in a Keogh Plan,

(3) An individual covered under a self-directed IRA which invests in Trust shares, or

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act.

Section IV. Effective Dates

This exemption will be effective as of July 31, 1993, except for transactions involving the GIC Fund. The exemption will be effective upon its grant with respect to the inclusion of the GIC Fund in the TRAK Program.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the applications for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 92–77, refer to the proposed exemption and grant notice which are cited above.

Signed at Washington, DC, this 23rd day of March, 1994.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–7271 Filed 3–28–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Overview Section); Scheduling of Panel Meeting: Correction

ACTION: Notice of correction to agenda.

SUMMARY: This notice corrects the scheduling of the Dance Advisory Panel (Overview Section) previously published in the **Federal Register** on March 3, 1994 (Vol. 59 FR No. 42).

The dates of the meeting are April 25–26, 1994. The meeting location, room M–07 in the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506, remains unchanged.

The panel will meet in open session from 9:00 a.m. to 6:00 p.m. both days. Topics will include an overview of the Dance Program activities, Endowment and field issues, and a review of FY96/97 guidelines.

Dated: March 24, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–7376 Filed 3–28–94; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships/Services to Composers Section) to the National Council on the Arts will be held on April 5-8, 1994. The panel will meet from 9 a.m. to 5:30 p.m. on April 5 and 6 1994; from 9 a.m. to 5 p.m. on April 7, 1994; and from 9 a.m. to 4:30 p.m. on April 8, 1994. This meeting will be held in room M-14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

Portions of this meeting will be open to the public from 3 p.m. to 5 p.m. on April 7, 1994 and from 3:30 p.m. to 4:30 p.m. on April 8, 1994, a discussion of policy and guidelines.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on April 5 and 6, 1994; from 9 a.m. to 3 p.m. on April 7, 1994; and from 9 a.m. to 3:30 p.m. on April 8, 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 applicants. 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) and (9)(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 a 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 Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: March 24, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–7377 Filed 3–28–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Meeting With Industry on In-Service Inspection Performance Demonstration Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of the Nuclear Regulatory Commission will meet with representatives of the Nuclear Energy Institute (NEI), the Performance Demonstration Initiative (PDI), and the utilities to discuss technical issues related to performance demonstration requirements for in-service inspection. The discussion will focus on plans by the PDI to submit documentation of their program for NRC review. An additional discussion item will be integration into the PDI program of the current qualification requirements for inspectors looking for intergranular stress corrosion cracking (IGSCC).

DATES: Wednesday, March 23, 1994.

TIME: 9 a.m.–12 p.m.

ADDRESSES: 11555 Rockville Pike, room 3–B13, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Mr. Allen L. Hiser, Jr., Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3988.

SUPPLEMENTARY INFORMATION: Recently the American Society of Mechanical Engineers (ASME) has adopted Appendix VIII, entitled "Performance Demonstration for Ultrasonic Examination Systems," to Section XI of the ASME Boiler and Pressure Vessel Code, and the NRC is preparing rulemaking to endorse the performance

demonstration requirements in the regulations. In anticipation of the NRC endorsing those requirements, the industry initiated the Performance Demonstration Initiative (PDI) to provide compliance with Appendix VIII. At this meeting the industry representatives will discuss their plans to submit documentation concerning the PDI program to the NRC for review.

In 1984, the NRC, the Electric Power Research Institute (EPRI), and the Boiling Water Reactor Owners Group (BWROG) developed a coordination plan for training and qualification activities of personnel employed in the performance of examinations of BWR piping for intergranular stress corrosion cracking (IGSCC). At this meeting, the industry representatives will discuss integration of the coordination plan with the PDI program.

Dated at Rockville, Maryland, this 17th day of March 1994.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

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

[FR Doc. 94–7327 Filed 3–28–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 57 to Facility Operating License No. NPF–58 issued to The Cleveland Electric Illuminating Company, et al. (the licensee), which revised the Technical Specifications for operation of the Perry Nuclear Power Plant, Unit 1 located in Lake County, Ohio. The amendment is effective as of the date of issuance.

The amendment revised the Technical Specifications to increase the limits on containment maximum average air temperature and normal maximum average suppression pool water temperature, and reduced the minimum allowable suppression pool water level (with the addition of an appropriate correction factor). Additional changes to the Technical Specifications included increasing the allowable upper containment pool water temperature and reducing the allowable minimum upper containment pool water level. Several editorial changes were also made.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with part of this action was published in the **Federal Register** on July 1, 1992 (57 FR 29337). A proposed no significant hazards consideration determination was published in connection with the rest of this action in the **Federal Register** on March 3, 1993 (58 FR 12257). No request for a hearing or petition for leave to intervene was filed following these notices.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (59 FR 12013).

For further details with respect to the action see: (1) The application for amendment dated June 24, 1992, as supplemented by letter dated September 25, 1992, and application for amendment dated November 16, 1992, (2) Amendment No. 57 to License No. NPF–58, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 23rd day of March 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 94–7330 Filed 3–28–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–454, STN 50–455, STN 50–456, and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77, issued to Commonwealth Edison Company (the licensee), for operation of the Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2 located in Ogle County, Illinois and Will County, Illinois respectively.

The proposed amendments would add a one-time revision to Technical Specification (TS) 4.7.1.2 and Table 3.7–2 to permit continued activities at all four units with main stream Code safety valve tolerances of ±3 percent until the setpoints can be reset to within ±1 percent. Specifically, the licensee proposed making two changes to the TSs. One change would be the addition of a statement to TS 4.7.1.1 for Braidwood stating that the provisions of TS 4.0.4 are not applicable for Braidwood, Unit 1 Cycle 5 until initial entry into MODE 2. Braidwood, Unit 1, is currently in refueling. The second change would be a statement to Table 3.7–2 allowing main steam line Code safety valve lift settings to have a ±3 percent tolerance until May 9, 1994, by which time the lift settings will be reset to ±1 percent.

The exigent circumstances could not be avoided because the licensee only recently became aware of the possible out-of-tolerance setpoints through a letter from the vendor dated March 10, 1994. Upon discovery, the licensee requested a Notice of Enforcement Discretion by telephone followed by a formal request on March 11, 1994. Upon review, the NRC concluded that exercising enforcement discretion involved minimal or no safety impact and exercised discretion not to enforce compliance with the TS for the period from March 10, 1994, until the approval of the TS amendment request which was to be submitted for NRC review by March 21, 1994.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under

exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

In the analysis performed for a ±3% as-found MSSV [main steam safety valve] setpoint, all of the applicable Loss of Coolant Accident (LOCA) and non-LOCA design basis acceptance criteria remain valid both for the transients evaluated and the single event analyzed, Loss of External Load/Turbine Trip.

The MSSVs are actuated after accident initiation to protect the secondary systems from overpressurization. Increasing the as-found setpoint tolerance will not result in any hardware modification to the MSSVs. Therefore, there is not an increase in the likelihood of spurious opening of a MSSV. Sufficient margin exists between the normal steam system operating pressure and the valve setpoint with the increased tolerance to preclude an increase in the probability of actuating the valves.

The peak primary and secondary pressures remain below 110% of design at all times. The Departure from Nucleate Boiling Ratio (DNBR) and Peak Clad Temperature (PCT) values remain within the specified limits of the licensing basis. Although increasing the valve setpoint tolerance may increase the steam release from the ruptured steam generator above the UFSAR [Updated Final Safety Analysis Report] value by approximately 2%, the Steam Generator Tube Rupture (SGTR) analysis indicates that the calculated break flow is still less than the value reported in the UFSAR. Therefore, the radiological analysis indicates that the slight increase in the steam release is offset by the decrease in the break flow such that the offsite radiation doses are less than those reported in the UFSAR. The evaluation also concluded that the existing mass releases used in the offsite dose calculation for the remaining transients (i.e., steamline break, rod ejection) are still applicable. Therefore, based on the above, there is no increase in the dose releases.

The effects of increased tolerances for MSSV setpoints on the LOCA safety analyses has been previously performed for VANTAGE 5 fuel. Calculations performed to determine the response to a hypothetical large break LOCA do not model the MSSVs, since a large break LOCA is characterized by a rapid depressurization of the reactor coolant system below the pressure of the steam generators. Thus, the calculated consequences of a large break LOCA are not dependent upon assumptions of MSSV performance. Therefore, the large break LOCA analysis results are not adversely affected by revising setpoint tolerances.

The small break LOCA analyses presented in Appendix C of the Byron/Braidwood Stations Units 1 and 2 VANTAGE 5 Reload Transition Safety Report were performed using a 3% higher safety valve setpoint pressure. The standard 3% accumulation between valve actuation and full flow was also accounted for in the analyses. These analyses calculated peak cladding temperatures well below the allowed 2200° F limit as specified in 10 CFR 50.46 demonstrating that the change to the MSSV setpoint tolerance can be accommodated for small break LOCAs.

Neither the mass and energy release to the containment following a postulated LOCA, nor the containment response following the LOCA analysis, credit the MSSV in mitigating the consequences of an accident. Therefore, changing the MSSV lift setpoint tolerances would have no impact on the containment integrity analysis. In addition, based on the conclusion of the transient analysis, the change to the MSSV tolerance will not affect the calculated steamline break mass and energy releases inside containment.

The loss of load/turbine trip event was analyzed in order to quantify the impact of the setpoint tolerance relaxation. As was demonstrated in the evaluation, all applicable acceptance criteria for this event have been satisfied and the conclusions presented in the UFSAR remain valid. The conclusions presented in the Overpressure Protection Report remain valid. Therefore, the probability or consequences of an accident previously evaluated in the UFSAR would not be increased as a result of increasing the MSSV lift setpoint as found tolerance to 3% above or below the current Technical Specification lift setpoint value.

The probability of an accident occurring will not be affected by granting this amendment request. Therefore, the requested amendment does not significantly increase the probability or consequences of an accident previously evaluated.

b. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new system configurations are introduced, and no equipment is being operated in a new or different manner than has been previously analyzed. Accordingly, no new or different failure modes are being created. Increasing the as-left setpoint tolerance on the MSSV does not create the possibility of an accident which is different than any already evaluated in the UFSAR. Increasing the as-left lift setpoint tolerance on the MSSVs does not introduce a new accident initiator mechanism. No new failure modes have been defined for any system or component important to safety nor has any new limiting single failure been identified. No accident will be created that will increase the challenge to the MSSVs, and result in increased actuation of the valves. Therefore, the possibility of an accident different than any already evaluated is not created.

c. The proposed amendment does not involve a significant reduction in a margin of safety.

Although the proposed amendment is requested for equipment utilized to prevent overpressurization on the secondary side and to provide an additional heat removal path, increasing the as-left lift setpoint tolerance on the MSSVs will not adversely affect the operation of the reactor protection system, any of the protection setpoints or any other device required for accident mitigation.

The proposed increase in the as-left MSSV lift setpoint tolerance will not invalidate the LOCA and non-LOCA conclusions presented in the UFSAR accident analyses. The new loss of load/turbine trip analysis concluded that all applicable acceptance criteria are still satisfied. For all the UFSAR non-LOCA transients, the DNB [departure from nucleate boiling] design basis, primary and secondary pressure limits and does release limits continue to be met. Peak cladding temperatures remain well below the limits specified in 10 CFR 50.46. Thus, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S.

Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document rooms, which for Byron is located at the Byron Public Library, 109 N. Franklin, P.O. 434, Byron, Illinois 61010; and for Braidwood is located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designed by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. James E. Dyer: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidney and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 11, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms, which for Byron is located at the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; and for Braidwood is located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 23rd day of March 1994.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate III–2; Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–7326 Filed 3–28–94; 8:45 am]

BILLING CODE 7590–01–M

[IA 94–003]

Robert C. Dailey; Order Prohibiting Involvement in Certain NRC-Licensed or Regulated Activities (Effective Immediately)

I

Robert C. Dailey is employed by Nuclear Support Services, Inc. (NSSI) of Hershey, Pennsylvania, as Vice President of Safety. NSSI provides health physics personnel and support to various nuclear power plants. Mr. Dailey was the NSSI Security Officer from November 1989 to May 1991. As NSSI Security Officer, Mr. Dailey was responsible for requesting unescorted access authorization for NSSI personnel to nuclear power plants which included complying with the NRC fitness-for-duty (FFD) program requirements (10 CFR part 26).

II

Mr. Dailey, as a representative of NSSI, provided letters to NRC reactor licensees requesting unescorted access authorization for NSSI personnel and certifying that personnel met all FFD and access authorization requirements. Licensees use this information in determining whether the individual should be granted unescorted access authorization and this information is therefore material.

III

On August 14, 1991, two NRC licensees (Northern States Power Company (NSP) and Wisconsin Electric Power Company (WEPC)) submitted Licensee Event Reports (LER) to the Commission because an NSSI employee had been improperly granted unescorted access to the NSP Prairie Island plant and the WEPC Point Beach plant based on written requests for such access from Mr. Dailey which stated that the employee met all of the FFD requirements for unescorted access. However, in fact, the employee had four past drug-related access denials at other nuclear power plants since 1987. Both Licensee Event Reports noted that NSSI was aware of the past denials.

An investigation was initiated by the NRC Office of Investigations (OI). The OI investigation concluded that Mr. Dailey had sent on three occasions to Point Beach, and one occasion to Prairie Island, letters stating that the person for whom he was requesting unescorted access had met all FFD requirements and had no positive drug or alcohol use test results within the previous five years. The OI investigation concluded that the letters sent by Mr. Dailey were inaccurate because the person did have positive drug or alcohol use test results.

Despite the statements in the access authorization request letters, Mr. Dailey told the OI investigator during a January 1993 interview that he had verbally advised the appropriate NSP and WEPC security personnel of the past positive test results. These licensee representatives denied being advised of such information. Mr. Dailey's statement to the OI investigator, which was subsequently determined to be false, constitutes a violation of 10 CFR 50.5(a)(2).

IV

The NRC must be able to rely on licensee contractor personnel to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Dailey's deliberate violation of 10 CFR 50.5 has raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC, a licensee or an employer engaged in NRC-licensed or regulated activities.

Consequently, I lack the requisite assurance that licensed activities under NRC jurisdiction can be conducted by Mr. Dailey in compliance with the Commission's requirements. Therefore, I have concluded that the public health, safety and interest require that Mr. Dailey be prohibited from participating in NRC-licensed or regulated activities for a period of five years from the date of this Order. In addition, during the same period, should he seek employment with any person whose operations he knows or suspects involve any NRC-licensed or regulated activities, Mr. Dailey is required to give notice of the existence of this Order to that person to assure that such employer is aware of Mr. Dailey's history and the restrictions on his activities imposed by this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 62, 63, 81, 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 26.27, and 10 CFR 50.5, *It is hereby ordered,* effective immediately, That:

1. Robert C. Dailey is prohibited for five years from the date of this Order from participating in NRC-licensed or regulated activities.

2. Should Robert C. Dailey seek employment with any person or entity whose operations he knows or has reason to believe involve any NRC-licensed or regulated activities during the five-year period from the date of this Order, Mr. Dailey shall provide a copy of this Order to such person or entity at the time Mr. Dailey same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to Robert C. Dailey, if the answer or hearing request is by a person other than Robert C. Dailey. If a person other than Robert C. Dailey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Robert C. Dailey or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Robert C. Dailey, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 22nd day of March 1994.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 94–7325 Filed 3–28–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its February 26, 1990, application for proposed amendment to Facility Operating License Nos. NPF–4 and NPF–7 for the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

The proposed amendment would have revised the license concerning main steam line break accident analysis.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 19, 1991 (56 FR 33313). However, by letter dated March 7, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 26, 1990, and the licensee's letter dated March 7, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland this 22nd day of March, 1994.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–7328 Filed 3–28–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Company; Yankee Nuclear Power Station; Notice of Receipt of Decommissioning Plan and Decommissioning Environmental Report and Opportunity for Public Comments

By letter dated December 20, 1993, Yankee Atomic Electric Company (YAEC or the licensee) submitted the Decommissioning Plan and Environmental Report describing the decommissioning of the Yankee Nuclear Power Station (YNPS or the plant). The U.S. Nuclear Regulatory Commission is required by its regulation 10 CFR 50.82(e) to provide notice to interested persons prior to approval of the Decommissioning Plan. The licensee is the holder of facility Possession Only License No. DPR–3 that was issued on August 5, 1992. The permanently shutdown plant is located in Franklin County, Massachusetts.

The Decommissioning Plan does not contain any requests for amendments to the Yankee Nuclear Power Station Possession-Only License; therefore, under 10 CFR part 2 of Commission regulations, an opportunity for a hearing is not being offered by this notice. Interested persons are invited to submit written comments or questions on the Decommissioning Plan or Environmental Report. Any written comments should be limited to the contents of the Decommissioning Plan and Environmental Report. The staff will review and consider all comments that are received before taking final action on the proposed Decommissioning Plan. Written comments should be submitted within 120 days of the publication date of this notice and addressed to: Morton Fairtile, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition, the NRC is planning a public meeting to be held in the vicinity of the plant within approximately eight months of date of receipt of the Decommissioning Plan and prior to taking final action. The meeting will be given sufficient advance notice in the newspapers in the plant vicinity to provide interested members of the public an opportunity to attend and provide comments with respect to the Decommissioning Plan.

A previous public meeting was held on June 9, 1993 to discuss the licensee plan for component removal prior to NRC approval of the Decommissioning Plan. The public meeting described in this notice will be confined to the Decommissioning Plan and Environmental Report.

Copies of the Decommissioning Plan and Environmental Report are available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 23rd day of March 1994.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support.

[FR Doc. 94–7329 Filed 3–28–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of a New Information Collection, Form RI 98–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a new information collection. Form RI 98–7, We Need Important Information About Your Eligibility for SSA Disability Benefits (SSA Decision not received), is used to verify receipt of SSA disability benefits, make necessary adjustments to the FERS disability benefit, and notify the annuitant of any overpayment amount payable to OPM. It also specifically notifies the annuitant of his or her responsibility to notify OPM of his or her Social Security status and the consequences of non-notification.

There are estimated to be 2,000 respondents for RI 98–7. It takes approximately 5 minutes to complete RI 98–7 for an annual burden of 166 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received by April 28, 1994.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Retirement and Insurance Group, FERS Division, U.S. Office of Personnel Management, 1900 E. Street, NW., room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief Forms Analysis and Design Section, (202) 606–0623.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.
[FR Doc. 94–7232 Filed 3–28–94; 8:45 am]
BILLING CODE 6325–01–M

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.
ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the thirty-third meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings are open to the public.

DATES: April 20, 1994, at 10 a.m.
ADDRESSES: Office of Personnel Management, 1900 E Street NW., room 7B09, Washington, DC.
FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's pay agent.
Lorraine A. Green,
Deputy Director.
[FR Doc. 94–7231 Filed 3–28–94; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33802; File No. SR–Amex–93–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Its After-Hours Trading Facility

March 22, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests permanent approval of its pilot After-Hours Trading ("AHT") facility.[4] Originally approved in 1991, the AHT facility has been extended on a temporary basis, most recently until April 30, 1994.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In August 1991, the Commission partially approved the Exchange's AHT facility on a temporary basis.[6] This facility permits the execution of coupled and single-sided closing price orders after the close of the 9:30 a.m. to 4 p.m. trading session. Commencing at 4:15 p.m., single-sided round lot orders for equity securities can be entered through the Exchange's PER system or left with the specialist or the specialist's authorized representative for matching and execution at 5 p.m. at the Exchange's last closing regular way price. Coupled buy and sell round lot, odd lot and partial round lot orders also can be entered through the PER system, or left with the specialist for execution at 5 p.m. against each other at the Exchange's last regular way price. Members are permitted to designate good 'till canceled ("GTC") limit orders entered during the regular trading session as eligible for execution in the AHT session. Such orders are marked "GTX" and migrate to the AHT facility for possible execution.[7]

The Commission stated in its order approving the AHT facility that it would review the operation of the facility during the temporary approval period. In this regard, the Commission asked the Exchange to assemble date on the operation of the facility which the Exchange submitted under separate cover. It is the Exchange's opinion that the system has functioned well during the temporary approval period and that the operation of the system has not had any adverse affects upon the development of the national market system.[8] In the order extending the pilot

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b-4 (1991).

[3] Concurrently with this notice, the Commission is also publishing for comment proposals submitted by the New York Stock Exchange, Inc. ("NYSE"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Stock Exchange, Inc. ("PSE"), to request permanent approval for their respective programs which provide for executions of securities after regular trading hours. *See* File Nos. SR–NYSE–93–50; BSE–93–24; SR–CHX–93–23; SR–Phlx–94–8; and SR–PSE–94–2.

[4] As originally filed, File No. SR–Amex–93–15 requested permanent approval of Amex's pilot After-Hours Trading facility. On January 4, 1994, the Amex amended the filing with an additional request for a three month extension of the pilot until April 30, 1994, in order to give the Commission adequate time to consider the request for permanent approval and requested that the extension be granted accelerated approval. See letter from William Floyd-Jones, Jr., Amex, to Sandra Sciole, Special Counsel, Commission, dated December 23, 1993. That extension was approved in Securities Exchange Act Release No. 33561. See *infra* note 5.

[5] The Commission partially approved the Exchange's AHT facility in 1991. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991). The Commission subsequently approved extensions of the Exchange's AHT facility. See Securities Exchange Act Release No. 32363 (May 25, 1993), 58 FR 31558 (June 3, 1993) and 33561 (February 1, 1994), 59 FR 5789 (February 8, 1994) (order granting partial accelerated approval to File No. SR–Amex–93–15).

[6] *See* Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (order approving File No. SR–Amex–91–15) (Amex AHT Approval Order).

[7] The Commission notes that the Amex's AHT facility enables members, not including specialists, to enter both proprietary and agency orders in any Exchange traded equity security, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price.

[8] File No. SR–Amex–93–15 also requests Commission approval for specialist participation in the AHT facility for investment trust securities listed pursuant to Section 118B of the Exchange's Listing Guidelines. The previous pilot and extension orders temporarily approved only the portion of the AHT proposal which establishes the AHT facility and which allows members, not including specialists, to enter proprietary and agency orders in Exchange-traded equities. The Commission has not approved on a pilot basis the portion of the proposed rule change which allows specialists to participate in any way for their own

until April 30, 1994, the Commission requested that the Exchange submit to the Commission by March 15, 1994, an updated report concerning the pilot activity through February 28, 1994. This updated report will assist the Commission in considering the Exchange's request for permanent approval prior to the April 30, 1994 expiration of the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act of general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–15 and should be submitted by April 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

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accounts in the AHT facility. See File No. SR–Amex–93–15. See *also* Securities Exchange Act Release Nos. 32363 and 33561, *supra* note 5.

[Release No. 34–33800; File No. SR–BSE–93–24]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. ("BSE") Relating to the Facilitation of GTX Orders

March 22, 1994.

Pursuant to section 19(b)(1) of the Securities Exchanges Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests permanent approval of its pilot program for the facilitation of customer "GTX" orders (good until cancelled, executable through crossing session) after the close of the 9:30 a.m. to 4 p.m. trading session.[2] On February 1, 1994, the Commission approved an extension of the BSE's pilot program until April 30, 1994.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request permanent approval of the proposed rule which expires on April 30, 1994, and which permits Exchange specialists to provide primary market price protection to limit orders through the acceptance of cancellations and issuance of trade reports after the close of the 9:30 a.m. to 4 p.m. trading session in order to accommodate certain member orders designated as GTX orders. The GTX order is an

[9] 17 CFR 200.30–3(a)(12) (1991).

[1] Concurrently with this notice, the Commission is also publishing for comment proposals submitted by the New York Stock Exchange, Inc., the American Stock Exchange Inc., the Chicago Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the Pacific Stock Exchange, Inc., to request permanent approval for their respective programs which provide for executions of securities after regular trading hours. See File Nos. SR–NYSE–93–50; SR–CHX–93–23; SR–Amex–93–15; SR–Phlx–94–8; and SR–PSE–94–2.

[2] On June 13, 1991, the Commission approved, on a pilot basis, File No. SR–BSE–91–04, which established BSE procedures for providing primary market protection after regular trading hours for customer limit orders. See Securities Exchange Act Release No. 29301 (June 13, 1993), 56 FR 28182 (order approving File No. SR–BSE–91–04) (BSE Approval Order). The BSE procedures provide primary market protection for customer GTX orders in securities listed on the NYSE and on the Amex and traded during the after-hours sessions on those Exchanges. The New York Stock Exchange ("NYSE") initiated its Off-Hours trading ("OHT") Crossing Sessions in June 1991. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). The American Stock Exchange, Inc. ("Amex") established an after-hours trading facility in August 1991. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (approving File No. SR–Amex–91–15). The Commission approved extensions of the NYSE, Amex and BSE pilots, as well as pilots by other regional exchanges until January 31, 1994 and further extended the pilots until April 30, 1994. See Securities Exchange Act Release Nos. 32365 (May 25, 1993), 58 FR 31560 (June 3, 1993), and 33562 (February 8, 1994), 59 FR 5792 (February 8, 1994).

[3] See Securities Exchange Act Release No. 33562, *supra* note 2.

unconditioned good until canceled ("FTC") order designated by the entering broker as executable at 5:00 p.m. at the primary market closing price. This pilot does not establish a separate after-hours trading session on the Exchange.

Under the pilot program, pursuant to the BSE's Execution Guarantee Rule, if an issue has traded at the limit price in a primary market's after-hours trading session, the specialist is required to fill GTX orders after the close of the 9:30 a.m. to 4:00 p.m. trading session based on volume that prints in the primary market's after-hours trading session, unless it can be demonstrated to the primary market or the broker and specialist agree to a specific volume-related or other criteria requiring a fill.[4]

Procedurally, the Exchange's BEACON system[5] scans each specialist's limit order books for limit orders designated as GTX and priced at the primary market closing price. All such orders become eligible for execution at the primary market closing price up to the amount of the volume that prints in the primary market's after-hours trading session. GTX orders on the specialists' books retain priority among themselves and are entitled to an execution based on that priority. Any eligible GTX orders that are not due a report based on prints in the primary market's after-hours trading session remain on the specialists' books and retain their priority in the next day's regular trading session.

Eligible GTX orders that are due an execution are manually executed and reported to the Consolidated Tape as regular way transactions after the primary market prints its 5:00 p.m. transactions.

In addition, the proposed pilot defines one-sided and two-sided single stock orders in the event that the Exchange chooses to adapt its current proposed procedures to provide for the acceptance, execution and reporting of such orders at a future date.[6] The Commission requested in its order extending the pilot until April 30, 1994, that the Exchange submit to the Commission by March 15, 1994, an updated report concerning the pilot activity through February 28, 1994. This updated report will assist the Commission in considering the Exchange's request for permanent approval prior to the April 30, 1994 expiration of the pilot program.

2. Statutory Basis

The proposed rule change will advance the objectives of section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. This is accomplished through the ability of the Exchange to compete with the primary markets in protecting limit orders that are sent to the BSE that may have been eligible for an after-hours execution if they had been sent to the primary market, and in effect allows the Exchange to compete with the primary markets in regard to this new order type. The proposed rule gives Exchange specialists the ability to provide additional liquidity to that provided in the primary markets,[7] thus advancing the objective of public order protection. Because of this ability to compete with the primary markets and to protect customer limit orders, the concept of a free and national market system is strengthened.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–24 and should be submitted by April 19, 1994.

[4] The BSE Execution Guarantee Rule states, among other things, that all agency limit orders will be filled if the issue is trading on the primary market at the limit price unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market, or the broker and specialist agree to a specific volume-related or other criteria requiring a fill. See BSE Rules of the Board, Chapter II, Section 33.01. In effect, pursuant to this rule, if an issue has traded at the limit price in a primary market's after-hours trading session, the BSE specialist must fill limit orders, designated as executable after the BSE close by the GTX designation, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release No. 29301, supra note 2.

[5] BEACON, the Boston Exchange Automated Communications Order Routing Network, routes orders in eligible stocks from member firms to the BSE. BEACON allows orders to be transmitted from member firms to a BSE specialist's post where they are displayed on the specialist's terminal together with the automatically assigned BEACON quote at which the order would be automatically executed. The order is displayed on the specialist's terminal for up to 15 seconds to permit the specialist to intervene in the automatic execution of the order should be or she wish to improve on the BEACON quotation. When the specialist does not intervene, the order automatically will be executed at the BEACON quote. See Securities Exchange Act Release No. 27012 (July 10, 1989), 54 FR 30487 (July 20, 1989).

[6] While the BSE pilot program includes definitions of one-sided and two-sided single stock orders, the BSE currently does not effect such orders after the regular chose of business. Under current procedures, the BSE only effects transactions after-hours in order to provide primary market protection to GTX orders held on a BSE specialist's book.

[7] A regional specialist may send a mirror order to the primary market to aid in determining whether an after-hours execution is due. In such situations, the regional specialist would not be providing additional liquidity, but would be protecting his or her customers' limit orders.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7279 Filed 3–28–95; 8:45 am]

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[Release No. 34–33798; File No. SR–CHX–93–23]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. ("CHX") Relating to Price Protection of Limit Orders

March 22, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 30, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX requests permanent approval of its proposed rule change relating to price protection of limit orders.[1] The rule change provides primary market protection to certain limit orders trading at the limit price in a primary market's after-hours trading session.[2] On February 1, 1994, the CHX's pilot program was extended until April 30, 1994.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request permanent approval of the Exchange's price protection of limit orders based on after-hours prints in a primary market. The proposed change requires that Exchange specialists provide primary market protection for those limit orders entered during the Exchange's primary trading session which are designated as executable after the close of the regular Exchange auction market trading session, known as "GTX" orders ("good until cancelled, executable in the afternoon session").[4]

The Exchange provided the Commission with an updated report describing the Exchange's experience with the new rule during the period of January 1, 1993, through September 1, 1993, with a summary review covering the entire pilot program from June 13, 1991, through September 1, 1993.[5] The Exchange has already provided much of the information requested in monthly reports and has provided all requested information in a single report to the Commission dated April 30, 1993, covering data collected through January 1, 1993.[6] The Commission requested in its order extending the pilot until April 30, 1994, that the Exchange submit to the Commission by March 15, 1994, an updated report concerning the pilot activity through February 28, 1994. This updated report will assist the Commission in considering the Exchange's request for permanent approval prior to the April 30, 1994 expiration of the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Sections 6(b)(5) and 11A of the Act in that it is designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or (B) Institute proceedings

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[1] Concurrently with this notice, the Commissions also publishing for comment proposals submitted by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the Pacific Stock Exchange, Inc., to request permanent approval for their respective programs which provide for executions of securities after regular trading hours. See File Nos. SR–NYSE–93–50; BSE–93–24; SR–Amex–93–15; SR–Phlx–94–8; and SR–PSE–94–2.

[2] On June 13, 1991, the Commission approved, on a pilot basis, File No. SR–MSE–91–11, which amended CHX Rule 37 (in 1991, the CHX was named the Midwest Stock Exchange or MSE). *See* Securities Exchange Act Release No. 29297 (June 13, 1991), 56 FR 28191 (June 19, 1991) (order approving File No. SR–56 FR 28191 (June 19, 1991) (order approving File No. SR–MSE–91–11) (MSE Approval Order). The CHX procedures provide primary market protection for customer GTX orders (good until canceled, executable in the afternoon session) in securities listed on the NYSE and on the Amex and traded during the after-hours sessions of those Exchanges. The New York Stock Exchange ("NYSE") initiated its Off-Hours trading ("OHT") Crossing Sessions in June 1991. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). The American Stock Exchange, Inc. ("Amex") established an after-hours trading facility in August 1991. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (approving File No. SR–Amex–91–15). The Commission approved extensions of the NYSE, Amex and CHX pilots, as well as pilots by the other regional exchanges until January 31, 1994 and further extended the pilots until April 30, 1994. See Securities Exchange Act Release Nos. 32365 (May 25, 1993), 58 FR 31560 (June 3, 1993), and 33562 (February 8, 1994), 59 FR 5792 (February 8, 1994).

[3] See Securities Exchange Act Release No. 33562, *supra* note 2. File No. SR–CHX–93–23 requested both an extension and permanent approval of the proposal relating to the price protection of limit orders. This notice concerns the CHX's permanent approval request.

[4] The Exchange is open for business for two trading sessions during each business day. The first trading session (the Primary Trading Session) is conducted on the Floor of the Exchange from 8:30 a.m. to 3 p.m., Central time, Monday through Friday. The second session (the Secondary Trading Session) is conducted through the Portfolio Trading System, pursuant to the provisions of Article XX from 3:30 p.m. to 5 p.m., Central time, Monday through Friday. The Floor of the Exchange is closed during the Secondary Trading Session. See CHX Article IX, rule 10.

[5] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Diana Luka-Hopson, Branch Chief, Commission, dated September 30, 1993.

[6] See letter from Daniel J. Liberti, Associate Counsel, MSE, to Diana Luka-Hopson, Branch Chief, Commission, dated April 30, 1993.

to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 CHX. All submissions should refer to File No. SR–CHX–93–23 and should be submitted by April 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7281 Filed 3–28–94; 8:45 am]

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[Release No. 34–33803; File No. SR–NYSE–93–50]

March 22, 1994.

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Off-Hours Trading Facility and Matched MOC Order Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Commission has approved on a temporary basis (i) the Exchange's Crossing Session I and Crossing Session II initiatives[4] (ii) its pilot program for procedures regulating matched market-on-close orders ("MOC").[5] The Commission several times extended the "sunset" date for both Crossing Sessions I and II, and for the MOC order pilot program, most recently until April 30, 1994.[6] The proposed rule change seeks permanent approval of the Exchange's Crossing Session I and Crossing Session II initiatives, and its MOC order pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) *Crossing session initiatives.* By order dated May 24, 1991,[7] the Commission approved for a two-year temporary period the OHT facility by which the Exchange offers its two off-hours trading sessions. "Crossing Session I" permits the execution of single-stock, single-sided closing-price orders and crosses of single-stock, closing-price buy and sell orders. "Crossing Session II" allows the execution of crosses of multiple-stock (portfolios of 15 or more securities) aggregate price buy and sell orders.

The Exchange began offering the two sessions on June 13, 1991. On May 25, 1993, the Commission approved an extension of the Pilot until January 31, 1994 ("Extension Order").[8] On February 1, 1994, the Commission approved an extension of the Pilot until April 30, 1994.[9] The proposed rule change seeks permanent approval of Crossing Session I and Crossing Session II. When the Exchange first introduced its crossing sessions, it sought to accomplish the following goals: (1) To repatriate much of the program trading of U.S. securities that had moved overseas; (2) to respond to competitive alternatives, both foreign and domestic; (3) to provide an alternative trading structure that might provide a useful experience for the design of future trading initiatives; and (4) to provide an appropriate and useful method for the Exchange to extend its trading hours.

The Exchange has had a positive experience with the crossing sessions.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Concurrently with this notice, the Commission is also publishing for comment proposals submitted by the Chicago Stock Exchange, Inc., the American Stock Exchange Inc., the Boston Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the Pacific Stock Exchange, Inc., to request permanent approval for their respective programs which provide for executions of securities after regular trading hours. See File Nos. SR–CHX–93–23; BSE–93–24; SR–Amex–93–15; SR–Phlx–94–8; and SR–PSE–94–2.

[4] See Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (June 3, 1991) (File Nos. SR–NYSE–90–52 and SR–NYSE–90–53) ("OHT Approval Order").

[5] The Commission initially approved the matched MOC order procedures on a pilot basis in June, 1990. In that order, the Commission also granted an exemption from its short sale rule, Rule 10a–1, for matched MOC orders that are part of a program trading strategy. See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order granting temporary approval to File No. SR–NYSE–89–10) and letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President and Secretary, NYSE, dated July 2, 1990.

[6] The original one-year pilot program for the MOC procedures was temporarily extended by the Commission for an additional six months, until September 30, 1991, in order to give the Exchange the opportunity to contrast the use of matched MOC orders with certain program trading transactions effected in the Exchange's then recently implemented Crossing Session II. See Securities Exchange Act Release No. 29393 (July 1, 1991), 56 FR 30954 (order granting temporary accelerated approval to File No. SR–NYSE–91–22). Subsequently, the Commission granted accelerated approval to an Exchange proposal to extend the pilot period until November 30, 1991. See Securities Exchange Act Release No. 29761 (September 30, 1991), 56 FR 50743 (order granting temporary accelerated approval to File No. SR–NYSE–91–34). Thereafter, the Commission extended the matched MOC order pilot program through May 24, 1993. See Securities Exchange Act release No. 30004 (November 27, 1991), 56 FR 63533 (order granting temporary approval to File No. SR–NYSE–91–35). On May 25, 1993, the Commission approved extensions of the NYSE's OHT and MOC pilots until January 31, 1994. See Securities Exchange Act Release No. 32362 (May 25, 1993), 58 FR 31565 (June 3, 1993). On February 1, 1994, the pilots were extended until April 30,1994. See Securities Exchange Act Release No. 33563 (February 1, 1994), 59 FR 5795 (February 8, 1994).

[7] See OHT Approval Order, *supra* note 6.

[8] See Securities Exchange Act Release No. 32362, *supra* note 6.

[9] See *supra* note 6.

Both have continued to grow since inception and have succeeded in meeting each of the Exchange's original objectives.

In 1993, Crossing Session I averaged 175,000 shares per day and has averaged nearly 260,000 shares per day thus far in the fourth quarter of 1993. The marketplace has found Crossing Session I especially useful for particular types of business. Thus, members use Crossing Session I primarily for the execution of small, two-sided baskets which are ineligible for Crossing Session II and, most recently, for index rebalancing. Over 200 firms have received executions in Crossing Session I. In addition, the Exchange's experience to date with Crossing Session I suggests that it has no detrimental effect on the 9:30 a.m. to 4 p.m. trading session.

Crossing Session II has averaged approximately 3.9 million shares per day in 1993. To date, there have been 11 days where volume has exceeded 15 million shares, with the record being 57 million shares. Crossing Session II has successfully repatriated business from foreign after-hours markets; the Exchange's member firms have executed approximately 50 percent of all post-4 p.m. program trades in Crossing Session II. The Exchange believes that this repatriation of trading serves the public interest because it once again subjects this business to the U.S. regulatory umbrella.

The Exchange is also seeking permanent approval of the two crossing sessions because the sessions have become popular among many Exchange members. The Exchange's feedback from members has been nothing but favorable. In a number of instances, members have volunteered—without Exchange solicitation—their interest in having the Exchange continue the sessions. For all of these reasons, the Exchange believes that the level of acceptance of the two crossing sessions by the investing public warrants its approval on a permanent basis. The Commission requested in its order extending the pilot until April 30, 1994, that the Exchange submit to the Commission by March 15, 1994, an updated report concerning the pilot activity through February 28, 1994. This updated report will assist the Commission in considering the Exchange's request for permanent approval prior to the April 30, 1994 expiration of the pilot program.

(b) *Matched MOC orders.* In File No. SR–NYSE–91–35, the Exchange requested that procedures for using matched MOC orders and the exemption from SEC rule 10a–1 (relating to short sales of securities) [10] for such orders (which had originally been filed as part of the pilot extending expiration Friday pricing procedures for MOC orders for every trading day) run concurrently with the temporary period for the Exchange's OHT facility. In its order approving this filing, the Commission stated that "it is appropriate to allow the Exchange additional time to compare and contrast the matched MOC procedures with Crossing Session II." [11] On May 25, 1993, the Commission approved an Exchange request to extend the pilot program for matched MOC procedures until January 31, 1994.[12] On February 1, 1994, the Commission approved an Exchange request to extend the pilot program until April 30, 1994.[13]

The Exchange has reviewed program trading activity by its member firms through December 17, 1993, but has not found any instances of firms entering matched MOC orders during that period.

The proposed rule change seeks permanent approval of the Exchange's matched MOC order procedures. The matched MOC order procedures permit firms to enter a buy MOC order paired with a sell MOC order in the same security to be executed at the closing price on the Exchange. The procedures also provide an exemption from SEC rule 10a–1 as to the entry of an MOC order to sell short where (i) the member firm has also entered an MOC order to buy the same amount of stock and (ii) both MOC orders are part of a program trading strategy.

The matched MOC order provisions are intended to facilitate program trading strategies, such as exchanges for physicals ("EFPs"), where a firm accommodates a customer who wishes to convert a futures position into a stock position by swapping futures for stock. The Exchange believes that the matched MOC procedures should be granted permanent approval in order to provide member firms with a variety of vehicles (e.g., matched MOCs, Crossing Session II) in which to carry out program trading strategies. The Commission requested in its order extending the pilot until April 30, 1994, that the Exchange continue to inform the Commission of its members' use, if any, of the MOC procedures and to assess the impact of MOC orders on overall market quality and on any possible displacement of orders on the specialist's book or in the trading crowd.

2. Statutory Basis

The basis under the Act for the Exchange's OHT facility and the matched MOC order procedures, and for this extension of approval of the facility and those procedures, is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does 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 on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements

[10] Pursuant to rule 10a–1 under the Act, 17 CFR 240.10a–1 (1991), and Exchange Rule 440B, a short sale on the Exchange may not be effected at a price either (1) below the last reported price or (2) at the last reported price unless that price is higher than the last reported price.

[11] *See* Securities Exchange Act Release No. 30004, *supra* note 6.

[12] *See supra* note 6.

[13] *See supra* note 6.

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–50 and should be submitted by April 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7280 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33797; File No. SR–DTC–93–11]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Relating to Enhancements to the Automated Tender Offer Program

March 22, 1994.

On October 15, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–93–11) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published on December 17, 1993, in the **Federal Register** to solicit comments on the proposed rule change.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

DTC is enhancing its Automated Tender Offer Program ("ATOP") in order to improve the processing of tender and exchange offers at DTC.[3] At present, a participant who wishes to submit a notice of guaranteed delivery[4] in a tender offer being processed in ATOP must deliver outside of DTC a hard copy notice of guaranteed delivery to the tender or exchange agent. Under the proposed rule change, participants will be able to use ATOP to submit notices of guaranteed delivery in the same way that they can now use ATOP to submit letters of transmittal.[5] When a participant utilizes ATOP to submit through DTC's Participants Terminal System ("PTS") a notice of guaranteed delivery in a tender offer, the electronic instructions received by DTC from the participant and retransmitted to the tender or exchange agent will include a single character by which the participant acknowledges its receipt of and agreement to be bound by the notice of guaranteed delivery used in that offer.

DTC also is modifying its DTC/Agent Letter of Agreement. Currently, each time DTC handles a tender offer with a tender or exchange agent, DTC and the agent sign a hardcopy DTC/Agent Letter of Agreement which makes DTC's Voluntary Offerings Program Agents Procedures, including the ATOP procedures, applicable to the tender offer. DTC then adds attachments to the DTC/Agent Letter of Agreement to cover special procedures to be followed in the offer. Under the proposed rule change, DTC is eliminating the hardcopy DTC/Agent Letter of Agreement for each tender offer and will use PTS to communicate with a tender or exchange agent regarding each tender offer. The current form of the DTC/Agent Letter of Agreement will be replaced with a hardcopy Master Agreement which a tender or exchange agent will sign once. The Master Agreement will provide that the Master Agreement and DTC's Voluntary Offerings Program Agents Procedures will apply to all tender offers done thereafter through ATOP for which the tender or exchange agent acts. After a tender or exchange agent has entered into the Master Agreement with DTC, PTS will be used to confirm the agreement between the agent and DTC for each new tender offer in ATOP and to confirm any special procedures for that tender offer.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[6] Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and promote the prompt and accurate clearance and settlement of securities transactions.[7] The proposed rule change further automates the processing of tender offers involving securities on deposit at DTC by eliminating the processing of hardcopy notices of guaranteed delivery, and thereby, further alleviates problems such as the risk of loss, delays during shipment, and the expense and labor involved in the handling of physical documents. Furthermore, the proposed rule change, which is an extension of DTC's existing, Commission-approved ATOP program,[8] will be implemented consistently with the safekeeping requirements of sections 17A(b)(3) (A) and (F).[9]

III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act and particularly with section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–93–11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7276 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

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[14] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33322 (December 10, 1993), 58 FR 66043 (File No. SR–DTC–93–11).

[3] For a description of ATOP, refer to Securities Exchange Act Release Nos. 27139 (August 14, 1989), 54 FR 34841 (File No. SR–DTC–88–19) (order approving the ATOP program); 29168 (May 7, 1991), 56 FR 22742 (File No. SR–DTC–91–04) (order granting accelerated approval on a temporary basis to modifications of ATOP); 30678 (May 7, 1992), 57 FR 20541 (File No. SR–DTC–91–11) (order approving modifications of ATOP); and 32645 (July 16, 1993), 58 FR 39585 (File No. SR–DTC–92–12) (order approving mandatory use of ATOP).

[4] Notices of guaranteed delivery, sometimes called protect letters, are documents submitted to the tender agent prior to the expiration of the tender offer whereby the offeror submitting the notice guarantees delivery of securities after the expiration of the tender offer but before the expiration of the protection period. (The protection period usually lasts eight days after the expiration of the tender offer.)

[5] For a description of submission of letters of transmittal under ATOP, refer to Securities Exchange Act Release No. 32645 (July 16, 1993), 58 FR 39585 (File No. SR–DTC–92–12) (order approving mandatory use of ATOP).

[6] 15 U.S.C. 78q-1 (1988).

[7] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

[8] *Supra* note 3.

[9] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988). Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules be designed to assure the safeguarding of securities and funds in the clearing agency's custody or control or for which it is responsible.

[Release No. 34–33799; File No. SR–PSE–94–2]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. ("PSE") Relating to Its Crossing Session Pilot Program.

March 22, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S. 78s(b)(1), notice is hereby given that on January 7, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE requests permanent approval of its Crossing Session pilot program, under which certain designated limit orders on the PSE specialists' books are afforded price protection based on the primary market.[2] On February 1, 1994, the PSE's pilot program was extended until April 30, 1994.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request permanent approval of the Exchange's price protection of limit orders based on after-hours prints in a primary market. On June 13, 1991, the Commission approved, on a pilot basis, the PSE's proposed rule change to provide primary market protection to orders that have been entered with the PSE but designated to receive the execution price established in the primary market's after-hours session.[4] The Exchange submitted the proposal as a competitive response to the NYSE's Off-Hours Trading Facility.[5] On June 13, 1991, the Commission approved similar pilot programs by the BSE, Phlx, and CHX.[6]

Under the Crossing Session program, Exchange specialists are required to provide primary market protection for orders designated "GTX" (orders on the PSE specialists' limit order books that are good 'til cancelled and executable through the Crossing Session). Orders so designated become eligible for migration to the PSE's 1 p.m. to 1:30 p.m. (PS) auction market trading session[7] and to the Crossing Session for possible execution at the primary market's closing price. The Crossing Session, which serves as an order protection environment *vis-a-vis* NYSE Crossing Session I, occurs from 1:50 p.m. to 2 p.m. (PT). Orders that are designated as GTX but that are not filled remain on the PSE specialist limit order books and retain their priority.

The Commission approved the Crossing Session program for a temporary period ending on May 24, 1993.[8] The Commission subsequently approved extensions of the program to January 31, 1994 and April 30, 1994.[9] The Commission requested the PSE to submit a report to the Commission describing the PSE's experience with the new program during the approval period, particularly in regard to certain questions designated in the Crossing Session Approval Order.[10] In response thereto, the Exchange has submitted reports to the Commission dated April 30, 1993, and September 30, 1993. The Commission requested in its order extending the pilot until April 30, 1994, that the Exchange submit to the Commission by March 15, 1994, an updated report concerning the pilot activity through February 28, 1994.[11] This updated report will assist the Commission in considering the Exchange's request for permanent approval prior to the April 30, 1994 expiration of the pilot program. The Exchange now seeks permanent approval of the program.

2. Statutory Basis

The proposed rule change is consistent with Sections 6(b)(5) and 11A of the Act in that it is designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

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[1] Concurrently with this notice, the Commission is also publishing for comment proposals submitted by the Chicago Stock Exchange, Inc., the American Stock Exchange Inc., the Boston Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the New York Stock Exchange, Inc., to request permanent approval for their respective programs which provide for executions of securities after regular trading hours. See File Nos. SR–CHX–93–23; BSE–93–24; SR Amex–93–15; SR–Phlx–94–8; and SR–NYSE–93–50.

[2] On June 13, 1991, the Commission approved, on a pilot basis, File No. SR–PSE–91–21, which adopted the PSE Crossing Session Program. See Securities Exchange Act Release No. 29305 (June 13, 1991), 56 FR 28208 (June 19, 1991) (order approving File No. SR–PSE–91–21) (PSE Approval Order). The Exchange's procedures provide primary market protection for customer GTX orders (good until canceled, executable in the afternoon session) in securities listed on the NYSE and on the Amex and traded during the after-hours sessions of those Exchanges. The New York Stock Exchange ("NYSE") initiated its Off-Hours trading ("OHT") sessions in June 1991. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). The American Stock Exchange, Inc. ("Amex") established an after-hours trading facility in August 1991. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (approving File No. SR–Amex–91–15). The Commission approved extensions of the NYSE. Amex and PSE pilots, as well as pilots by other regional exchanges until January 31, 1994 and further extended the pilots until April 30, 1994. See Securities Exchange Act Release Nos. 32367 (May 25, 1993), 58 FR 31570 (June 3, 1993), and 33562 (February 8, 1994), 59 FR 5792 (February 8, 1994).

[3] See Securities Exchange Act Release No. 33562, *supra* note 2.

[4] See Securities Exchange Act Release No. 29305, *supra* note 2.

[5] See Securities Exchange Act Release No. 29237, *supra* note 2.

[6] See Securities Exchange Act Release No. 29305, *supra* note 2. On August 30, 1991, the Commission approved the portion of File No. SR–PSE–91–21 relating to the extension of the hours of the PSE's auction market trading session for an additional twenty minutes to 1:50 p.m. (PT). See Securities Exchange Act Release No. 29631 (August 30, 1991), 56 FR 46025 (September 9, 1991). In addition, the portion of File No. SR–PSE–91–21 relating to the creation and trading on the Exchange of a new type of order, one-side ("OS") closing price orders, is currently under reviewed by the Commission.

[7] This session was later extended to 1:50 p.m. (PT). See Securities Exchange Act Release No. 29631, *supra* note 6.

[8] See supra note 2.

[9] See supra note 2.

[10] See supra note 2.

[11] See supra note 2.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 PSE. All submissions should refer to File No. SR–PSE–94–2 and should be submitted by April 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7283 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33796; File No. SR–Phlx–93–15]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to a Proposed Rule Change by the Philadelphia Stock Exchange Relating to the Handling of Registered Options Traders' Orders

March 22, 1994.

On April 5, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make certain amendments to Exchange Rule 1065 and Exchange Floor Procedure Advice C–3 ("Advice C–3").[3] Notice of the proposal (not including Amendment No. 1) appeared in the Federal Register on October 13, 1993.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

The Phlx has proposed amending Advice C–3 to extend its restrictions to non-Phlx options market makers. Accordingly, the Phlx proposes to retitle Advice C–3 as follows: Handling Orders of Phlx ROTs and Other Registered Options Market Makers. In addition, the restrictions contained in paragraph (d) (formerly paragraph (c)) would now apply to options market makers from other exchanges so that the use of floor broker discretion [5] with respect to the orders of such market makers would be prohibited. The Phlx has similarly proposed amending Rule 1065 to reflect this prohibition.[6]

In addition, paragraph (b) would be added to Advice C–3 to require floor brokers to ascertain which orders are for the accounts of non-Phlx market makers. The Phlx has stated that the purpose of this new provision is to establish an accurate audit trail of such orders by requiring that order tickets be marked with an "N." The Phlx has also stated that new paragraph (b) would reinforce the requirement that a Phlx floor broker, when in possession of an "N" order, must represent to the trading crowd that the order is a "BD" order, as orders of market makers qualify by definition as "BD" orders.

In order to fulfill this obligation, the floor broker or the floor unit of the member firm with which the floor broker is associated would be required to make reasonable inquiry of the account status of orders for market makers to identify orders for the accounts of non-Phlx market makers. Currently, paragraph (a) requires floor brokers to announce to the trading crowd whether an order is for a Phlx market maker and whether such order would establish or close out an option position (opening or closing).

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(5), in that the proposal is designed to promote just and equitable principles of trade as well as to protect investors and the public interest.

Specifically, the proposed amendments requiring Phlx floor brokers to: (1) Take reasonable steps to inquire which orders placed with him or her for execution are orders for non-Phlx market makers; (2) represent such orders as "BD" orders in the trading crowd, and (3) mark such orders "N" for purposes of identification will, in combination, help strengthen the Phlx's ability to generate greater detailed audit trail information for non-Phlx market makers. The Phlx currently possesses the capability to generate similarly detailed audit trail information for Phlx market makers. The above amendments will extend such capabilities to non-Phlx market makers as well, thereby ensuring that the Exchange has detailed audit trail capability for all market maker transactions. Additionally, these proposed amendments will help protect investors and the public interest by helping the Phlx to assure compliance with certain important Exchange trading rules, including rule 1033(a) ("Ten-Up Rule") and Rule 1014(g) ("Priority Rule").

The Commission is also satisfied that the proposed amendments (Phlx rule 1065, commentary .02 and Phlx Advice

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] On January 13, 1994, the Phlx proposed amending Phlx rule 1065 in order to state that a Phlx floor broker may not exercise any discretion with respect to the order of an options market maker registered on another exchange. This change was necessary in order to make Phlx rule 1065 consistent with the Phlx proposed changes to Advice C–3. See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Philadelphia Stock Exchange to Richard Zack, Branch Chief, Options Branch, Division of Market Regulation, SEC, dated January 13, 1994.

[4] See Securities Exchange Act Release No. 33012 (October 4, 1993), 58 FR 53010.

[5] A Phlx floor broker may not execute or cause to be executed any order(s) on the Phlx with respect to which such floor broker is vested with discretion as to: (i) The choice of class of options to be bought or sold, (ii) the number of contracts to be bought or sold, or (iii) whether any such transaction shall be one of purchase or sale. See Phlx Rule 1065.

[6] See note 3, *supra*.

C–3(d)) that will extend the floor broker prohibition against exercising "discretionary orders" to orders for the accounts of non-Phlx market makers serves legitimate regulatory concerns that are consistent with the Act. The Commission believes that market maker use of "not held" discretionary orders that are placed with floor brokers can, under certain circumstances, be deemed inconsistent with appropriate market maker functions and section 11(a) of the Act, which states it is unalwful for a member to effect a transaction for its account or an account of an associated person where it exercises investment discretion. Although section 11(a) excludes from this prohibition any transaction by a dealer acting in the capacity of a market maker, without the proposed prohibition, non-Phlx market makers, through the use of "not held" discretionary orders placed with Phlx floor brokers, could effectively obtain the benefits of market maker status in Phlx-listed options (*i.e.*, margin treatment) without being subject to the corresponding burdens of such status, such as providing market liquidity. Market makers could circumvent prohibitions against using "not held" orders by submitting them to a broker on another exchange (in this case, the Phlx).

Accordingly, the Commission believes that it is appropriate for the Exchange to proscribe such activity.[7]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Accelerating approval will allow the Exchange to implement the complete rule change proposal without delay. Further, the purpose of the amendment is non-substantive, limited to amending rule 1065 so that it will be consistent with the proposed amendment to Advice C–3, the substance of which was fully described in the original filing. The Commission further notes that the proposal (excluding Amendment No. 1) was published for the full 21 day comment period and no comments were received.

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, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–15 and should be submitted by April 19, 1994

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Phlx–93–15), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7278 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33804; File No. SR–PHLX–93–51]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Excessive Trading

March 22, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

Currently, PHLX rule 771, "Excessive Trading of Members," prohibits a member from effecting purchases or sales on the Exchange which are excessive in view of his or its financial resources or in view of the market for such security. The PHLX proposes to amend PHLX rule 771 by deleting the phrase "or in view of the market for such security." PHLX rule 1015, "Excessive Dealing in Options," prohibits a member from effecting purchases or sales in options which are excessive in view of his financial resources or in view of the market for such security. The PHLX proposes to amend PHLX rule 1015 by deleting the phrase "in view of his financial resources" and by renumbering the rule as PHLX rule 1021.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend PHLX rule 771 and to amend and renumber Exchange rule 1015 as PHLX rule 1021. Specifically, the PHLX proposes to amend PHLX rule 771, which is located among the financial responsibility rules, to delete the phrase "or in view of the market for such security." The PHLX states that this phrase is already appropriately included in PHLX rule 1015, which in turn would be amended to delete the reference to the financial resources of a member, because this phrase is already appropriately included in Exchange rule 771. The PHLX indicates that the financial responsibility reference included in the trade practice rule (PHLX rule 1015)

[7] The Commission notes that the proposed amendments do not present substantial competitive issues because they do not restrict access by non-Phlx market makers to the Phlx options trading market nor do they affect the existing priority or parity standards applying to the others on non-Phlx market makers.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

was recently the source of confusion, which will be corrected by the PHLX's proposal. Specifically, under the proposed rule change, PHLX rule 771 will govern the financial aspect of excessive trading and PHLX rule 1021 will govern the trade practice aspect.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and, in particular with section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7288 Filed 3–38–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33801; File No. SR–Phlx–94–8]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. ("Phlx") Relating to Its Off-Hours Trading Pilot Program

March 22, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 21, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx requests permanent approval of its Off-Hours Trading ("OHT") pilot program. The rule change requires Exchange specialists to provide primary market protection for limit orders entered during the Exchange's regular 9:30 a.m. to 4 p.m. trading session that the customer designates as "GTX" orders (executable after the Phlx close based on the primary market's volume).[2] On February 1, 1994, the Phlx's pilot program was extended until April 30, 1994.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request permanent approval of the Exchange's price protection of limit orders based on after-hours prints in a primary market. On May 30, 1991, the Commission approved the NYSE's proposed rule change which established the NYSE's OHT sessions,[4] and, thereafter, on June 13, 1991, granted temporary approval to Phlx rule 232 through May 24, 1993, which required Phlx specialists to provide primary market protection for limit orders entered during the Exchange's regular 9:30 a.m. to 4 p.m. trading session that the customer designated as executable after the close of the regular Exchange auction market trading session, known

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[1] Concurrently with this notice, the Commission is also publishing for comment proposals submitted by the New York Stock Exchange, Inc., the American Stock Exchange Inc., the Chicago Stock Exchange, Inc., the Boston Stock Exchange, Inc. and the Pacific Stock Exchange, Inc., to request permanent approval for their respective programs which provide for executions of securities after regular trading hours. See File Nos. SR–NYSE–93–50; SR–CHX–93–23; SR–Amex–93–15; SR–BSE–93–24; and SR–PSE–94–2.

[2] On June 13, 1991, the Commission approved, on a pilot basis, File No. SR–Phlx–91–26, which adopted Phlx Rule 232. See Securities Exchange Act Release No. 29300 (June 13, 1991), 56 FR 28212 (June 19, 1991) (order approving File No. SR–Phlx–91–26) (Phlx Approval Order). The Exchange's procedures provide primary market protection for customer GTX orders (good until canceled, executable in the afternoon session) in securities listed on the NYSE and on the Amex and traded during the after-hours sessions of those Exchanges. The New York Stock Exchange ("NYSE") initiated its Off-Hours trading ("OHT") sessions in June 1991. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). The American Stock Exchange, Inc. ("Amex") established an after-hours trading facility in August 1991. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (approving File No. SR–Amex–91–15). The Commission approved extensions of the NYSE, Amex and Phlx pilots, as well as pilots by the other regional exchanges until January 31, 1994 and further extended the pilots until April 30, 1994. See Securities Exchange Act Release Nos. 32364 (May 25, 1993), 58 FR 31574 (June 3, 1993) and 33562 (February 8, 1994), 59 FR 5792 (February 8, 1994).

[3] See Securities Exchange Act Release No. 33562, *supra* note 2.

[4] See Securities Exchange Act Release No. 29257, *supra* note 2.

as "GTX" orders ("good until cancelled, executable in the afternoon session"). Exchange rule 232 continues to govern the foregoing.

If the specialist does not execute these orders during regular Phlx trading hours, the Phlx GTX orders will be eligible for execution after the Phlx close based on volume that prints in Crossing Session I of the primary market's OHT session. Since the original filing, this procedure remains equally unchanged.[5] On February 1, 1994, the Commission approved an extension of the pilot program until April 30, 1994.[6] The Exchange now seeks permanent approval of the pilot program.

The Commission requested in its order extending the pilot until April 30, 1994, that the Exchange submit to the Commission by March 15, 1994, an updated report concerning the pilot activity through February 28, 1994. This updated report will assist the Commission in considering the Exchange's request for permanent approval prior to the April 30, 1994, expiration of the pilot program.

Although Phlx OHT business remains *de minimis*, the Phlx nevertheless, must continue the GTX order guarantees for competitive reasons. The Phlx, therefore, requests approval for its OHT GTX guarantee program on a permanent basis.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) and 11A of the Act in that it is designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received on the proposed rule change.

[5] However, the Phlx later added the Amex's volume to the definition of the primary market (in addition to the NYSE's volume) for the purposes of GTX orders. See Securities Exchange Act Release No. 29749 (September 27, 1991) 56 FR 50405.

[6] See *supra* note 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–8 and should be submitted by April 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7282 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20154; 811–2801]

AIM Convertible Securities, Inc.; Application

March 22, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: AIM Convertible Securities, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 11 Greenway Plaza, suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 272–3809, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Maryland. On January 19, 1978, applicant registered under the Act as an investment company and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on March 6, 1978, and applicant's initial public offering commenced on March 30, 1978.

2. Applicant's board of directors approved an agreement and plan of reorganization (the "Plan") at meetings of the board held on July 19, 1993 and September 11, 1993. The purpose of the Plan was to reorganize applicant from a stand-alone investment company incorporated in Maryland to a portfolio of a multiple portfolio investment company organized as a Delaware

business trust, which management believes in the long run will result in more efficient operation. In accordance with rule 17a–8 under the Act, applicant's board of directors determined that the sale of applicant's assets to the AIM Balanced Fund Portfolio (the "Balanced Portfolio") of AIM Funds Group, was in the best interests of applicant, and that the interests of applicant's existing shareholders would not be diluted as a result.

3. On September 1, 1993, applicant mailed proxy materials to its shareholders. At a special meeting held on September 27, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, applicant transferred all of its assets and liabilities to the Balanced Portfolio in exchange for Class A shares of the Balanced Portfolio with an aggregate net asset value equal to the aggregate net assets of applicant. The Class A shares then were issued to the shareholders of applicant.

5. On October 15, 1993, applicant filed articles of transfer with the State of Maryland. Applicant is in the process of preparing articles of dissolution to be filed with the State of Maryland.

6. All expenses incurred in connection with the transaction have been assumed and paid by applicant. No brokerage commissions were paid in connection with the transaction.

7. Applicant has no assets and no debts remaining, and is not a party to any litigation or administration proceeding. Applicant has no securityholders at the time of filing of the application.

8. Applicant is not now engaged, nor does it propose to engage, in any business activity other than that necessary to wind-up its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR. Doc. 94–7285 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20155; 811–2756]

AIM High Yield Securities, Inc.; Application

March 22, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: AIM High Yield Securities, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 7, 1994. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 11 Greenway Plaza, suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 272–3809, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The Complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Maryland. On July 12, 1977, applicant registered under the Act as an investment company and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on September 2, 1977, and applicant's initial public offering commenced on September 29, 1977.

2. Applicant's board of directors approved an agreement and plan of reorganization (the "Plan") at meetings of the board held on July 19, 1993 and September 11, 1993. The board determined that a combination of applicant with the AIM High Yield Fund portfolio (the "High Yield Portfolio") of AIM Funds Group, would provide economies of scale that would benefit its shareholders by providing them with a larger portfolio of securities and reducing the cost per share of providing certain legal, accounting and shareholder services. In accordance with rule 17a–8 of the Act, applicant's board of directors determined that the sale of applicant's assets to the High Yield Portfolio was in the best interests of applicant, and that the interests of applicant's existing shareholders would not be diluted as a result.

3. On September 1, 1993, applicant mailed proxy materials to its shareholders. At a special meeting held on September 27, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, applicant transferred all of its assets and liabilities to the High Yield Portfolio in exchange for Class A shares of the High Yield Portfolio with an aggregate net asset value equal to the aggregate net assets of applicant. The Class A shares then were issued to the shareholders of applicant.

5. On October 15, 1993, applicant filed articles of transfer with the State of Maryland. Applicant is in the process of preparing articles of dissolution to be filed with the State of Maryland.

6. All expenses incurred in connection with the transaction have been assumed and paid by applicant. No brokerage commissions were paid in connection with the transaction.

7. Applicant had no assets and no debts remaining, and is not a party to any litigation or administration proceeding. Applicant has no securityholders at the time of filing of the application.

8. Applicant is not now engaged, nor does it propose to engage, in any business activity other than that necessary to wind-up its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7284 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20152; File No. 812–8896]

Allianz Life Insurance Company of North America, et al., Applications

March 22, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Allianz Life Insurance Company of North America (the

"Company"), Allianz Life Variable Account B (the "Variable Account"), and NALAC Financial Plans, Inc.

RELEVANT 1940 ACT SECTIONS: Amended order requested under section 6(c) for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an amended order to permit the deduction of a mortality and expense risk charge under certain variable annuity contracts from the assets of the Variable Account, or any other separate account established by the Company in the future to support materially similar variable annuity contracts.

FILING DATE: An application was initially filed on July 18, 1988, and amended on September 8 and September 19, 1988. Notice of the Application for Exemption was published on November 2, 1988 (File No. 812–7070, Release No. IC–16620) and an Order Granting Exemptions was issued November 30, 1988 (Release No. 16664). This Application for an Amended Order was filed on March 17, 1994.

HEARING OR NOTIFICATION OF HEARING: An amended order granting the application and superseding the existing order will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1750 Hennepin Avenue, Minneapolis, Minnesota 55403.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 272–3045, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Company is a stock life insurance company organized under the laws of Minnesota.

2. The Variable Account is a segregated investment account of the Company and is registered as a unit investment trust under the 1940 Act. The Variable Account was established to act as the funding entity for certain variable annuity contracts (the "Contracts") issued by the Company. The Variable Account is divided into sub-accounts, each of which invests solely in the shares of one of the Funds of Franklin Valuemark Funds, a Massachusetts business trust registered under the 1940 Act as an open-end management investment company.

3. NALAC Financial Plans, Inc., a broker-dealer registered under the Securities Exchange Act of 1934, is the distributor of the Contracts.

4. The Contracts are individual flexible payment deferred variable annuity contracts ("Deferred Contracts") or individual immediate variable annuity contracts ("Immediate Contracts"). The Contracts are available in connection with retirement plans that qualify for Federal tax advantages and for plans that do not so qualify.

5. Premium taxes, or other taxes payable to a state or other government entity, paid by the Company are charged against Contract values either when due or at a later time, at the Company's discretion.

6. Owners of Deferred Contracts may transfer all or a part of their interest in a sub-account to another sub-account. The Company reserves the right to charge, per transfer, the lesser of $25 or 2% of the amount transferred. Prior to the date annuity payments begin (the "Annuity Date"), there is no charge for the first three transfers per Contract year. Currently the Company permits 12 transfers per Contract year without a transfer fee.

Owners of Immediate Contracts may transfer all or part of their interest in a sub-account to another sub-account without the imposition of any transfer fee.

7. For Deferred Contracts, there is an annual $30 Contract Maintenance Charge. Applicants represent that this charge has not been set at a level greater than its cost and contains no element of profit. There is no Contract Maintenance Charge for Immediate Contracts.

8. The Company deducts an Administrative Expense Charge that is equal on an annual basis to .15% of the average daily net assets of the Variable Account. This charge, together with the Contract Maintenance Charge, is designed to reimburse the Company for the expenses it incurs in the establishment and maintenance of the Contracts and the Variable Account. The Company does not intend to profit from this charge. Should this charge be insufficient, the Company will not increase this charge and will incur the loss. Applicants rely on rule 26a-1 with respect to the deduction of the Contract Maintenance Charge and the Administrative Expense Charge. Applicants represent that the Administrative Expense Charge will be reduced in the future to the extent that the amount of this charge is in excess of that necessary to reimburse the Company for its administrative expenses.

9. The Contracts do not provide for a front-end sales charge to be deducted from purchase payments. Some Deferred Contracts charge a Contingent Deferred Sales Charge ("CDSC") on full or partial surrenders to reimburse the Company for expenses incurred in connection with the promotion, sale and distribution of the Contracts. The CDSC applies only to purchases payments received within five years of the date of surrender. No CDSC is imposed on distributions made as annuity payments. In calculating the CDSC, purchase payments are allocated to the amount surrendered on a first-in first-out basis. The amount of the CDSC is calculated by (i) allocating purchase payments to the amount surrenders; (ii) multiplying each allocated purchase payment that has been held under certain of the Contracts for the period shown below by the charge shown below:

Years since payment	In percent—	
	Certain contracts	Other contracts
0–1	5	6
1–2	5	5
2–3	4	4
3–4	3	3
5–5	1.5	1.5
5+	0	0

and (iii) adding the products of each multiplication in (ii) above.

In no event will the aggregate CDSC exceed 9% of the total purchase payments made. A Contract owner may surrender no more than once annually 15% or purchase payments less prior surrenders without incurring a CDSC. The Company may eliminate or reduce the CDSC under Company procedures then in effect. There is no CDSC imposed on Immediate Contracts.

10. For all Contracts issued in connection with the Variable Account,

the Company deducts a Mortality and Expense Risk Charge that is equal, on an annual basis, to 1.25% of the average daily net assets of the Variable Account: Approximately .90% for mortality risks and .35% for expense risks.

The mortality risks assumed by the Company arise from its contractual obligation to make annuity payments after the Annuity Date for the life of the annuitant in accordance with the annuity rates guaranteed in the Contracts. The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including Contract maintenance costs, administrative costs, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the Contract Maintenance Charge and the Administrative Expense Charge.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request an amended order under section 6(c) exempting them from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Variable Account under the Contracts. Applicants request that the amended order also permit the deduction of the Mortality and Expense Risk Charge from the assets of any other separate account established by the Company in the future to support variable annuity contracts offered on a basis similar in all material respects to the basis on which the Contracts are offered.

3. Applicants submit that their request for an order that applies to the Variable Account and to future separate accounts issuing contracts that are substantially similar to the Contracts is appropriate in the public interest. Such an amended order would promote competitiveness in the variable annuity contract market by eliminating the need for the Company to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Investors would not receive any benefit or additional protection by the Company being required to repeatedly seek exemptive relief with respect to the same issues addressed in this Application.

4. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks undertaken by the Company and within the range of industry practice with respect to comparable annuity products. Applicants base this representation on an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the expense risks taking into consideration the existence of charges against separate account assets for other than mortality and expense risks, and the estimated costs, now and in the future, for certain product features as well as an examination of comparable annuity products. The Company represents that it will maintain at its principal office a memorandum, available to the Commission, setting forth in detail this analysis.

5. If a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the CDSC. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion will be set forth in a memorandum maintained by the Company at its principal office and available to the Commission upon request.

6. The Company represents that the Variable Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Variable Account under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7286 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20151; File No. 812–8666]

Metropolitan Life Insurance Co. et al.; Applications

March 22, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Metropolitan Life Insurance Company ("MetLife"), Metropolitan Tower Life Insurance Company ("MetTower") (the "Life Insurance Companies"), Metropolitan Life Separate Account E ("MetLife SA E"), Metropolitan Life Separate Account UL ("MetLife SA UL"), and Metropolitan Tower Separate Account Two ("MetTower SA Two") (the "Separate Accounts").

RELEVANT 1940 ACT SECTIONS: Order requested for approval under section 26(b) and exemptions pursuant to sections 6(c) and 17(b) from sections 17(a)(1) and 17(a)(2) in connection with the proposed substitution (the "Substitution").

SUMMARY OF APPLICATION: Applicants seek an order regarding the Substitution of the Diversified Portfolio of the Metropolitan Series Fund, Inc. (the "Fund") for the GNMA Portfolio and the Equity Income Portfolio of the Fund held by the Separate Accounts to fund variable annuity contracts and variable life insurance contracts issued by the Life Insurance Companies.

FILING DATE: The application was filed on November 4, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants

with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 18, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Madison Avenue, New York, NY 10010.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney or Michael V. Wible, Special Counsel at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. MetLife is a mutual life insurance company organized under New York law. MetTower, a wholly-owned subsidiary of MetLife, is a stock life insurance company organized under Delaware law.

2. The Fund, incorporated under Maryland law, is registered under the 1940 Act as an open-end management investment company consisting of nine separate series ("Portfolios"). The Portfolios include the Equity Income Portfolio ("EIP"), the GNMA Portfolio ("GNMA"), the Diversified Portfolio ("DP"), and six other Portfolios. Shares of each Portfolio are registered under the Securities Act of 1933. MetLife serves as the investment adviser to each series of the Fund. State Street Research & Management Company, a wholly-owned subsidiary of MetLife, acts as sub-investment adviser to the Diversified Portfolio, the GNMA Portfolio and the Equity-Income Portfolio of the Fund.

3. MetLife is the depositor of MetLife SA E and MetLife SA UL. MetTower is the depositor of MetTower SA Two. MetLife SA E consists of 16 investment divisions ("Divisions"), nine of which invest in shares of a corresponding series of the Fund. MetLife SA UL and MetTower SA Two each consist of eight Divisions that invest in shares of a corresponding series of the Fund. Each Separate Account includes an Equity Income Division and a Diversified Division; MetLife SA E also includes a GNMA Division. Each Separate Account is registered under the 1940 Act as a unit investment trust.

4. MetLife SA E funds variable annuity contracts and MetLife SA UL and MetTower SA Two fund variable life insurance contracts. Variable life contracts are no longer offered by MetTower. The variable annuity contracts which utilize the Equity Income Division and the GNMA Division of MetLife SA E are no longer being offered by MetLife, and on May 1, 1993, MetLife discontinued offering the Equity Income Division in connection with its variable life contracts. Existing contracts are currently invested in such Divisions.

5. No deduction is made from purchase payments for the variable annuity contracts to cover sales expenses; however, a deduction for such expenses is made as a contingent deferred surrender charge for any withdrawals occurring during the first seven years after the issuance of certain variable annuity contracts. A deduction is made of up to two per cent of premium payments under the variable life contracts of MetLife to cover sales expenses. In addition, certain of the MetLife variable life contracts are subject to a deduction of up to 1.5 per cent of premium payments for MetLife's federal income taxes, which may be deemed to be a sales load under the federal securities laws. Certain of the variable life contracts of MetLife are also subject to a contingent deferred surrender charge based on the specified face amount, the death benefit option and the age of the insured for contracts surrendered during the first fifteen contract years. A deduction is made from premium payments to cover sales expenses for the MetTower variable life contracts. The maximum deduction is 27 per cent of premium payments in the first year and seven per cent thereafter.

6. Under the contracts, the owner may transfer all of his or her accumulation units or cash value, as the case may be, to another Division or the general account of the insurance company issuing the contract. Under the variable annuity contracts of MetLife, twelve free transfers may be made each calendar year. Under the variable life contracts of MetLife, no charge is made for a transfer, but MetLife has reserved the right to charge up to $25 for transfers in the future. Under the variable life contracts of MetTower, six free transfers may be made each calendar year.

7. Shareholders of each of the Portfolios of the Fund have approved an amendment to the investment management agreements on behalf of each Portfolio between the Fund and MetLife which eliminates a provision of such agreements that obligated MetLife to pay the direct expenses of the Fund. During 1992, the total expenses subsidized by MetLife were $307,000 for DP, $109,000 for EIP and $109,000 for GNMA.[1] It is MetLife's present intention to voluntarily pay, through 1994, certain expenses of any Portfolio whose ratio of operating expenses (excluding the investment management fee and taxes) to average net assets of the Portfolio is greater than a certain percentage (0.25% in the cases of DP, EIP, and GNMA). Applicants estimate that the elimination of the mandatory subsidy will result in an increased cost per share of $.07 for EIP, $.06 for GNMA and $.02 for DP if the Substitution is not effected.[2]

8. As of May 1, 1993, MetTower and MetLife ceased making available under their respective contracts the Equity Income Division of MetTower SA Two and MetLife SA UL, respectively. MetLife ceased making available the Equity Income and GNMA Divisions of MetLife SA E in connection with its variable annuity contracts on May 1, 1990. Consequently, no purchase payments or premium payments may be allocated to these Divisions nor may accumulation units or cash values be transferred from the general account or any other Division to the Divisions. Applicants represent that EIP an GNMA therefore are likely to decrease in size over time and become less efficient as investment vehicles. Also, the continued reduction in size will mean that the expenses of these Portfolios will have a greater effect over time on the net asset value per share of each Portfolio, particularly now that the mandatory subsidy by MetLife has been eliminated.

9. Applicants propose to substitute the shares of DP for shares of EIP and GNMA currently held in the respective Equity Income Division of the Separate Accounts and in the GNMA Division of MetLife SA E. On August 4, 1993, the board of directors of the Fund, including a majority of those directors who are not "interested persons" as defined in the 1940 Act, approved in principle the Substitution. Applicants propose to effect the Substitution by June 1, 1994.[3] Immediately following

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[2] As of December 31, 1992, the net asset value per share of DP was $13.58, of EIP was $11.17 and of GNMA was $10.61. Applicants represent that, during the Notice Period, the application will be amended to reflect these representations.

[3] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

the Substitution, Applicants will treat, as a single Division of each Separate Account, the pre-existing Diversified Division invested in the shares of DP and the former Equity Income and GNMA Divisions then invested in shares of DP. Applicants will reflect this treatment in the disclosure documents for the Separate Accounts and the Form N-SAR annual reports filed by the Separate Accounts.

10. Applicants have reserved the right, without contract owners' consent, to invest the assets of a Division of a Separate Account in securities other than the shares of a particular Portfolio as a substitute for Portfolio shares already purchased or to be purchased in the future. The reservation of right is subject to compliance with applicable law, including prior approval by the insurance authorities of New York and Delaware, and any required Commission approval. Applicants will not consummate the Substitution prior to receiving such approvals.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act prohibits the depositor of a registered unit investment trust holding the security of a single issuer from substituting another security for such security unless the Commission has approved the substitution. The subaccounts of a registered separate account are treated as separate investment companies in connection with substitution transactions. Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 17(a) (1) and (2) of the 1940 Act prohibits an affiliated person of a registered investment company from selling or purchasing a security from the registered investment company. The transfer of accumulation units and cash values from the Equity Income and GNMA Divisions to the Diversified Division of the Separate Accounts could be deemed to involve a purchase and sale between the Divisions, each of which is an affiliated person of the other. The Equity Income and GNMA Divisions could each be said to be selling its portfolio shares of EIP and GNMA to the Diversified Division in return for accumulation units or interests of the Diversified Division. Conversely, the Diversified Division of a Separate Account, as affiliated person of the Equity Income and GNMA Divisions of the same Separate Account, could be said to be purchasing from an EIP or GNMA Division shares of EIP or GNMA owned by such Division.

Section 17(b) provides that the Commission may grant an application exempting a proposed transaction provided the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; the transaction is consistent with the policy of each registered investment company concerned; and the transaction is consistent with the general purposes of the 1940 Act.

3. Section 6(c) of the 1940 Act permits the Commission to exempt any person or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors fairly intended by the policy and provisions of the 1940 Act.

Applicants submit that the Substitution would meet these requirements for the reasons set forth below.

4. Applicants assert that the investment objectives of EIP, GNMA and DP, although not identical, are nevertheless compatible. The primary investment objective of the EIP is a high level of current income and, secondarily, long-term growth of capital by investing primarily in common stocks offering above-average dividend yields and in equity and debt securities convertible into or carrying the right to acquire common stocks. The primary investment objective of GNMA is a high level of current income while attempting to preserve liquidity and safety of principal by investing in mortgage-related securities, predominantly those issued by the Government National Mortgage Association. The primary investment objective of the DP is a high total return while attempting to limit investment risk and preserve capital by investing in equity securities, fixed income debt securities, or short-term money market instruments, or any combination thereof.

5. Applicants assert that the equity securities and debt securities in which DP invests are not inconsistent with the investment objectives of EIP and GNMA. Also, there is no alternative Portfolio with the characteristics of investing in the kinds of securities invested in by EIP and GNMA. DP, EIP and GNMA also have similar investment policies and practices and identical attributes of organization and operation. They also have identical investment management fees, and the same subinvestment manager. As a result, Applicants represent that the Substitution will not cause management fees and other expenses currently being paid by contract owners to be greater after the Substitution than before the Substitution. Also, all three Portfolios sell shares to the Separate Accounts and redeem such shares at net asset value without sales charge.

6. Applicants assert that the Substitution will not give rise to any tax liability or to any adverse tax consequences for contract owners, insureds, annuitants or beneficiaries. Applicants have a current opinion of tax counsel that the tax effect of the Substitution will be the same as the tax effect of a transfer from the Equity Income or GNMA Division to the Diversified Division of a Separate Account.

7. Applicants assert that the Substitution would be effected in a manner consistent with the protection of contract owners. The Fund disclosed the possibility of the Substitution in its prospectus dated April 30, 1993. The Insurance Companies will mail to their respective contract owners a supplement to their respective prospectuses disclosing the proposed Substitution. Prior to the date the Substitution is consummated, contract owners may transfer accumulation units or cash values and reallocate purchase and premium payments to any other Division of the respective Separate Account or the respective general account pursuant to transfer rights under the contracts (subject to any applicable charge or number of transfers per calendar year limits). Following the Substitution and prior to August 1, 1994,[4] contract owners that are invested in a Diversified Division under a Contract as a result of the Substitution may transfer to any other Division of the respective Separate Account without incurring any applicable charge and without regard to any limits on the number of transfers that may be made in a calendar year. After August 1, 1994,[5] any transfers from the Diversified Division of a Separate Account to another Division of that Separate Account or to the respective general account will be subject to any applicable charges or limits.

8. Applicants will effect the Substitution by simultaneously placing an order to redeem their shares of EIP and, in the case of MetLife SA E, GNMA, and an order to purchase shares of DP. The net asset values will

[4] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[5] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

calculated based on values determined as of the close of business on the business day next preceding the transaction, which day shall be within 24 hours of the date of the transaction. The Fund will pay the redemption proceeds in cash or transfer the assets of EIP and GNMA in kind to DP, or a combination of cash and in kind assets depending upon the existing investments of EIP and GNMA and how appropriate they are to DP at the time of transfer. Applicants have been advised by the Fund that, prior to effecting the Substitution, the Fund will take all actions necessary to comply with the requirements of section 18(f) of the 1940 Act and Rule 18f–1 thereunder, as set forth in its registration statement.[6]

9. Applicants represent that they have been advised by the Fund that the Fund's board of directors will instruct MetLife and State Street Research and Management Company to monitor EIP and GNMA portfolio assets, up to the effecting of the Substitution, with a view toward maintaining portfolio assets consistent with EIP's and GNMA's investment objective that are, to the extent practical, compatible with DP's investment objective. To the extent that any EIP or GNMA portfolio asset is not consistent with DP's investment objective, upon effecting the Substitution, MetLife will bear the cost of DP's liquidating such security.

10. Within five days after the Substitution, Applicants will mail each contract owner a notice of the Substitution including a specification of the shares indirectly owned by each owner affected by the Substitution.

11. The Insurance Companies will bear the expenses attributable to the Substitution.

12. Applicants assert that the interests of contract owners in the EIP or GNMA Divisions will be no different, in economic reality, immediately after the Substitution than before. The value of accumulation units in the Diversified Division received by the owners will be equivalent in value to the units or interests previously held in the respective EIP or GNMA Divisions. Owners investing in the DP will benefit from the economies of scale and administration of a single Division of a Separate Account rather than two or more Divisions investing in the same underlying Portfolios. Accordingly, Applicants represent that the terms of the Substitution will be reasonable and fair and not involve overreaching on the part of any person concerned.

[6] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested order approving the proposed Substitution under section 26(b) is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants further assert that exempting the applicants pursuant to sections 6(c) and 17(b) from sections 17(a)(1) and 17(a)(2) in connection with the proposed Substitution is appropriate because the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; the transaction is consistent with the policy of each investment company concerned; the transaction is consistent with the purposes of the 1940 Act; and the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7287 Filed 3–28–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #8208]

Massachusetts; Declaration of Disaster Loan Area

Middlesex County and the contiguous counties of Essex, Norfolk, Suffolk, and Worcester in the State of Massachusetts and Hillsborough County in the State of New Hampshire constitute an economic injury disaster area as a result of a fire in the Town of Medford which occurred on February 27. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on December 22, 1994 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303,

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of Massachusetts is 820800 and for New Hampshire the number is 820900.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 22, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–7357 Filed 3–28–94; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates; Quarterly Determinations

The interest rate on Section 7(a) Small Business Administration direct loans (as amended by P.L. 97–35) and the SBA share of immediate participation loans is 7 percent for the fiscal quarter beginning April 1, 1994.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4) (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the April–June quarter of FY 94, this rate will be 6 percent.

John R. Cox,

Assistant Administrator for Financial Assistance.

[FR Doc. 94–7358 Filed 3–28–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on April 21, 1994, at 9 a.m. Arrange for oral presentations by April 14, 1994.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–8235

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on April 21, 1994, at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW, Washington, DC 20005. The agenda for the meeting will include: Opening Remarks, Review of Action Items, Working Group Reports, Old Business, New Business.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 14, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on March 22, 1994.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–7289 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 147 Forty-Fifth Meeting; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 147 meeting to be held April 25–26, starting at 9:00 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the minutes of the forty-fourth meeting held on January 19–20 1994; (4) Report of Working Group Activities (a) Operations Working Group (OWG) (b) Separation Assurance Task Force (c) Requirements Working Group (d) Enhancements Working Group; (5) Report on FAA TCAS Program Activities (a) TCAS I (b) TCAS II (c) TCAS III (d) ATC applications activities; (6) Review of international activities/ issues; (7) Review and update of verification and validation process; (8) Review of action items from last meeting; (9) Other business; (10) Date and place of Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariart, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee of any time.

Issued in Washington, DC, on March 21, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–7292 Filed 3–28–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–19; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990, 1991, 1992, and 1994 Mercedes-Benz Gelaendewagen 300GE (Long Wheel Base Type 463) Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for determination that nonconforming 1990, 1991, 1992, and 1994 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that 1990, 1991, 1992, and 1994 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with or are capable of being modified to comply with, all such standards.

DATES: The closing date for comments on the petition is April 28, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 1089(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i)(I), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and afford interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No R–91–002 has petitioned NHTSA to determine whether 1990, 1991, 1992, and 1994 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPVs are eligible for importation into the United States. Europa contends that these vehicles are

eligible for importation under section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), because they have safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that 1990, 1991, 1992, and 1994 Mercedes-Benz Galaendewagen 300GE (long wheel base Type 463) MPVs have safety features that comply with Standards Nos. 102 Transmission Shift Lever Sequence * * *. (based on visual inspection and operation), 103 Defrosting and Defogging Systems (based on inspection), 104 Windshield Wiping and Washing Systems (based on operation), 105 Hydraulic Brake Systems (based on documented testing), 106 Brake Hoses (based on visual inspection of certification markings), 107 Reflecting Surfaces (based on visual inspection), 113 Hood Latch Systems (based on information in owner's manual describing operation of secondary latch mechanism), 116 Brake Fluids (based on visual inspection of certification markings and information in owner's manual describing fluids installed at factory), 119 New Pneumatic Tires for Vehicles other than Passenger Cars (based on visual inspection of certification markings), 124 Accelerator Control Systems (based on operation and comparison to U.S.-certified equipment), 201 Occupant Protection in Interior Impact (based on test film and certification of vehicle to European standard), 202 Head Restraints (based on test film and certification of vehicle to European standard), 204 Steering Control Rearward Displacement (based on test film), 205 Glazing Materials (based on visual inspection of certification markings), 207 Seating Systems, (based on undocumented test results and certification of vehicle to European standard), 209 Seat Belt Assemblies (based on certification markings and schematic diagram of seat belt warning system), 211 Wheel Nuts, Wheel Disc And Hubcaps (based on visual inspection), 214 Side Impact Protection (based on test results), 219 Windshield Zone Intrusion (based on engineering evaluation of Standard No. 208 compliance test film and test data), and 302 Flammability of Interior Materials) based on composition of upholstery).

The petitioner also contends that 1990, 1991, 192, and 1994 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPVs are capable of being modified to comply with the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: Substitution of a lens marked "Barke" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors; (c) installation of a high mounted stop lamp on vehicles manufactured after September 1, 1993. The petitioner asserts that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 Rearview Mirrors: Inscription of the required warning statement on the convex surface of the passenger side rearview mirror.

Standard No. 114 Theft Protection: Installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar

Standard No. 118 Power-Operated Window Systems: Rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 Tire Selection and Rims for Vehicles other than Passenger Cars: Installation of a tire information placard. The petitioner asserts that even though the tire rims lack a DOT certification marking, they comply with the standard, based on their manufacturer's certification that they comply with the German TUV regulations, as well as their certification by the British Standards Association and the Rim Association of Australia.

Standard No. 206 Door Locks and Door Retention Components: Installation of interior locking buttons on all door locks and modification of rear door locks to disable latch release controls when locking mechanism is engaged.

Standard No. 208 Occupant Crash Protection: Installation of a complying driver's side air bag and a seat belt warning buzzer. The petitioner asserts that the vehicle conforms to the standard's injury criteria at the front passenger position based on a test report from the vehicle's manufacturer.

Standard No. 210 Seat Belt Assembly Anchorages: Insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner asserts that the vehicle is certified as complying with a European standard that contains more severe force application requirements than those of this standard.

Standard No. 212 Windshield Retention: Application of cement to the windshield's edges.

The petitioner provided test data indicating that the vehicle satisfied the frontal barrier requirements of Standard No. 301 Fuel System Integrity. The Petitioner also supplied data on a rear barrier crash at 31 mph with crash forces approximating those required by the standard. The data revealed that fuel leaked from the vent during the rollover that was conducted as part of this test. The petitioner installed a rollover valve in the fuel tank line to resolve that problem. The petitioner also stated that the vehicle should comply with the lateral impact test at the lower speed of 20 mph due to the reinforcing structure surrounding the fuel tank and the placement of the fuel lines inside the main frame of the vehicle.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments field after the closing date will also be considered. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8

Issued on: March 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94-7350 Filed 3-28-94; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Women Veterans will be held May 25-26, 1994, in room 930, VA Cental Office Building, 810 Vermont Avenue, NW., Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women

veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on May 25 9 a.m.–4:30 p.m.; May 26 from 9 a.m.–12 noon room 946, room 930, VA Central Office Building, 810 Vermont Avenue, NW., Washington, DC. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535–7571) prior to May 13, 1994.

Dated: March 17, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–7260 Filed 3–28–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 60
Tuesday, March 29, 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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: April 12, 1994, 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. Report to the Commission—Office of the Financial and Resource Management Services (FRMS).
3. Proposed Enforcement Guidance on *St. Mary's Honor Center* v. *Hicks.*

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: March 25, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–7582 Filed 3–25–94; 3:34 pm]

BILLING CODE 6750–06–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 28, April 4, 11, and 18, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters to be Considered:

Week of March 28

Wednesday, March 30

9:00 a.m.
Discussion of Interagency Issues (Closed—Ex. 9)
1:00 p.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Thursday, March 31

9:00 a.m.
Briefing by Nuclear Energy Institute (NEI) (Public Meeting)
(Contact: Richard Myers, 202–293–0770)
2:00 p.m.
Briefing by ABB/CE on Status of System 80+ Application for Design Certification (Public Meeting)
(Contact: 301–881–7040)

Friday, April 1

10:00 a.m.
Briefing on Low Level Radioactive Waste Performance Assessment Development Plan (Public Meeting)
(Contact: John Greeves, 301–504–3334)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Sequoyah Fuels Corp.—Petition for Review of LBP–93–25 (Tenatitive)
(Contact: Cecilia Carson, 301–504–1625)
b. Final Rule on Equal Access to Justice Act (10 CFR Part 12)
(Contact: Susan Fonner, 301–504–1634)

Week of April 4—Tentative

Thursday, April 7

10:00 a.m.
Briefing by Westinghouse on AP–600 Design Certification (Public Meeting)
(Contact: Brian McIntyre, 412–374–4334
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 11—Tentative

There are no meetings scheduled for the Week of April 11.

Week of April 18—Tentative

Friday, April 22

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities and Alternative Regulatory Approaches (Public Meeting)
(Contact: Ted Sherr, 301–504–3371)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are intially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: March 25, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–7571 Filed 3–25–94; 2:30 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 14021, March 24, 1994

PREVIOUSLY ANNOUNCED DATE OF MEETING: April 5, 1994.

CHANGE: Location and Time of Open Session meeting:

10:00 a.m., Room 302A, Chicago Main Post Office, 433 West Van Buren Street

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

Neva R. Watson,

Alternate Certifying Officer.

[FR Doc. 94–7547 Filed 3–25–94; 2:15 pm]

BILLING CODE 7710–12–M

federal register

Tuesday
March 29, 1994

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Guidance for Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Guidance for Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA is issuing this Notice as interim guidance on fish and wildlife and sensitive environments for the regulated community required to submit Oil Pollution Act Facility or Vessel Response Plans to U.S. Environmental Protection Agency or U.S. Coast Guard. This Notice is listed in the following outline:

Appendix I: Federal Agencies Responsible for Specific Environmental Resources.
Appendix II: Critical Habitats for Endangered/Threatened Species.
Appendix III: Federally Protected Areas.
Appendix IV: Sensitive Biological and Human-Use Resources.
Appendix V: Ranking of Shoreline Habitats Impacted by Oil Spills.
Appendix VI: Mailing Addresses and Phone Numbers for Regional Offices.

ADDRESSES: Limited additional copies are available by calling or writing the Oil Pollution Act (OPA90) Staff, (G–MS), 2100 Second St. SW., Washington DC 20953; (202) 267–6740. This number is equipped to record messages 24 hours a day.

FOR FURTHER INFORMATION CONTACT: Jean Snider, Ph.D., NOAA HAZMAT Liaison, c/o USCG (G–MEP), 2100 2nd St. SW., rm 2100, Washington DC 20230; (202) 267–6122, Fax (202) 267–4825.

SUPPLEMENTARY INFORMATION: Under section 311 of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (OPA), certain facilities (including some onshore facilities, pipelines, and rolling stock as defined in 40 CFR part 112, 33 CFR part 150, 49 CFR part 194 and 49 CFR part 106), offshore facilities, and vessels are required to prepare and submit response plans. This planning requirement is meant to include all tank vessels and those facilities that could reasonably be expected to cause substantial harm to the environment by a discharge of oil or a hazardous substance into navigable waters (as defined in 40 CFR part 110.1), adjoining shorelines, or the exclusive economic zone. At this time, only oil discharges are being addressed by this Notice. The CWA, as amended by OPA, requires that these response plans be consistent with Area Contingency Plans (ACPs). The ACPs are being prepared by Area Committees, composed of qualified personnel from Federal, State, and local agencies, who will identify and prioritize for protection specific locations that may fall under the categories of fish and wildlife and sensitive environments. New requirements for addressing fish and wildlife and sensitive environments were called for in sections 4201(b) and 4202(a) of OPA. These Sections required "fish and wildlife response plans * * * for the immediate and effective protection * * *" and "joint preplanning by the Area Committees, including * * * protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife * * *." The completed fish and wildlife and sensitive environments plans will likely be geographic-specific annexes to the ACPs, and should be the primary source of natural resource information that should be used by facility and vessel owners or operators during response planning. These annexes will reflect local scientific knowledge, responder experience, and community priorities. Sensitive environments identified by Area Committees may include areas sensitive to the effects from a spill event, and areas which if impacted may endanger human health. In preparing or updating their response plans, owners and operators are strongly encouraged to contact the Environmental Protection Agency (EPA)- and U.S. Coast Guard (USCG)-chaired Area Committees to ensure consistency in the definition of sensitive environments and priorities for actions to be taken in the event of a spill.

This document is provided as guidance to owners and operators until the geographic-specific fish and wildlife and sensitive environments annexes in ACPs are completed. It does not supersede or replace these annexes, but rather provides some interim guidance on fish and wildlife and sensitive environments, and background information regarding those annexes. It is also intended to assist owners and operators by listing some references being used by the Area Committees in determining protection priorities and appropriate cleanup strategies. This guidance is not meant to provide a complete listing of sources that Area Committees are using to develop their fish and wildlife and sensitive environments annexes. Rather, it provides a description of the basic type of information that Area Committees use to establish protection priorities and cleanup strategies.

Proximity of the potential discharge source to fish and wildlife and sensitive environments has been identified as a factor in the substantial harm evaluation. (See appendix C of 40 CFR part 112 from EPA's NPRM of February 17, 1993 on Non-Transportation-Related Onshore Facilities.) Environments may be identified as sensitive (as described in the proposed changes to 40 CFR 300.210(c)(4) and detailed in the fish and wildlife and sensitive environments annexes to the ACPs) by either their legal designation, or evaluations of Area Committees (for planning) or members of the spill response Unified Command Structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered/threatened species, wilderness and natural areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, public drinking water intakes, Federal and State lands that are research natural areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats, such as: Aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats. The Area Committee and the spill response Unified Command Structure may consult with the natural resource management agencies, to determine additional areas to be considered sensitive environments for the purposes of OPA.

This document includes appendices, which provide basic environmental reference information for facility and vessel owners and operators to use in the development and update of their response plans. Appendix I provides a list of Federal agencies that are responsible for specific environmental resources. Appendix II provides further information to assist owners and operators in identifying boundaries of critical habitats for endangered/threatened species identified by the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS). (Appendix II lists the seasons associated with critical habitats for some endangered species. Since it is not known when a discharge might occur, owners and operators should base their response planning on the worst case, i.e., a discharge that occurs during the critical habitat season.) Appendix III provides a list of some Federally protected areas. In EPA's Rule

on Non-Transportation-Related Onshore Facilities, Appendices I through III will be referenced as the lists that owners and operators will use in self-determining their substantial harm (with regards to the factor on proximity to sensitive environments).

The lists in appendix IV and V will further help owners and operators develop protection priorities until the ACP geographic-specific Annexes on Fish and Wildlife and Sensitive Environments are completed. These tables are not necessarily applicable for purposes other than spill preparedness and response. Appendix IV addresses the biological and human-use aspects of area sensitivity and the associated activities that represent the most risk for those resources. It has been abstracted from information developed by natural resource trustee agencies and technical experts.

Natural resources are most at risk from oil spills when: (1) Large numbers of individuals are concentrated in a relatively small area, such as bays where rafts of waterfowl concentrate during migration and overwintering;

(2) Wildlife come ashore for birthing, resting, or molting, such as seal haulouts and marine turtle nesting;

(3) Early life stages are present in somewhat restricted areas, such as nursery areas for anadromous fish, turtle nesting beaches, and bird rookeries;

(4) Areas important to specific life stages or migration patterns, such as foraging or overwintering sites, are impacted by oil;

(5) Specific areas are known to be vital sources for propagation, such as oyster seed beds;

(6) The species are threatened or endangered; and

(7) A significant percentage of the population is likely to be exposed to oil.

Human-use resources at risk from oil spills can be divided into four components: (1) High recreational use and shoreline access areas,

(2) Officially designated natural resource management areas,

(3) Resource extraction sites, such as subsistence sites, commercial fisheries areas, aquaculture sites, water intakes and other water resource usage and resource extraction site areas; and

(4) Archaeological, historical, and cultural sites.

Water resource usage areas that may require protection include surface water intakes and groundwater recharge zones and well fields. Groundwater protection may be of particular concern for spills of light products in rivers where wells are located in the flood plain and are hydraulically connected to the river.

Appendix V ranks several shoreline habitats by their relative sensitivity to oil spills. The sensitivity ranking is controlled by the following factors: (1) Relative exposure to wave, tidal, and river flow energy;

(2) Shoreline type (e.g., rocky cliffs, sand beaches, marshes);

(3) Substrate type (grain size, mobility, oil penetration, and trafficability); and

(4) Biological productivity and sensitivity.

The concept of ranking coastal environments on a relative sensitivity scale was originally developed in 1976 and has since been refined and expanded to include all shoreline types in North America, including the Great Lakes and riverine environments. The ranking is based on an understanding of the physical and biological character of the shoreline environment, not just the substrate type and grain size. Area Committees determine protection and cleanup priorities for areas by reviewing their shoreline and resource sensitivity as well as other local factors. Subsequently, the appropriate protection and cleanup methods for the different environments are determined. Further information on preferred cleanup methods for different environments and factors to consider for mechanical protection can be found in the following documents available from the National Technical Information Service: "Shoreline Countermeasures Manual: Temperate Coastal Environments" (NOAA, December 1992) and "Shoreline Countermeasures Manual: Tropical Coastal Environments" (NOAA, May 1993). Further information is anticipated to be available, including "Environmental Impacts of Freshwater Spill Response Options" (NOAA/American Petroleum Institute, in press mid-1994), and "Mechanical Protection Guidelines" (NOAA/USCG, in press mid-1994).

To facilitate the update of Vessel and Facility Response Plans and the incorporation of recent information, appendix VI lists mailing addresses and phone numbers for regional offices. In addition, owners and operators should note that the appropriate agencies responsible for fish and wildlife and sensitive environments will periodically update their sensitive environment information as well as agency lists. This is due to: Legal changes (i.e., changes in law or regulations to federally protected areas and species), updates to Area Contingency Plans and changes in agency contact information. Owners and operators are responsible for ensuring that their response plans and their plan updates reflect recent fish and wildlife and sensitive environments information. Area Contingency Plans will periodically be updated to reflect these new designations, as well.

Dated: March 23, 1994.

Frank W. Maloney,

Deputy Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration, DOC.

Appendix I—Federal Agencies That Are Responsible for Specific Environmental Resources

For more information on the following areas, owners and operators should contact the responsible agency listed below. These agencies will provide assistance, including maps, for the areas under their jurisdiction.

Areas	Responsible Federal Agency
Wetlands, as defined in 40 CFR Part 230.3	EPA*; COE; DOI/FWS, BLM, NPS; USDA/FS.
Critical habitat for Designated or Proposed Endangered/Threatened Species	DOI/FWS, BLM, NPS; NOAA/NMFS; USDA/FS.
Habitat Used by Designated or Proposed Endangered/Threatened Species or Marine Mammals	DOI/FWS, BLM, NPS; NOAA/NMFS; USDA/FS.
National Marine Sanctuaries	NOAA/NOS.
National Parks	DOI/NPS.
Federal Wilderness Areas	DOI/FWS, BLM, NPS; USDA/FS.
National Estuary Program Areas	EPA*.
Near Coastal Waters Program Areas	EPA*.
Clean Lakes Program Critical Area	EPA*.
National Monuments	DOI/NPS; USDA/FS.
National Recreational Areas	DOI/NPS; USDA/FS.
National Preserves	DOI/NPS.

Areas	Responsible Federal Agency
National Wildlife Refuges	DOI/FWS.
Coastal Barrier Resource System (units, undeveloped, partially developed)	DOI/FWS, NPS.
National River Reach Designated as Recreational	EPA*; DOI/BLM.
Federal or State Designated Wild and Scenic Rivers	DOI/BLM, NPS; USDA/FS.
National Conservation Areas	DOI/BLM; USDA/FS.
Hatcheries	DOI/FWS; NOAA/NMFS.
Waterfowl Management Areas	DOI/FWS.
Cultural Resources	DOI/NPS, BLM; USDA/FS.
Areas of Critical Environmental Concern	DOI/BLM.
National Forest System	USDA/FS.

*Where EPA is designated as the responsible agency, the information may be provided by the appropriate Regional office.

Note: Please contact State or local agencies for information on resources they manage.

Acronyms:
BLM—Bureau of Land Management.
COE—US Army Corps of Engineers.
DOI—Department of the Interior.
EPA—US Environmental Protection Agency.
FS—US Forest Service.
FWS—US Fish and Wildlife Service.
NMFS—National Marine Fisheries Service.
NOAA—National Oceanic and Atmospheric Administration.
NOS—National Ocean Service.
NPS—National Park Service.
USDA—US Department of Agriculture.

APPENDIX II—Critical Habitats for Endangered/Threatened Species

1. Designated Critical Habitat for NMFS Species

The following locations have been designated as critical habitats for NMFS species. These habitats are considered sensitive environments and are preserved by the government. Habitat boundaries for the NMFS species listed below are identified in 50 CFR parts 226 and 227. This list is not all-inclusive. Owners and operators should contact the appropriate NMFS region listed in Appendix VI for further information.

NMFS Species	Location
Hawaiian Monk Seal, Leatherback Sea Turtle, Steller Sea Lion.	Northwest Hawaiian Islands, Sandy Point, St. Croix, USVI, AK/North Pacific Coast (35 rookery sites).
Winter-run Chinook Salmon, Snake River Salmon.	Sacramento River, CA, Columbia and Snake Rvrs., ID, OR, WA.

2. Primary Seasonal Habitats

Primary seasonal habitats (i.e., species distributions) for endangered species as identified in recovery plans and other technical documents are listed below. Owners and operators should contact the appropriate NMFS region listed in appendix VI for further information.

Northern Right Whale (Final Recovery Plan, December 1991)

Florida—Georgia coast from 28°N to 32°N during the months of December through March. Calving and nursery area.

Cape Cod—Massachusetts Bay during the months of March through September. Primary feeding areas.

Great South Channel on the western edge of Georges Bank and Jeffrey's Ledge during the months of March through September. Primary feeding area.

Humpback Whale—east coast population (Final Recovery Plan, November 1991)

Gulf of Maine, Great South Channel, Stellwagen Bank, and Jeffrey's Ledge during the period from mid-April through mid-November. Primary feeding area.

Silver Bank and Navidad Bank off the coast of Puerto Rico, coastal areas off the northwest coast of Puerto Rico, and the US Virgin Islands from mid-December through early April. Calving and nursery area.

Humpback Whale—west coast population (Final Recovery Plan, November 1991)

Hawaiian Islands (Central North Pacific stock) and Guam (Western North Pacific stock) from December through April. Calving and nursery area.

Central and western Gulf of Alaska, including Prince William Sound, Shelikof Strait, Barren Islands and the southern coastline of the Alaska peninsula during the months of May through November. Primary feeding area.

Inside Passage and coastal waters of the southeast Alaska panhandle from Yakutat Bay south to Queen Charlotte Sound from May to November. This area includes Glacier Bay, Icy Strait, Stephens Passage/Frederick Sound, Seymour Canal, Sitka Sound, Cape Fairweather, Lynn Canal, Sumner Strait, Dixon Entrance, the west coast of Prince Wales Island, and the Fairweather grounds which is an offshore bank. Primary feeding area.

Shortnose Sturgeon (NOAA Technical Report NMFS 14 and Food and Agriculture Organization, Fisheries Synopsis No. 140).

The following east coast rivers and bays should be included: Kennebec River, Andrescoggin River, Montsweag Bay, Merrimack River, Connecticut River, Hudson River, Delaware River, Wacoamaw River (including Winyah Bay), Lake Marion-Wateree River, lower Savannah River, Altamaha River, Ocumulgee River, and St. Johns River.

Gray Whale (5 year Status Review)

Northern Bering and southern Chukchi Seas. Primary feeding areas.

Unlike other whale species, the gray whale is particularly vulnerable during its migration period because it migrates very close to shore. In areas such as Monterey and Point Conception it migrates within two miles of shore. The entire west coast from Alaska to the Mexican border should be listed during the migration periods. Southbound migration is during the months of October through December, and northbound migration is from mid-February to April.

Sacramento River Winter-Run Chinook Salmon (Designated Critical Habitat; Sacramento River Winter-Run Chinook Salmon Proposed Rule, 57 FR 36626, August 14, 1992).

The following waterways, bottom and water of the waterways, and adjacent riparian zones are included: (1) Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of Sacramento-San Joaquin Delta; (2) all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait; (3) all waters of San Pablo Bay westward of the Carquinez Bridge; and (4) all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge.

3. Inland Critical Habitats for FWS Species

Critical habitats for threatened and endangered species are considered sensitive environments. They are areas in which federal agencies must consider the effects of their activities (or activities they permit) on the species under the Endangered Species Act, section 7. Critical habitat boundaries for the FWS species are listed in 50 CFR 17.95. This list is not all-inclusive. Habitats used by endangered species are not listed specifically

in the CFR and may require professional judgment to identify. Owners and operators should contact the appropriate FWS office listed in appendix VI for further information.

Appendix III—Federally Protected Areas

1. National Marine Sanctuaries (NMS) and National Estuarine Research Reserves (NERR)

National Marine Sanctuaries	Location	Regulation
MONITOR NMS	NC	15 CFR Part 924.
Key Largo NMS	FL	15 CFR part 929.
Channel Islands NMS	CA	15 CFR Part 935.
Point Reyes/Farallon Island NMS	CA	15 CFR Part 936.
Looe Key NMS	FL	15 CFR Part 937.
Gray's Reef NMS	GA	15 CFR Part 938.
Stellwagen Bank NMS	MA	15 CFR Part 940.
Fagatele Bay NMS	AS	15 CFR Part 941.
Cordell Bank NMS	CA	15 CFR Part 942.
Florida Keys NMS	FL	pending [1].
Flower Garden Banks NMS	TX	15 CFR Part 943.
Monterey Bay NMS	CA	15 CFR Part 944.

[1] Currently designated an NMS by the Office of Ocean and Coastal Resource Management, Sanctuaries and Reserves Division. Notification in CFR is pending.

National Estuarine Research Reserve	Area of concern
Wells NERR	Rachel Carson Refuge, ME.
Great Bay NERR	Durham, NH.
Waquoit Bay NERR	MA.
Narragansett Bay NERR	RI.
Hudson River NERR	NY.
Old Woman Creek NERR	Huron, OH.
Chesapeake Bay NERR (for Maryland)	Annapolis, MD.
Chesapeake Bay NERR (for Virginia)	Gloucester Pt., VA.
North Carolina NERR	Wilmington, NC.
Sapelo Island NERR	GA.
Jobos Bay NERR	Guayama, PR.
Apalachicola River NERR	FL.
Rookery Bay NERR	Naples, FL.
Weeks Bay NERR	Fairhope, AL.
Tijuana River NERR	Imperial Beach, CA.
Elkhorn Slough NERR	Watsonville, CA.
South Slough NERR	Charleston, OR.
Padilla Bay NERR	Mt. Vernon, WA.
Waimanu Valley NERR	Oahu, HI.
Ahepoo-Combahee Edisto Basin NERR	SC.
Delaware NERR	DE.
North Inlet-Winyah Bay NERR	SC.
St. Lawrence River Basin NERR	NY.

General information on these sanctuaries and reserve programs can be found in these regulations:

—National Marine Sanctuary Program (15 CFR part 922)

—National Estuarine Research Reserve Program (15 CFR part 921)

For additional information on area boundaries for all NMS sites, all proposed new sanctuaries, and information on points-of-contact with the National Estuarine Research Reserve sites contact: Department of Commerce, NOAA, Office of Ocean and Coastal Resource Management, Sanctuaries and Reserves Division, 1305 East West Highway, SSMC4, Silver Spring, MD 20910.

2. Federally Protected Inland Areas

Federal regulations protect numerous inland areas. These include National Parks and National Wildlife Refuges, wilderness areas, National forests, and others. These areas are listed in Appendix I. Owners and operators should contact the responsible Federal agency, also listed in Appendix I, for area boundaries, information on proposed new areas, and applicable regulations.

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APPENDIX IV

SENSITIVE BIOLOGICAL AND HUMAN-USE RESOURCES

RESOURCE CATEGORY	SUB-CATEGORY	AREA OF SENSITIVE ACTIVITY
Marine Mammals	Sea lions; Seals, Walruses	Haulouts
	Sea otters; Manatees, Whales	Concentration areas
Terrestrial Mammals	Water-associated species (e.g., otter, beaver, mink)	Concentration areas
	Endangered species	Important habitats, as identified by resource agency
Birds	Waterfowl	Nesting/migration/wintering concentration areas;
	Diving birds	Rookeries; Forage/wintering areas
	Seabirds	Rookeries; Winter concentration areas
	Wading birds	Rookeries; Important forage areas
	Shorebirds	Nesting sites; Important migration stopover sites
	Gull/Terns	Nesting sites
	Raptors	Nest sites; Important forage areas
	Other migratory species	Nesting sites; Important migration stopover sites; Winter concentration areas
	Endangered species	Important habitats, as identified by resource agency
Fish	Anadromous fish	Spawning streams
	Beach spawners	Spawning beaches
	Nursery areas	Areas for all nearshore species
	Endangered species	Important habitats, as identified by resource agency
Shellfish	Mollusks	Seed beds; Abundant beds; leased mussel beds; endangered freshwater mussel beds
	Shrimp/crabs/lobster	Nursery areas; concentration areas
Reptiles/Amphibians	Water-associated species (e.g., sea turtles, alligators)	Nursery areas; concentration areas
	Endangered species	Important habitats, as identified by resource agency
Benthic Habitats	Submerged aquatic vegetation	Grass beds
	Worm beds/coral reefs	Live reefs
Plants	Endangered species	Important areas, as identified by resource agency
Recreation	Marinas, boat ramps, beaches, Boating/fishing/diving areas, State/county/other parks	High-use areas
Management Areas	Federally protected areas	(see Appendix I)
	State and local protected areas	(see appropriate agency)
Resource Extraction	Subsistence	Designated subsistence harvest areas
	Commercial fisheries	Concentration areas
	Aquaculture facilities	Water intakes/pens/ponds
	Water intakes	Drinking/irrigation/other
	Other water supplies	*(see introductory text)
	Other resource extraction sites	
Cultural Resources	Archaeological sites	Water-associated sites
	Historical sites	Water-associated sites
	Native lands	Reservations/culturally important sites

Source: Modified from NOAA "Guidelines for Developing Digital Environmental Sensitivity Index (ESI) Atlases and Databases" (April, 1993).

APPENDIX V

Ranking of Shoreline Habitats Impacted by Oil Spills

This appendix ranks shoreline habitats by their relative degree of sensitivity to oil spills in estuarine, lacustrine, and riverine environments. Facility and vessel owners and operators should use the scale to develop protection priorities. Upon completion by the Area Committees of geographic-specific annexes in the Area Contingency Plans, response plans should be consistent with the appropriate Area Contingency Plan annexes.

Most Sensitive	Estuarine	Lacustrine	Riverine
10	Freshwater swamps and marshes, mangroves, saltwater marshes	Freshwater swamps and marshes	Freshwater swamps and marshes
9	Sheltered tidal flats	Sheltered sand/mud flats, sheltered vegetated low banks	Muddy unvegetated substrates, vegetated low banks
8	Sheltered manmade structures, sheltered rocky shores	Sheltered manmade structures, sheltered scarps in bedrock	Sheltered manmade structures; vegetated; steeply sloping bluffs
7	Exposed tidal flats	Exposed flats	Not present
6	Rip rap structures, gravel beaches	Rip rap structures, gravel beaches	Rip rap structures, gravel bars, gently sloping gravel banks
5	Mixed sand and gravel beaches	Mixed sand and gravel beaches	Mixed sand and gravel bars, gently sloping mixed sand and gravel banks
4	Coarse-grained sand beaches	Sand beaches	Sandy bars, gently sloping sandy banks
3	Fine-grained sand beaches	Eroding scarps in unconsolidated sediments	Exposed, eroding banks in unconsolidated sediments
2	Wave-cut platforms in bedrock	Shelving bedrock shores	Rocky shoals, bedrock ledges
1 Least Sensitive	Exposed rocky shores	Exposed rocky cliffs	Exposed rocky banks

Source: Modified from NOAA "Guidelines for Developing Digital Environmental Sensitivity Index (ESI) Atlases and Databases" (April 1993), other NOAA guidance for freshwater environments, and FWS National Wetlands Research Center. NOAA ESI maps for coastal waters or the Great Lakes may be viewed at the USCG COTP offices or at NOAA offices in Seattle, Washington.

BILLING CODE 3510-08-C

Appendix VI—Mailing Addresses and Phone Numbers for Regional Offices

1. Area Committees

For more information on the EPA- and USCG-chaired Area Committees, please contact the appropriate Regional EPA office (see item 4) or the appropriate USCG COTP office (see item 9).

2. BLM State Offices

US BLM—Alaska, 222 West 7th Ave., #13, Anchorage, AK 99513–7599, Telephone: (907) 271–5076

US BLM—Arizona, 3707 North 7th St., PO Box 16563, Phoenix, AZ 85011, Telephone: (602) 650–0206

US BLM—California, Federal Building, 2800 Cottage Way, Sacramento, CA 95825, Telephone: (916) 978–4743

US BLM—Colorado, 2850 Youngfield St., Lakewood, CO 80215, Telephone: (303) 239–3700

US BLM—Eastern States, Office, 7450 Boston Blvd., Springfield, VA 22153, Telephone: (703) 440–1700

US BLM—Idaho, 3380 Americana Terrace, Boise, ID 83706, Telephone: (208) 384–3001

US BLM—Montana, Granite Towers, 222 N. 32nd St., PO Box 36800, Billings, MT 59107, Telephone: (406) 255–2904

US BLM—Nevada, Federal Building, 850 Harvard Way, PO Box 12000, Reno, NV 89520–006, Telephone: (702) 785–6590

US BLM—New Mexico, 1474 Rodeo Rd., PO Box 27115, Santa Fe, NM 87502–7115, Telephone: (505) 438–7501

US BLM—Oregon, 1300 NE 44th Ave., PO Box 2965, Portland, OR 97208, Telephone: (503) 280–7026

US BLM—Utah, 324 S. State St., Suite 301, Salt Lake City, UT 84111–2303, Telephone: (801) 539–4010

US BLM—Wyoming, 2515 Warren Ave., PO Box 1828, Cheyenne, WY 82003, Telephone: (307) 775–6001

3. COE Division Offices

US Army Corps of Engineers, Huntsville Division, PO Box 1600, Huntsville, AL 35807–4301, Telephone: (205) 955–5460

US Army Corps of Engineers, Lower Miss. Valley Div., Regulatory Branch PO Box 80, Vicksburg, MS 39181–0080, Telephone: (601) 634–5818

US Army Corps of Engineers, Missouri River Division, Planning Branch 12565 West Center Rd., Omaha, NE 68144–3869, Telephone: (402) 221–7267

US Army Corps of Engineers, New England Division, Operations Branch, 424 Trapelo Rd., Waltham, MA 02254–9149, Telephone: (617) 647–8321

US Army Corps of Engineers, North Atlantic Division, Regulatory Branch, 90 Church St., New York, NY 10007–2979, Telephone: (212) 264–3996

US Army Corps of Engineers, North Central Division, 111 North Canal St., Chicago, IL 60606–7205, Telephone: (312) 353–6310

US Army Corps of Engineers, North Pacific Division, Planning/Engineering Branch, PO Box 2870, Portland, OR 97208–2870, Telephone: (503) 326–3780

US Army Corps of Engineers, Ohio River Division, Constr./Operations Branch PO Box 1159, Cincinnati, OH 45201–1159, Telephone: (513) 684–6811

US Army Corps of Engineers, Pacific Ocean Division, Constr./Operations Branch, Bldg. 230, Ft. Shafter, HI 96858–5440, Telephone: (808) 438–9293

US Army Corps of Engineers, South Atlantic Division, Constr./Operations Branch, 77 Forsyth St. SW, Rm. 313, Atlanta, GA 30335–6801, Telephone: (404) 331–6740

US Army Corps of Engineers, Transatlantic Division, Constr./Operations Branch, PO Box 2250, Winchester, VA 22601–1450, Telephone: (703) 665–3629

US Army Corps of Engineers, South Pacific Division, Constr./Operations Branch, 630 Sansome St., Rm. 720, San Francisco, CA 94111–2206, Telephone: (415) 705–1226

US Army Corps of Engineers, Southwestern Division, Constr./Operations Division, 1114 Commerce St., Dallas, TX 75242–0216, Telephone: (214) 767–2436

Note: Please contact the Division to determine the appropriate district office responsible for a particular area of concern.

4. EPA Regional Offices

US EPA, Region 1, Emergency Response Sect., 60 Westview St., Lexington, MA 02173, attn: Response Plan Coord., Telephone: (617) 860–4361

US EPA, Region 2, RPB, Removal and Emergency Preparedness Programs, (MS–211), 2890 Woodbridge Ave., Edison, NJ 08837, Telephone: (908) 321–6656

US EPA, Region 3, Oil and Title III Sect. (3HW34), 841 Chesnut St., 9th Fl., Philadelphia, PA 19107, Telephone: (215) 597–5998/1357

US EPA, Region 4, Emergency Resp. & Removal Br., 345 Courtland St. NE, 1st Fl., Atlanta, GA 30365, Telephone: (404) 347–3931

US EPA, Region 5, EERB (HSE–5J), 77 West Jackson Blvd., 5th Fl., Chicago, IL 60604–3507, Telephone: (312) 886–6236

US EPA, Region 6, (62–EP), Contingency Planning Sect., First Interstate Bank Tower, 1445 Ross Ave., Dallas, TX 75202–2733, Telephone: (214) 655–2270

US EPA, Region 7, EPPB (ENSV), 25 Funston Rd., 2nd Fl., Kansas City, KS 66115, Telephone: (913) 551–5000

US EPA, Region 8, Prevention Sect. (HWM-ER), One Denver Place, 999 18th St., Ste. 500, Denver, CO 80202–2405, Telephone: (303) 293–1603

US EPA, Region 9, ERS (H83), 75 Hawthorne St., San Francisco, CA 94105, Telephone: (415) 744–1500

US EPA, Region 10, SRIS (HW114), 1200 Sixth Ave., 11th Fl., Seattle, WA 98101, Telephone: (206) 553–1090

5. NMFS Regional Offices

NMFS Northeast Region, Director, One Blackburn Dr., Gloucester, MA 01930, Telephone: (508) 281–9250

NMFS Southeast Region, Director, 9450 Koger Blvd., St. Petersburg, FL 33702, Telephone: (813) 893–3141

NMFS Alaska Region, Director, Post Office Box 21668, Juneau, AK 99802, Telephone: (907) 586–7221

NMFS Northwest Region, Director, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Telephone: (206) 526–6150

NMFS Southwest Region, Director, 501 W. Ocean Blvd., #4200, Long Beach, CA 90802–4213, Telephone: (310) 980–4001

6. NPS Regional Offices

NPS, North Atlantic Region, 15 State St., Boston, MA 02109, Telephone: (617) 223–5200

NPS, Mid-Atlantic Region, 143 S 3rd St., Philadelphia, PA 19106, Telephone: (215) 597–7013

NPS, Southeast Region, 75 Spring St., Atlanta, GA 30303, Telephone: (404) 331–4998

NPS, Midwest Region, 1709 Jackson St., Omaha, NE 68102, Telephone: (402) 221–3471

NPS, Rocky Mountain Region, PO Box 25287, Denver, CO 80225, Telephone: (303) 969–2100

NPS, Southwest Region, PO Box 728, Santa Fe, NM 87504–0728, Telephone: (505) 988–6012

NPS, Western Region, 600 Harrison St., Ste. 600, San Francisco, CA 94107, Telephone: (415) 745–3955

NPS, Pacific NW Region, 83 S King St., Ste. 212, Seattle, WA 98104, Telephone: (206) 553–5565

NPS, Alaska Region, 2525 Gamble St., Anchorage, AK 99503, Telephone: (907) 257–2687

7. FWS Regional Offices

US FWS, Region 1, 911 NE 11th Ave., Portland, OR 97232–4181, Telephone: (503) 231–6118

US FWS, Region 2, PO Box 1306, 500 Gold Ave. SW, Rm. 3018, Albuquerque, NM 87103, Telephone: (505) 766–2321

US FWS, Region 3, Whipple Federal Bldg., 1 Federal Dr., Fort Snelling, MN 55111, Telephone: (612) 725–3502

US FWS, Region 4, 1875 Century Blvd., Atlanta, GA 30345, Telephone: (404) 679–4000

US FWS, Region 5, 300 Westgate Center Dr., Hadley, MA 01035–9589, Telephone: (413) 253–8301

US FWS, Region 6, PO Box 25486, Denver Federal Center, Denver, CO 80225, Telephone: (303) 236–7920

US FWS, Region 7, 1011 East Tudor Rd., Anchorage, AK 99503, Telephone: (907) 786–3542

8. FS Regional Offices

US Forest Service, Northern Region, Federal Bldg., PO Box 7669, Missoula, MT 59807, Public Affairs: (406) 329–3092

US Forest Service, Rocky Mountain Region, 740 Simms St., Lakewood, CO 80401, Public Service: (303) 275–5041

US Forest Service, Southwestern Region, Federal Bldg., 517 Gold Ave. SW, Albuquerque, NM 87102, Public Affairs: (505) 842–3291

US Forest Service, Intermountain Region, Federal Building, 324 25th St., Ogden, UT 84401, Public Affairs: (801) 625–5352

US Forest Service, Pacific Southwest Region, 630 Sansome St., San Francisco, CA 94111, Public Affairs: (415) 705–2874

US Forest Service, Pacific Northwest Region, 333 SW 1st Ave., PO Box 3623, Portland, OR 97208, Public Affairs: (503) 326–4154

US Forest Service, Southern Region, 1720 Peachtree Rd. NW, Atlanta, GA 30367, Telephone: (404) 347–7229
US Forest Service, Eastern Region, 310 West Wisconsin Ave., Milwaukee, WI 53203, Public Affairs: (414) 297–3620
US Forest Service, Alaska Region, Federal Office Building, PO Box 21628, Juneau, AK 99802, Public Affairs: (907) 586–8806

9. USCG District Offices and Area Committees (ACs)

Note: The USCG has no Third, Fourth, Sixth, Tenth, Twelfth, Fifteenth, or Sixteenth District.

[*Acronyms:* AC Area Committee; CG Coast Guard; COTP Captain of the Port; MSD Marine Safety Detachment; MSO Marine Safety Office; USCG US Coast Guard]

First District

District Office: Commander, 1st CG District (m), John Foster Williams CG Bldg., 408 Atlantic Ave., Boston, MA 02210–3350, Telephone: (617) 223–8444, Fax: (617) 223–8094
Maine and New Hampshire AC: Commanding Officer, USCG MSO, PO Box 108, Downtown Station, Portland, ME 04112–1096, Telephone: (207) 780–3251, Fax: (207) 780–3567
Long Island Sound AC: COTP, Long Island Sound, c/o USCG Group, 120 Woodward Ave., New Haven, CT 06512–3698, Telephone: (203) 468–4451, Fax: (203) 468–4445
Boston AC: Commanding Officer, USCG MSO, 445 Commercial St., Boston, MA 02109–1045, Telephone: (617) 223–3025, Fax: (617) 223–3032
Providence AC: Commanding Officer, USCG MSO, 20 Risho Ave., E. Providence, RI 02914–1215, Telephone: (401) 528–5335, Fax: (401) 528–5202
Long Island Sound AC: COTP, New York, c/o USCG Group, Governor's Is., Bldg. 108, New York, NY 10004–5000, Telephone: (212) 668–7917, Fax: (212) 668–7759

Second District

District Office: Commander, 2nd CG District (meps), 1222 Spruce St., Suite 2.102G, St. Louis, MO 63103–2832, Telephone: (314) 539–2655, Fax: (314) 539–2649
Area Committees: (No USCG Area Committees)

Fifth District

District Office: Commander, 5th CG District (mep), Federal Bldg., 431 Crawford St., Portsmouth, VA 23704–5004, Telephone: (804) 398–6389, Fax: (804) 398–6503
Philadelphia Coastal AC: Commanding Officer, USCG MSO, 1 Washington Ave., Philadelphia, PA 19147–4395, Telephone: (215) 271–4803, Fax: (215) 271–4833
Southern Coastal North Carolina AC: Commanding Officer, USCG MSO, 272 N Front St., Suite 500, Wilmington, NC 28401–3907, Telephone: (919) 343–4882, Fax: (919) 343–4423
Maryland Coastal AC: Commanding Officer, USCG MSO, Customhouse, 40 Gay St., Baltimore, MD 21202–4022, Telephone: (410) 962–5121, Fax: (410) 962–0930
Virginia Coastal AC, NE:, North Carolina Coastal AC: Commanding Officer, USCG MSO, Norfolk Federal Bldg., 200 Granby St., Norfolk, VA 23510–1888, Telephone: (804) 441–3302, Fax: (804) 441–3262

Seventh District

District Office: Commander, 7th CG District (mep), Brickell Plaza Bldg., 909 SE 1st Ave., Miami, FL 33131–3050, Telephone: (305) 536–5651, Fax: (305) 536–5091
Jacksonville AC: Commanding Officer, USCG MSO, 2831 Talleyrand Ave., Rm. 213, Jacksonville, FL 32206–3497, Telephone: (904) 232–2640, Fax: (904) 232–2664
Caribbean AC: Commanding Officer, USCG MSO, PO Box 3666, San Juan, PR 00902–3666, Telephone: (809) 729–6800 ext. 300, Fax: (809) 722–2697
Charleston AC: Commanding Officer, USCG MSO, 196 Tradd St., Charleston, SC 29401–1899, Telephone: (803) 724–7683, Fax: (803) 724–7705
Savannah AC: Commanding Officer, USCG MSO, PO Box 8191, Savannah, GA 31412–8191, Telephone: (912) 652–4353, Fax: (912) 652–4052
South Florida AC: Commanding Officer, USCG MSO, 51 SW 1st Ave., 5th Fl., Miami, FL 33130–1609, Telephone: (305) 536–5691, Fax: (305) 536–7005
Tampa AC: Commanding Officer, USCG MSO, 155 Columbia Dr., Tampa, FL 33606–3598, Telephone: (813) 228–2191, Fax: (813) 228–2399

Eighth District

District Office: Commander, 8th CG District (mep), Hale Boggs Federal Bldg., Rm. 1331, 501 Magazine St., New Orleans, LA 70130–3396, Telephone: (504) 589–6271, Fax: (504) 589–4999
Morgan City AC: Commanding Officer, USCG MSO, 800 David Dr., Rm. 232, Morgan City, LA 70380–1304, Telephone: (504) 384–2406, ext. 161, Fax: (504) 589–6793
S Texas Coastal Zone AC: Commanding Officer, USCG MSO, PO Box 1621, Corpus Christi, TX 78403–1621, Telephone: (512) 888–3192, Fax: (512) 888–3115
Houston/Galveston AC: Commanding Officer, USCG MSO, Houston, PO Box 446, Galena Park, TX 77547–0446, Telephone: (713) 671–5199, Fax: (713) 671–5177
Mobile AC: Florida Panhandle AC: Commanding Officer, USCG MSO, 150 N Royal St., PO Box 2924, Mobile, AL 36652–2924, Telephone: (205) 441–5201, Fax: (205) 441–6169
New Orleans AC: Commanding Officer, USCG MSO, 1440 Canal St., Tidewater Bldg., New Orleans, LA 70112–2711, Telephone: (504) 589–6196, Fax: (504) 589–6218
SW Louisiana-SE Texas AC: Commanding Officer, USCG MSO, Federal Bldg., 2875 75th St. & Hwy. 69, Port Arthur, TX 77640–2099, Telephone: (409) 723–6513, Fax: (409) 723–6534

Ninth District

District Office: Commander, 9th CG District (mep), 1240, East 9th Street, Cleveland, OH 44199–2060, Telephone: (216) 522–4405, Fax: (216) 522–3290
Cleveland AC: Commanding Officer, USCG MSO, 1055 East 9th St., Cleveland, OH 44114–1092, Telephone: (216) 522–4405, Fax: (216) 522–3290
Sault Ste. Marie AC: Commanding Officer, USCG MSO, c/o USCG Group, Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783–9501, Telephone: (906) 635–3210, Fax: (906) 635–3238
Eastern Wisconsin AC: Commanding Officer, USCG MSO, 2420 S Lincoln Memorial Dr., Milwaukee, WI 53207–1997, Telephone: (414) 747–7156, Fax: (414) 747–7108
Duluth-Superior AC: Commanding Officer, USCG MSO, Canal Park, 660 S. Lake St., Duluth, MN 55802–2352, Telephone: (218) 720–5274, Fax: (218) 720–5258
Buffalo AC: Commanding Officer, USCG MSO, Federal Bldg., Rm. 1111, 111 W Huron St., Buffalo, NY 14202–2395, Telephone: (716) 846–4168, Fax: (716) 846–4171
Western Lake Erie AC: Commanding Officer, Federal Bldg., Rm. 501, 234 Summit St., Toledo, OH 43604–1590, Telephone: (419) 259–6398, Fax: (419) 259–6374
Detroit AC: Commanding Officer, USCG MSO, 110 Mt. Elliot Ave., Detroit, MI 48207–4380, Telephone: (313) 568–9580, Fax: (313) 568–9581
Grand Haven AC: COTP, Grand Haven, 650 Harbor Ave., Grand Haven, MI 49417, Telephone: (616) 847–4502, Fax: (616) 847–4525
Chicago AC: Commanding Officer, USCG MSO, 215 W. 83rd St., Ste. D, Burr Ridge, IL 60521–7059, Telephone: (708) 789–5830, Fax: (708) 789–5843

Eleventh District

District Office: Commander, 11th CG District (mer), 501 W. Ocean Blvd., Long Beach, CA 90822–5399, Telephone: (310) 980–4300, Fax: (310) 980–4381
Santa Barbara/Ventura AC; Central Coast AC: Commanding Officer, USCG MSD, 111 Harbor Way, Santa Barbara, CA 93109–2315, Telephone: (805) 942–7430, Fax: (805) 942–7968
San Francisco Bay and Delta Region AC; North Coast AC: Commanding Officer, USCG MSO, San Francisco, Bldg. 14, Coast Guard Island, Alameda, CA 94501–5100, Telephone: (510) 437–3135, Fax: (510) 437–3072
San Diego AC: Commanding Officer, USCG MSO, 2710 North Harbor Dr., San Diego, CA 92101–1064, Telephone: (619) 557–5860, Fax: (619) 557–6769
Los Angeles/Long Beach Harbor AC, Orange County AC: Commanding Officer, USCG MSO, Long Beach, 165 N Pico Avenue, Long Beach, CA 90802–1096, Telephone: (310) 980–4429, Fax: (310) 499–4415

Thirteenth District

District Office: Commander, 13th CG District (mer), Jackson Federal Bldg., 915 Second Ave., Seattle, WA 98174–1067, Telephone: (206) 553–1711, Fax: (206) 553–0768
Puget Sound AC: Commanding Officer, USCG MSO, Puget Sound, 1519 Alaskan Way S., Pier 36, Bldg. 1, Seattle, WA 98134–1192, Telephone: (206) 286–5550, Fax: (206) 286–5544
Portland AC: Commanding Officer, USCG MSO, 6767 N Basin Ave., Portland, OR 97217–3929, Telephone: (503) 240–9355, Fax: (503) 240–9302.

Fourteenth District

District Office: Commander, 14th CG District (mer), Prince JKK Federal Bldg., Rm. 9149, 300 Ala Moana Blvd., Honolulu, HI 96850–4982, Telephone: (808) 541–2114, Fax: (808) 541–2116

Guam AC, Palau AC, Commonwealth of the Northern Marianas Islands AC: Commanding Officer, USCG MSO, Guam, Box 176, PSC 455, FPO AP 96540–1056, Telephone: 8–011–671–550–7340 (Int'l), Fax: 8–011–671–339–6210 (Int'l)

Hawaii/American Samoa AC: Commanding Officer, USCG MSO, 433 Ala Moana Blvd., Rm. 1, Honolulu, HI 96813–4909, Telephone: (808) 541–2061, Fax: (808) 541–3154

Seventeenth District

District Office: Commander, 17th CG District (mep), PO Box 25517, Juneau, AK 99802–5517, Telephone: (907) 463–2005, Fax: (907) 463–2218

Western Alaska AC: Commanding Officer, USCG MSO, Federal Bldg. & US Courthouse, 510 "L" St., Suite 100, Anchorage, AK 99501–1946, Telephone: (907) 271–6710, Fax: (907) 271–6751

Southeast Alaska AC: Commanding Officer, USCG MSO, 2760 Sherwood Ln, Ste., 2A, Juneau, AK 99801–8545, Telephone: (907) 463–2450, Fax: (907) 463–2445

Prince William Sound AC: Commanding Officer, USCG MSO, PO Box 486, Valdez, AK 99686–0486, Telephone: (907) 835–4791, Fax: (907) 835–5153

[FR Doc. 94–7314 Filed 3–28–94; 8:45 am]

BILLING CODE 3510–08–P

federal register

Tuesday
March 29, 1994

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Mandatory English-as-a-Second Language Program; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

RIN 1120–AA19

Control, Custody, Care, Treatment and Instruction of Inmates; Mandatory English-as-a-Second Language Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: This rule incorporates statutory mandatory functional literacy requirements into Bureau of Prisons policy. The functional literacy requirements provide that inmates who are not proficient in English must participate in an English-as-a-Second-Language (ESL) program until they function at the eighth grade level on a nationally recognized achievement test. This rule is intended to implement that statute and to assist inmates who are not functionally literate in English.

DATES: Effective March 29, 1994. Comments must be submitted by May 31, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adding new regulations for a Mandatory English-as-a-Second-Language (ESL) program to conform to the mandatory functional literacy requirements of the Omnibus Crime Control Act of 1990, 18 U.S.C. 3624(f). The statute requires non-English speaking inmates to participate in an ESL program until they function at an eighth grade level on a nationally recognized educational achievement test. This rule implements the statutory requirements by requiring qualified federal inmates to participate in an ESL program unless the Warden has excused the inmate for good cause. This rule also includes a provision that the program shall include incentives to help effectuate inmate motivation and success. In addition, this rule includes procedures to identify inmates who qualify for the program and recordkeeping requirements to monitor inmate progress.

All qualified inmates should be enrolled in the ESL program unless the Warden documents that an inmate has been excused from participation in the program for good cause. Implementing instructions to staff provide that inmates who are not required to participate may attend if the facilities can accommodate them.

Because these regulations are intended to meet statutory requirements, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking. We are, however, interested in receiving public comment on the procedures set forth. For this reason, we are publishing this document as an interim rule. Members of the public are invited to submit comments concerning this rule by writing to the previously cited address. These comments will be considered prior to the Bureau finalizing the rule in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866; this rule was reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart E, consisting of §§ 544.40 through 544.44, is added to read as follows:

Subpart E—Mandatory English-as-a-Second Language Program (ESL)

Sec.

544.40 Purpose and scope.
544.41 Applicability: Who must attend the ESL program.
544.42 Procedures.
544.43 Incentives.
544.44 Disciplinary action.

Subpart E—Mandatory English-as-a-Second Language Program (ESL)

§ 544.40 Purpose and scope.

Pursuant to the Crime Control Act of 1990 (18 U.S.C. 3624(f)), limited English proficient inmates confined in Federal Bureau of Prisons institutions are required to attend an English-as-a-Second Language (ESL) program until they function at the equivalence of the eighth grade level in competency skills. Waivers to this requirement may be granted by the Warden in accordance with §§ 544.41 and 544.42.

§ 544.41 Applicability: Who must attend the ESL program.

(a) All Federal prisoners who have limited English proficiency skills shall attend an ESL program except:

(1) Pretrial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer;

(4) Other inmates whom, for documented good cause, the Warden may excuse from attending the ESL program.

(b) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in the ESL program.

§ 544.42 Procedures.

(a) The Warden at each federal institution shall ensure that inmates who at their initial classification are found to be limited English proficient are enrolled in the ESL program. Determination of limited English proficiency is made by staff on the basis of personal interviews and placement testing.

(b) An inmate who returns to the Federal Bureau of Prisons on a new sentence or as a parole violator, and who has not achieved or is unable to demonstrate verified achievement of the eighth grade level, must provide verification or enroll in the ESL program until that inmate achieves such a grade or is granted a waiver for cause.

(c) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ESL program. The ESL coordinator or designee shall meet with the inmate for the purpose of enrolling

the inmate in the ESL program. The ESL coordinator shall be responsible for the completion of the official ESL Program Record, and shall place it in the inmate's education file.

(d) Ordinarily, there will be no time limit for completion of the ESL mandatory program. However, after 120 calendar days of continuous enrollment in an ESL program, excluding sick time, furloughs, and other excused absences from scheduled classes, the Warden shall have the authority to grant a waiver from further program participation. This waiver may be granted when it is determined that the inmate will not benefit from further instruction. Each exemption determination shall be made on an individual basis and shall be supported by documentation.

§ 544.43 Incentives.

The Warden or designee shall establish a system of incentives to encourage an inmate to meet the mandatory ESL program requirements.

§ 544.44 Disciplinary action.

As with any other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate when that inmate refuses to enroll and participate in, or to meet the minimum requirements of the mandatory ESL program.

[FR Doc. 94–7375 Filed 3–28–94; 8:45 am]
BILLING CODE 4410–05–P

federal register

Tuesday
March 29, 1994

Part IV

The President

Proclamation 6659—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1994

Proclamation 6660—Small Family Farm Week, 1994

Executive Order 12905—Trade and Environment Policy Advisory Committee

Federal Register
Vol. 59, No. 60
Tuesday, March 29, 1994

Presidential Documents

Title 3—

The President

Proclamation 6659 of March 25, 1994

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1994

By the President of the United States of America

A Proclamation

In voicing support of the Greek battle for independence, President Monroe expressed the American sense of fellowship that endures to this day, "A strong hope has been entertained, founded on the heroic struggle of the Greeks . . . that Greece will become again an independent nation. That she may obtain that rank is the object of our most ardent wishes."

Throughout the history of our sovereign nations, the unique bond that exists between the peoples of the United States and Greece has grown from the knowledge that we share a common cause—our profound devotion to advancing the ideals of democracy. Drawing on the wisdom of Hellenic philosophy, America's Founding Fathers crafted a Nation that realizes the early promise of representative government. From the gleaming white columns of ancient Athens to the shining monuments of Washington, D.C., the spirits and symbols of our capital cities reflect our deeply-held commitment to promoting individual freedom and human dignity.

This year, as Americans and Greeks rejoice in witnessing the formation of new democracies where old adversaries once stood, the traditional celebration of Greek Independence Day reveals the true legacy of Greek and American liberty. To mark both the triumph of freedom and the coming of spring in their rich land, one custom prescribes that Greek children remove the "March-thread" they have worn on their wrists throughout the month. As the swallows return from their winter in the South, the children hang the threads on a tree, an offering to the birds for their nests. These ties, once a reminder of the bleakness of winter, become the seeds of springtime's rebirth.

In much the same way, brave young nations around the world are throwing off the last vestiges of authoritarian rule and awakening to the rich possibilities of freedom's spring. They are emerging from their own fierce campaigns for independence and modeling their governments on the steady examples we have set. Encouraged by the triumphs of our histories and the continuity of our friendship, Greeks and Americans everywhere join today in wishing the world's newest democracies a future worthy of our past—one of great prosperity and lasting peace.

In recognition of the close bond that has been forged between the nations of the United States and Greece, and to reaffirm the democratic principles from which they draw their strength, the Congress, by Senate Joint Resolution 162, has designated March 25, 1994, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 25, 1994, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day, the 173rd anniversary of the beginning of the Greek revolution against the Ottoman Empire, with appropriate programs, ceremonies, and activities in honor of the Greek people and Greek independence.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth 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. 94–7599
Filed 3–25–94; 4:47 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6660 of March 25, 1994

Small Family Farm Week, 1994

By the President of the United States of America

A Proclamation

Small-scale family farms are a vital part of U.S. agricultural and rural life, and their activities add significantly to the economic and social strength of communities everywhere.

The majority of America's farms are small—out of more than two million farms, seven out of ten gross less than $50,000 annually. Small-scale farms, with their varied range of needs and interests, provide an array of agricultural products to the consumers of our Nation and our world.

Since the time of Thomas Jefferson, Americans have realized that family farmers are essential to making our rich land one of the most agriculturally productive in the world. Today, these diverse entrepreneurs represent the historical foundation of America's prosperity.

Small-scale family farms have survived the winds of change that have blown across our country's landscape in recent years. Farmers are ever more entrepreneurial, responding to unique niches and specialty-market opportunities. Many small-scale family farms are responsible for the innovations that are advancing new and enhanced technologies in agriculture and farming systems.

Family farmers are also stewards of the land and have a vested interest in energy conservation and protection of the environment. Many occupy land that their families have farmed for generations, and they seek to pass on the proud legacy of farming to their children.

More and more farmers are providing their products directly to consumers. Through such direct sales, the family farmer is creating market opportunities that benefit and strengthen rural economies and communities throughout America.

With each season, America's farmers demonstrate anew our ability to persevere and thrive. The great traditions of hard work and determination that have consistently characterized American agriculture will help our Nation envision a rich harvest of plenty for the twenty-first century.

The Congress, by Senate Joint Resolution 171, has designated the week of March 20 through 26, 1994, as "Small Family Farm Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 20, 1994, as Small Family Farm Week.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth 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. 94-7634
Filed 3-28-94; 10:51 am]
Billing code 3195-01-P

Presidential Documents

Executive Order 12905 of March 25, 1994

Trade and Environment Policy Advisory Committee

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)) ("Act"), it is hereby ordered as follows:

Section 1. *Establishment.* There is established in the Office of the United States Trade Representative ("Trade Representative" the "Trade and Environment Policy Advisory Committee" ("Committee").

Sec. 2. *Membership.* (a) The Committee shall consist of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-Federal government, and consumer interests. The Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues.

(b) The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the Trade Representative, in consultation with the Cabinet secretaries described in section 2155(c)(1) of title 19, United States Code, for a term of 2 years and may be reappointed for any number of terms. Appointments to the Committee shall be made without regard to political affiliation. Any member may be removed at the discretion of the Trade Representative.

Sec. 3. *Functions.* (a) The Committee shall provide the Trade Representative with policy advice on issues involving trade and the environment.

(b) The Committee shall submit a report to the President, to the Congress, and to the Trade Representative at the conclusion of negotiations for each trade agreement referred to in section 102 of the Act. The report shall include an advisory opinion on whether and to what extent the agreement promotes the interests of the United States.

(c) The Committee may establish such subcommittees of its members as it deems necessary, subject to the provisions of the Federal Advisory Committee Act and the approval of the Trade Representative, or his designee.

(d) The Committee shall report its activities to the Trade Representative, or his designee.

Sec. 4. *Administration.* (a) The Trade Representative, or his designee, with the advice of the Chairman, shall be responsible for prior approval of the agendas for all Committee meetings.

(b) The Trade Representative, or his designee, shall be responsible for determinations, filings, and other administrative requirements of the Federal Advisory Committee Act.

(c) (1) The Trade Representative shall provide funding and administrative and staff support for the Committee.

(2) The Committee shall have an Executive Director who shall be a Federal officer or employee designated by the Trade Representative.

(d) Members of the Committee shall serve without either compensation or reimbursement of expenses.

(e) The Committee shall meet as needed at the call of the Trade Representative or his designee, depending on various factors such as the level of activity of trade negotiations and the needs of the Trade Representative, or at the call of two-thirds of the members of the Committee.

Sec. 5. *General.* The Committee shall function for such period as may be necessary. In accordance with the Federal Advisory Committee Act, the Committee shall terminate after 2 years from the date of this order unless otherwise extended.

William J. Clinton

THE WHITE HOUSE,
March 25, 1994.

[FR Doc. 94–7635
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Reader Aids

Federal Register

Vol. 59, No. 60

Tuesday, March 29, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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

FEDERAL REGISTER PAGES AND DATES, MARCH

9613–9916.....1
9917–10046.....2
10047–10264.....3
10265–10568.....4
10569–10720.....7
10721–10938.....8
10939–11174.....9
11175–11472.....10
11473–11698.....11
11699–11896.....14
11897–12142.....15
12143–12522.....16
12523–12794.....17
12795–13178.....18
13179–13428.....21
13429–13638.....22
13639–13864.....23
13865–14082.....24
14083–14356.....25
14357–14540.....28
14541–14734.....29

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6651.....10049
6652.....10265
6653.....10723
6654.....10725
6655.....10727
6656.....11175
6657.....13639
6658.....14357
6659.....14729
6660.....14731

Administrative Orders:
Memorandums:
March 10, 1994.....14079
Presidential Determinations:
No. 94–15 of February 18, 1994.....10047
No. 94–16 of March 16, 1994.....14081

Executive Orders:
12759 (Revoked in part by EO 12902).....11463
12840 (Superseded by EO 12903).....11473
12873 (See 12902).....11463
12901.....10721
12902.....11463
12903.....11473
12904.....13179
12905.....14733

5 CFR

531.....11699
532.....11699, 11701, 13181, 13641
550.....11699
575.....11699
582.....14541
591.....13844
831.....12143
838.....12143
837.....10267
842.....12143
890.....12143, 12144
2638.....12145

Proposed Rules:
1630.....14371

7 CFR

2.....14083
54.....13642
246.....11475
248.....11508
300.....9613
301.....11177, 11659, 12795, 13181
319.....9917, 13181
321.....9917
457.....9614
800.....13865
810.....10569
905.....10051, 12523
907.....10052
908.....10052
911.....13429
917.....10053
927.....12524
932.....12526
944.....11529, 12523
955.....12527, 13866
959.....12149, 13430
979.....13430
980.....11529
981.....13432
985.....12151
989.....12153, 12528
993.....10228
999.....11529
1011.....13643
1094.....10056
1098.....13644
1106.....11180
1150.....13434
1211.....11897
1250.....12154
1413.....10574
1464.....10939
1475.....9918
1703.....11702
1786.....13616
1924.....9805
1930.....9805
1942.....11530, 12155
1944.....9805

Proposed Rules:
28.....12862
29.....14124
52.....13252
300.....13256
301.....12553
318.....13256
955.....12554
959.....11008
1004.....10326
1250.....13460
1427.....9674
1499.....12201
1744.....10327
1753.....10327
1942.....12201
1980.....12201, 14371

8 CFR

212.....13868

9 CFR

51.....12530
78.....12530, 14359
91.....9616
92.....9617, 10729
94.....12533, 12535, 13183
145.....12795
147.....12795

317.....12157, 12536, 14528
318.....12536
381.....12157, 14528
Proposed Rules:
78.....9938
92.....9679
94.....9939, 9941
101.....9681
113.....9681, 13257, 13896
160.....12863
301.....10246
317.....12462, 12472
318.....10246
381.....10230, 12462, 12472

10 CFR

20.....14085
21.....14085
30.....14085
35.....14085
40.....14085
50.....10267, 14085, 14087
70.....14085
72.....14085
73.....14085
171.....12539
Proposed Rules:
Ch. II.....9682
50.....14373
170.....12555
171.....12555
Ch. III.....9682
430.....10334, 10464
Ch. X.....9682

11 CFR

104.....10057
Proposed Rules:
8.....11211, 14022

12 CFR

3.....10946
205.....10678
264b.....12805
567.....12806
608.....13187
614.....11898
615.....11898, 12811
650.....9622
707.....13435
Proposed Rules:
205.....10684, 10698
225.....12202
327.....9687
550.....13461
552.....13461
562.....13461
563.....13461
571.....13461
701.....10334, 11937

13 CFR

121.....12811
123.....10953, 10955
124.....12811
Proposed Rules:
108.....12864
121.....11938

14 CFR

25.....13870, 13875
39.....10057, 10270, 10272, 10273, 10275, 10279, 10575, 10734, 10735, 11182, 11531, 11533, 11713, 11716, 12158, 13437, 13439, 13440, 13442, 13444, 13446, 13645, 14545
71.....9627, 9919, 9920, 10739, 10740, 10741, 10742, 10743, 10744, 10745, 10746, 10747, 10956, 10957, 11534, 11535, 12159, 13194, 13195, 13196, 13647, 13648, 13878, 14547
73.....10748
91.....10958, 11692
97.....11182, 11183, 12816, 12817, 12821
157.....10262
300.....10060
302.....10060
303.....10060
325.....10060
385.....10060
Proposed Rules:
Ch. I.....11009, 13897
25.....14571
39.....10336, 10338, 10340, 10759, 11733, 11735, 11737, 11739, 11939, 11940, 11942, 11944, 11946, 11947, 12203, 12205, 12207, 12558, 12560, 12865, 13898, 14124
71.....10040, 10084, 10760, 11010, 11222, 11223, 11224, 11561, 11562, 11563, 11564, 11565, 12208, 12209, 12874, 12875, 12876, 13260, 13261, 13262, 13263, 13663, 14573, 14574, 14576, 14577, 14578
91.....12740
135.....12740

15 CFR

770.....13196
771.....10958, 13196, 14360
772.....10958
773.....10958, 12824, 13196
774.....10958, 13196
778.....10958, 12824
779.....13449
785.....14360
786.....10958
787.....10958
799.....10958, 12824, 13879
Proposed Rules:
777.....13900
946.....9921
990.....9688

16 CFR

Proposed Rules:
1500.....10761
1700.....13264

17 CFR

1.....11544
5.....11544
9.....10228
12.....9631
21.....10228
30.....10281
31.....11544
143.....10228
156.....10228
190.....10228
200.....12543
211.....12748
231.....12748
240.....10984
241.....12748
Proposed Rules:
1.....9689
240.....12759, 12767, 13275
275.....13464

18 CFR

Ch. I.....9682
4.....10576
154.....11546
157.....11546
271.....10577
284.....11546
385.....11546
388.....11546
401.....11458
Proposed Rules:
284.....11011, 11566, 12210, 12877

19 CFR

4.....10283, 11898, 13198, 13664, 14022
12.....11547
102.....11547
123.....10283, 13198
134.....11547
141.....13198
173.....13198
175.....13450, 13452, 14548
Proposed Rules:
4.....11225, 12878
10.....11225
12.....11225
24.....13644
101.....12879
102.....11225
134.....11225, 14579
146.....10342
152.....14580
175.....10764, 12032, 14579
177.....11225

20 CFR

404.....11899
416.....11899, 12544
Proposed Rules:
404.....11949
416.....10766, 11949
422.....12211
626.....10769
1005.....10769

21 CFR

Ch. I.....14366
5.....14362, 14549
7.....14362
10.....14362
12.....14362
25.....14362
58.....13200
60.....14362
73.....10578
74.....11718
101.....14362
109.....14362
172.....10986, 14549
176.....14549
177.....9925, 10986, 14549
178.....10064, 10065, 13649, 14549
179.....14549
184.....14362, 14549
314.....13200, 14362
330.....14362
442.....12545
450.....9638
500.....14362
509.....14362
510.....14366
520.....14362
522.....14362, 14366, 14367
524.....14362
558.....12547, 14362, 14367
808.....14362
886.....10283
1010.....14362
1030.....14362
1240.....14362
1250.....14362
1308.....10718, 12828
1310.....13881
Proposed Rules:
101.....11872, 14126
123.....10085
203.....11842
205.....11842
351.....13284
356.....11836
806.....13828
1240.....10085
1308.....10720
1310.....12562

22 CFR

Proposed Rules:
89.....13904

23 CFR

Proposed Rules:
657.....11956

24 CFR

8.....14090
12.....14090
28.....14090
86.....14090
92.....14090
200.....14090
203.....13882
207.....14090
213.....14090
215.....14090
219.....14090
220.....14090
221.....14090
234.....13882
241.....14090
243.....14090
248.....14090, 14368
250.....14090
260.....14090
510.....14090
511.....14090
570.....14090
590.....14090
758.....14090
760.....14090
791.....14090
811.....14090
812.....14090
813.....14090
850.....14090
880.....13651, 14090
881.....13651, 14090
882.....14090
883.....13651, 14090
884.....13651, 14090
885.....14090
886.....13651, 14090
887.....14090
905.....14090, 14095, 14369
912.....14090
913.....14090
941.....14090, 14095

942.....14090
960.....14090
961.....14090
964.....14090
965.....14090
968.....14090
969.....14090
970.....14090, 14369
1800.....14090
2000.....14096
2002.....14096
2003.....14096

Proposed Rules:
221.....14581
291.....13284
905.....10876
968.....10876

25 CFR

Proposed Rules:
Ch. I.....9718
170.....14030

26 CFR

1.....10066, 10067, 11920, 12547, 12830, 12832, 12840, 12844, 13454
20.....9642
22.....9642
25.....9642
31.....9664
35a.....13455
48.....12549
301.....10075, 11547, 12840
602.....9642, 10067, 11920, 12832, 12840, 12844

Proposed Rules:
1.....10675, 11744, 11957, 12563, 12880, 13469, 13470
31.....13470
301.....11566
602.....10675

27 CFR

4.....14551
9.....14098, 14551

Proposed Rules:
4.....12566

28 CFR

0.....13882, 14100
2.....11185, 11186
512.....13860
544.....14724

Proposed Rules:
77.....10086

29 CFR

1601.....14554
1952.....14554
2616.....11187
2617.....11187
2619.....11925
2647.....9926
2676.....11925

Proposed Rules:
24.....12506
1910.....11567
1915.....11567
1926.....11567
1952.....14584, 14586, 14587, 14589

30 CFR

218.....14557
250.....12160
870.....14476
934.....11928
943.....13200

Proposed Rules:
Ch. II.....9718
Ch. IV.....9718
Ch. VI.....9718
Ch. VII.....9718
778.....14374
914.....14375
920.....12211
924.....11225
934.....11744
935.....11227
936.....10770
944.....14377, 14591
950.....13286

31 CFR

315.....10534
316.....10534
317.....10534
321.....10534
330.....10534
332.....10534
342.....10534
351.....10534
352.....10534
353.....10534
550.....13210

32 CFR

83.....13211
84.....13213
88.....14559
90.....10988
91.....13211
323.....9667
341.....13456
343.....14561
344.....14561
379.....14561
384.....14561
701.....9927

Proposed Rules:
536.....12650

33 CFR

1.....12549
100.....10749, 13457
110.....13457
117.....10076, 10749, 11659, 12032, 13248, 13249
165.....10077, 10749, 10750, 13249, 13653

Proposed Rules:
110.....10772, 13905
116.....13588
120.....14290
128.....14290
151.....12032
165.....10773, 10774, 10775, 10777
166.....14126
177.....10102

34 CFR

219.....14306
668.....12514

Proposed Rules:
75.....10926
200.....11444
201.....11444
Ch. VI.....10103
602.....12881
668.....13606
682.....12484, 14070
693.....10926

35 CFR

10.....11659

36 CFR

13.....14564
254.....10854

Proposed Rules:
Ch. I.....9718
1.....12740
2.....12740
3.....12740
4.....12740
5.....12740
6.....12740
7.....12740
1234.....13906
1275.....14128

37 CFR

201.....12162

38 CFR

4.....10676, 14566

Proposed Rules:
3.....9719, 10675
36.....9944

39 CFR

20.....11188
111.....11886
265.....11549
963.....10751

Proposed Rules:
111.....13287

40 CFR

9.....13044, 14101
35.....13814
52.....9668, 10078, 10284, 10752, 11550, 12165, 12168, 12170, 12849, 12851, 12853, 13883, 13884, 13886, 14110, 14112
55.....11721
60.....12408
61.....11554, 12408, 14040
63.....12408
76.....13538
80.....13610
81.....11193, 11550
82.....13044
86.....14101
130.....13814
180.....9928, 9929, 9931, 10286, 10287, 10288, 10988, 10990, 10991, 12855, 13654, 13658, 13659, 13888, 13890
185.....10993, 11556
195.....13166
233.....9933
238.....9866
264.....13891
265.....13891
271.....10550, 12857
279.....10550
700.....13166
712.....14115
716.....14115

Proposed Rules:
Ch. I.....9946
52.....9947, 10103, 10349, 11012, 11228, 11569, 11958, 12882, 12886, 13289, 13292, 13910
63.....10352, 10461, 10591, 11018, 11662, 11960, 12567
68.....9947, 11105
81.....11012, 12886
85.....13912
122.....13665
123.....13665, 13820
124.....13820
131.....13665, 13820
132.....13665
141.....11961
142.....13820
144.....13820
145.....13820
156.....10228
165.....10228
172.....13666
180.....9947, 9949, 11570, 11572
185.....11570, 11572
186.....11570, 11572
233.....13820
261.....9808, 10352
268.....10778
271.....9808, 9950
281.....9950
302.....9808
430.....12567
501.....13820
600.....13912
721.....13294
745.....9951, 11108, 11122

41 CFR

302–11.....10997

42 CFR

400.....13458
405.....10290, 12172
410.....13458
412.....11000
413.....13458
417.....12172
424.....10290
473.....12172
489.....13458
498.....13458

Proposed Rules:
57.....10104
100.....13916
417.....11230
431.....13666
435.....13666
436.....13666
440.....13666
447.....13666

43 CFR

11.....14262

Public Land Orders:
7029.....12648
7030.....11726
7031.....11195
7032.....11196
7033.....11196
7034.....13893

Proposed Rules:
Subtitle A.....9718
Ch. I.....9718
Ch. II.....9718
4.....14314
1780.....14314
3160.....11019, 12570

4100.....14314

44 CFR

64.....9671, 11727
65.....12184, 12185, 12186
67.....12188, 12189

Proposed Rules:

61.....13298
67.....12214, 12215

45 CFR

233.....10299
235.....12860
1355.....13535
1356.....13535
1357.....13535
1611.....12550
2510.....13772
2513.....13772
2515.....13772
2516.....13772
2517.....13772
2518.....13772
2519.....13772
2520.....13772
2521.....13772
2522.....13772
2523.....13772
2524.....13772
2530.....13772
2531.....13772
2532.....13772
2533.....13772
2540.....13772

Proposed Rules:

1321.....12728

46 CFR

10.....10753
15.....10753
530.....13459

Proposed Rules:

10.....10544
12.....10544
16.....10544
25.....10461
114.....14132
571.....13471
572.....13471

47 CFR

61.....10300
69.....10300
73.....11556, 11557, 12191, 12550, 13660, 13661, 13918, 13919, 13920, 14567
76.....9934, 14567
90.....13920
99.....14115

Proposed Rules:

Ch. I.....11962
1.....12570, 12888
21.....11836
25.....11746
73.....10605, 10606, 10607, 11574, 11575, 13918, 13919, 13920
90.....10107, 13920
94.....11746
97.....11029

48 CFR

Ch. I.....13769
1.....11368, 11387
3.....11387
4.....11371
5.....11387
9.....11371
10.....11373
14.....11374
15.....11374, 11375, 11387
16.....11387
19.....11375, 11376, 11387
25.....11377, 11378
31.....11378, 11387
32.....11379
33.....11380
42.....11380, 11382, 11387
45.....11383, 11384
47.....11382, 11385
48.....11387
52.....11371, 11374, 11377, 11379, 11380, 11385, 11386, 11387
53.....11387, 11933
219.....12191
225.....10579, 11729
226.....12191
247.....10579
252.....10579, 11729
903.....11197
1801.....12192
1804.....10078, 12192
1807.....10079, 11198, 11200
1808.....12192
1809.....12192
1810.....12192
1814.....12192
1815.....10081, 11198, 12192
1816.....12192
1817.....12192
1824.....12192
1825.....12192
1831.....12192
1832.....12192
1834.....10079
1835.....12192
1837.....12192
1842.....12192
1845.....12192, 13250
1846.....12192
1847.....12192
1852.....10079, 11198, 12192
1853.....10078
1870.....10078, 10079, 11198, 12192
2801.....13661

Proposed Rules:

Ch. 9.....9692
Ch. 14.....9718
8.....14454
9.....14455
15.....13164, 14457, 14458
31.....14458
35.....13164
42.....14459
45.....14460, 14461, 14462, 14464
46.....14466
47.....14467
51.....14454
52.....13164, 14454, 14455, 14459, 14462, 14464, 14467, 14468
245.....12223
252.....12223
927.....14593
952.....14593
970.....14593
1815.....9951
1837.....9951
1852.....9951

49 CFR

1.....10060
7.....10060
8.....10060
10.....13661
28.....10060
173.....12861
180.....12861
543.....10756
571.....11004, 11200, 14452, 14569
582.....13630
1051.....14570
1053.....14570
1312.....10304, 11557, 14570

Proposed Rules:

192.....13300
215.....11238
571.....10779, 11750, 11962, 12225, 13535
1002.....11240
1011.....11240
1130.....11240

50 CFR

17.....9935, 10305, 10580, 10898, 10906, 13374, 13836, 14482
21.....11203
24.....14119
85.....11204
204.....13894
217.....10584
282.....13894
380.....11729
601.....11557
611.....13769
625.....10586, 11934
641.....10675
650.....11006, 14370
651.....9872, 10588
669.....11560
672.....10588, 11209, 12551, 13894, 14121
675.....10082, 13662, 13769, 14121
676.....13769

Proposed Rules:

Ch. I.....9718
14.....12578
15.....12784
17.....9720, 10364, 10607, 11755, 13302, 13472, 13691, 14378, 14382, 14496
20.....11838
24.....13921
Ch. IV.....9718
644.....9720
646.....9721
649.....11029
651.....10608, 13472, 13923
658.....9724
671.....10365
675.....14383

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 22, 1994

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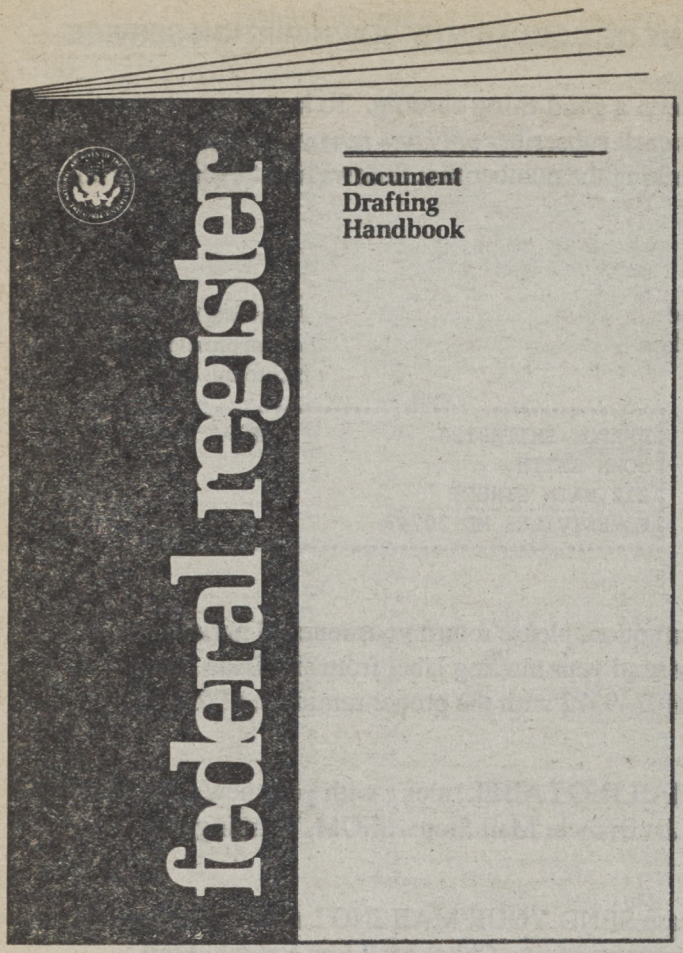

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