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WHO: The Office of the Federal Register.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001 and 1002

[DA-94-09]

Milk in the New England and New York-New Jersey Marketing Areas; Termination of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule terminates the seasonal production incentive plans for paying producers under the New England and New York-New Jersey Federal milk orders. This termination was requested by cooperative associations that represent producers who supply about one-half of the milk regulated under the orders. The seasonal incentive plans have been suspended during each of the last three years and are no longer effective in carrying out their intended purpose.

EFFECTIVE DATE: April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Termination or Suspension: Issued February 15, 1994; published February 24, 1994 (59 FR 8873).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the orders on dairy farmers and will not affect milk handlers.

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the orders regulating the handling of milk in the New England and New York-New Jersey marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on February 24,1994 (59 FR 8873) concerning a proposed termination or suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views and arguments. Comments supporting the proposed termination were received from Dairylea Cooperative, Inc, and Agri-Mark, two of the cooperatives who proposed termination. One comment was received from a dairy farmer who opposed termination.

After consideration of all relevant material, including the proposal in the notice, the comments received and other available information, it is hereby found and determined that the following provisions of the orders do not tend to effectuate the declared policy of the Act:

1. In § 1001.62, paragraphs (c) and (d); and
2. In § 1002.61, paragraphs (d) and (e).

Statement of Consideration

This rule terminates the seasonal plans for paying producers under the New England and New York-New Jersey Federal orders. These seasonal payment plans provide for making deductions from prices paid to producers during the normal flush-production months of March through June and returning to producers the deducted amounts during the normal short-production months of August through November. The plans are intended to provide an incentive for dairy farmers to level out their production during the year.

The termination of the payment plans was requested by cooperative associations that represent dairy farmers who supply handlers regulated under the orders. Collectively, these cooperatives represent about 51 percent of the producers associated with the New England marketing area and about 48 percent of the producers associated with the New York-New Jersey marketing area. The cooperative associations proposing the terminations are Agri-Mark, Inc.; Allied Federated Cooperatives, Inc.; Atlantic Dairy Cooperative, Inc.; Dairylea Cooperative, Inc., and its members cooperatives: Cortland Bulk Milk Producers Cooperative, Oneida-Madison Milk Producers Cooperative Association, Inc., and Steamburg Milk Producers Cooperative Association, Inc., and its affiliated cooperatives: Deer River Bulk Milk Cooperative, Inc., and Jefferson Bulk Milk Cooperative, Inc.; Eastern Milk Producers Cooperative Association, Inc., and its affiliated cooperatives: Chateaugay Co-operative Marketing Association, Inc., Konhokton Milk Producers Co-operative Association, Inc., Middlebury Milk Producers Cooperative Association, Inc., and Sullivan County Co-operative Dairy Association, Inc.; and Upstate Milk Cooperatives, Inc.

Proponents contend that the "Louisville" seasonal payment plans are no longer effective or necessary to reduce the seasonal spring-to-fall swings in milk production as was intended when they were first provided for in these orders some 25 years ago. Proponents indicated that the seasonal payment plans are largely ineffective because of a general lack of awareness about the plans in the dairy farming community. They also contend that the price differentials are too low relative to milk prices to provide an incentive for dairy farmers to modify their seasonal production patterns. The proponents further indicated concern about the impact of reducing returns to producers during the spring months when producer milk prices are already generally lower than during other times of the year.

In addition, it has been noted that the seasonal incentive payment plans are no longer necessary or effective since they have been suspended for the past three years. The proponents point out that these past suspension actions were supported by the need for dairy farmers to have additional monies available during the spring months during which prices to producers decline precipitously. Proponents expect that milk prices will decline in the spring months of 1994 and in the spring months of future years. They also maintain that retaining the payment plans will continue to put cash flow pressures on dairy farmers during a time of increased cash needs for spring planting.

In the comments, Agri-Mark reiterated its support for the termination of the seasonal payment plans. The cooperative's primary support for termination involves the volatility of milk prices at low levels for the past several years. Agri-Mark maintains that if the Louisville seasonal payment plan had been in effect, about $20 million would have been removed from producer payments in the spring planting months and would have resulted in cash flow difficulties for many farms. Agri-Mark said that even those farmers who have contra-seasonal milk production would have reduced income during the spring and summer months.

In further support for the termination of the seasonal payment plans, Agri-Mark indicated that actual seasonal price movements in the marketplace, to some extent, accomplished the fall price incentives originally intended by the Louisville payment plan. The cooperative noted that during the past three years, while the Louisville plans were suspended, the blend price in the August-November period averaged slightly more that $1.00 above the March-June period in both the New England and New York-New Jersey orders. Agri-Mark expects this pattern to generally continue.

One comment in opposition to this termination was received from a dairy farmer who supplies the New York-New Jersey marketing area. This farmer expressed the view that the Louisville payment plan is still effective in reducing the variability of milk production even though the Louisville plan differential levels are too low to be as meaningful as they were in earlier years when the differential level represented a greater percentage of the price of milk. The farmer also expressed the view that withholding money from a producer's milk check in the spring months when cash is needed for meeting spring planting costs was not particularly burdensome.

The "Louisville" seasonal incentive payment plan has been in effect in the New England and New York-New Jersey orders since the late 1960's when there was significant variability between milk production in the spring and fall months. Market statistics reveal that this variability was as much as 30 percent when the plans were first implemented in the orders, and there was considerable institutional and economic pressure to reduce this seasonality of production because of the high costs of marketing seasonal surpluses of milk. It is reasonable to conclude from a review of current-day statistics that the plans have played a role in reducing this variability, as commented upon by the producer in opposition to the termination action. However, the seasonality of milk production has not changed much since 1980, and there are certainly a number of other reasons for this in addition to the "small" Louisville differentials relative to the per hundredweight price of milk from the 1960's and 1970's versus today. Without question, it is also reasonable to attribute, in part, the narrowing of production seasonality to advances in production practices, including improvement in feeding programs, breeding and other management practices.

One of the most important consideration in this termination action is the fact that the plans have not been operational for the last three years and thus have had no impact on the seasonality of milk production. The prior suspension actions, as well as this request to terminate the payment plans, were supported by a significant number of producers who were concerned about their prices being reduced any more than what would normally occur because of seasonally lower prices in the spring. The seasonal variability in the basic formula price for milk (the M-W price) in today's marketplace already provides an incentive for producers to make their own individual production decisions in response to the seasonal price changes. Since the payment plans have not been operational or effective, they should be terminated.

Therefore, the seasonal incentive payment plans of the two markets are hereby terminated.

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

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Parts 1001 and 1002

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in title 7, parts 1001 and 1002, are amended as follows:

1. The authority citation for 7 CFR parts 1001 and 1002 continues to read as follows:

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

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

§ 1001.62 [Amended]

2. In § 1001.62, paragraphs (c) and (d) are removed and reserved.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

§ 1002.61 [Amended]

3. In § 1002.61, paragraphs (d) and (e) are removed and reserved.

Dated: April 4, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–8409 Filed 4–6–94; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Inflation Adjusted Size Standards

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On September 2, 1993, the Small Business Administration (SBA) published a proposed rule in the **Federal Register**, 58 FR 46573, re-proposing to streamline its size standards by reducing the current number of fixed size standard levels from thirty to nine (retaining the five existing employee-based levels and establishing four new receipts-based levels). As a part of the proposed rule, an inflation adjustment percentage of 45.8% was applied to most of SBA's receipts-based size standard levels and then rounded to the nearest newly established four receipts-based levels. The SBA has decided to further review the effectiveness of reducing the current number of fixed size standard levels in order to simplify the size standards program. However, the SBA continues to believe that the application of an inflationary adjustment, to account for the effects of inflation since the third quarter of 1982, to its receipts-based size standards is still warranted. This final rule reflects the SBA's finding that the application of an inflation adjustment percentage of 48.2% (based upon the latest inflation information) to the receipts-based size standard of each and every industry, not otherwise prohibited for change by statute, is necessary.

EFFECTIVE DATE: April 22, 1994.

FOR FURTHER INFORMATION CONTACT: Ajoy K. Sinha, Program Analyst, Size Standards Staff (202) 205–6618.

SUPPLEMENTARY INFORMATION: On December 21, 1992, SBA published a proposed rule in the **Federal Register**, 57 FR 62515, that sought to achieve the twin goals of adjusting SBA's receipt-based size standards for inflation and streamlining the SBA size standards system. Following a withdrawal of that proposed rule on February 19, 1993 (58 FR 9131) and further review of the proposal by the Agency, SBA again published a proposed rule in the **Federal Register** on September 2, 1993, 58 FR 46573, to accomplish those same dual purposes.

Pursuant to the September 2, 1993 proposed rule, SBA's current system of approximately thirty size standards would first have been simplified by reducing the number of different size standards to nine. More specifically, SBA's twenty-one different receipts-based size standards would have been reduced to only the four most common receipts-based size standards—$3.5 million in average annual receipts, $7.0 million, $12.5 million, and $17.0 million. In addition, SBA proposed to increase the receipts-based size standards for inflation. The inflation rate to be applied was then calculated at 45.8 percent. This rate covered the period between the third quarter of 1982 (the last date for which size standards were adjusted for inflation) and the first quarter of 1993 (the most recent data available at the time of the publication of the proposed rule).

The 45.8 percent inflation rate would then have been applied to the four remaining receipts-based size standards. This application would have in turn generated the four most common receipts-based size standards with an inflation adjustment—$5 million, $10 million, $18 million and $25 million. The inflation adjustment then would have been calculated for each of the existing receipts-based size standards, except where the Agency is legally prohibited from doing so. Each of these standards, preliminarily adjusted for the full inflation rate, would have then been modified by reducing or increasing them to the closest of the four inflation-adjusted simplified size standards. As a result, many industries would have received a net inflation adjustment that would have been significantly larger or smaller than the 45.8 percent inflator.

After further considering the proposed rule in light of comments received, the SBA has concluded that further study is needed on the issue of how best to simplify its size standards. In addition, SBA feels that the manner in which size standards would have been increased for inflation (that is, adjusting upward or downward from a full inflation increase to one of the four newly created simplified size standards) may not have adequately taken into account the effects of inflation on a significant number of industries. Indeed, it believes that the need to adjust current size standards for inflation is an urgent one. Small business owners have requested quick action. In SBA's view, updating such standards as soon as possible is necessary to make them more appropriate. Several commenters to the proposed rule maintained that the proposed rule was inequitable in that certain industries would not have received a full inflationary adjustment. These commenters recommended that SBA modify every size standard upward to the next highest of the four inflation-adjusted simplified size standards, but never downward to give certain industries less than a full increase for inflation. While SBA is not convinced that increasing each of these size standards upward to the next highest level is the appropriate solution, SBA does believe that the concerns raised regarding the unequal inflation adjustments are valid.

Accordingly, the SBA has decided to finalize only that portion of the proposed rule that called for an increase in the receipts-based size standards due to inflation. In other words, this final rule will adjust each of the current twenty-one receipts-based size standards for inflation.

The SBA firmly believes that all possible alternatives should continue to be studied and analyzed to determine the most effective means by which a true simplification of the numerical size standards, related size standard definitional provisions, and the size determination process can be achieved. After this review has been completed, a new proposal to simplify the size standards may be forthcoming with an opportunity for the public to express its views regarding such a proposal.

In the interim, however, the SBA continues to believe in the necessity of adjusting the receipts-based size standards to account for the effects of inflation since the Agency's last inflationary adjustment in 1984. This final rule adopts increases to the receipts-based size standards to reflect the effects of inflation. As discussed in the proposed rule, March 12, 1984 was the last time a general inflationary adjustment was applied to the receipts-based size standards. The proposed rule took into account available data through the first quarter of 1993.

In an effort to establish receipts-based size standard levels reflective of current market conditions, the SBA, based on the availability of the U.S. Department of Commerce's most recent inflation data, has re-calculated the inflation adjustment percentage to be applied to the receipts-based size standards. Thus, taking into account available data through the fourth quarter of 1993, SBA calculates the inflation adjustment to be 48.2 percent (as opposed to the 45.8 percent adjustment calculated in the proposed rule based on the most current data available at that time, the first quarter of 1993). As in the proposed rule, in determining the rate of inflation, SBA has utilized the U.S. Department of Commerce's published Gross Domestic Product (GDP) Implicit Price Deflator.

The methodology used in determining the appropriate inflation adjustment is as follows:

1. Determine the base period used to establish the current size standard;

2. Determine the GDP deflator at the base period and at the most recent point in time for which the GDP deflator has been published; and

3. Apply the calculated inflation adjustment percentage to the receipts-based size standard of each and every industry, not otherwise prohibited from change by statute.

The inflation adjustment calculated in this final rule is based on the last index value used for the 1984 inflation adjustment and the latest available index value. The 1984 adjustment accounted for inflation up to the third quarter of 1982. For purposes of this rule, the third quarter of 1982 is, therefore, the base period for which SBA calculated the amount of inflation that has occurred since the last adjustment. The U.S. Department of Commerce's latest data show index values of 84.3 for the third quarter of 1982 and 124.9 for the fourth quarter of 1993. This change records inflation of 48.2 percent for the time between these two periods. Thus, each and every industry having a receipts-based size standard, not otherwise prohibited from change by statute, first receives an inflationary calculation percentage of 48.2 percent in this final rule. Finally, where necessary, the inflated size standards are rounded to the nearest half million dollar increment. This rounding method produces net increases to most industry size standards that are slightly above or below the calculated inflation rate of 48.2 percent. This methods is selected because it results in an increase to each size standard that is as close as possible to the calculated 48.2 percent inflationary increase, and is consistent with the settled practice of establishing size standards at $0.5 million increments. Past inflationary increases in SBA's receipt-based size standards have similarly been rounded to the nearest $0.5 million increment. See, e.g., 49 FR 5024 (February 9, 1984). The SBA believes that this rounding methodology most closely reflects the calculated inflation increase. The inflation adjustment adopted by this final rule is not intended to and can not be a precise calculation of inflation experienced within each and every industry. This is because inflation will vary from industry to industry, and measures of these cost and price increases are not generally calculated for specific industries, as represented by individual Standard Industrial Classification (SIC) code designations. SBA feels that the rounding methodology is, therefore, the most reasonable application of an inflationary adjustment since the inflation measure used for this final rule measures only the general rise of prices in the whole economy over an extended period of time.

Three industry categories which SBA has revised since the 1984 inflation adjustment are being adjusted differently in this final rule to correctly increase those industries for inflation through 1993. These are the chicken egg production industry, SIC coded 0252; motor vehicles dealers (new and used), SIC code 5511; and the industries of computer services, SIC codes 7371 through 7379. In developing the existing size standards for these industries, SBA used data on industry revenues later than the third quarter of 1982. Thus, the existing standards take into account the effects of inflation beyond the third quarter of 1982. To avoid double-counting for the effects of inflation on these size standards, the size standards will be adjusted for inflation occurring from the year of the industry data (the base period) to the fourth quarter of 1993. The data bases the SBA relied upon to establish the size standards for these three categories reflect revenues generated during an entire calendar year. Accordingly, the average price deflator for the applicable calendar year is used as the base period's deflator value for purposes of this inflation calculation.

The size standard for the Chicken Egg industry, SIC code 0252, was primarily based on industry data contained in the SBA's 1986 Small Business Data Base (56 FR 55617) and became effective on November 29, 1991. Accordingly, the inflation adjustment for this industry is calculated in this final rule based on the inflation between calendar year 1986 (the base period) and the fourth quarter of 1993. Using the same methodology discussed above, the Implicit Price Deflator for GDP increased 28.9 percent during this period based on deflators of 96.9 for calendar year 1986 and 124.9 for the fourth quarter of 1993. The $7.0 million size standard for this industry will, therefore, increase to $9.0 million.

The 1987 Census of Service Industries and 1987 Census of Retail Trade Industries, published by the U.S. Department of Commerce's Bureau of the Census, were primarily used to establish the size standards for Computer Services, SIC codes 7371 through 7379 (57 FR 27907), and for Motor Vehicle Dealers (New and Used), SIC code 5511 (57 FR 4837). Their size standards became effective on July 23, 1992 and March 11, 1992, respectively. Accordingly, the inflation adjustment for these two industries will be calculated based on inflation between calendar year 1987 (the base period) and the end of 1993 in this final rule. Using the same methodology discussed above, the Implicit Price Deflator for GDP increased 24.9 percent during this period based on deflators for calendar year 1987 (the base period) of 100.0 and for the fourth quarter of 1993 of 124.9. Based on these calculations, the $14.5 million size standard for Computer Services will increase to $18 million and the $17 million size standard for Motor Vehicle Dealers (New and Used) will increase to $21 million.

Two other industries had their size standards further changed after the general 1984 inflation adjustment, but these changes were based on industry specific data for 1982 and 1984. These are the industries of Travel Agencies, SIC code 4724 (53 FR 18820) (1982 data), and Real Estate and Managers, SIC code 6531 (50 FR 27418) (1984 data). The SBA believes no adjustment is needed to the real estate industry size standard to correct for the double-counting of inflation since the increment of change in inflation between 1982 and 1984 is insufficient to cause a different size standard than the one established in this rule.

An additional issue which is addressed in this final rule is the resolution of an employee or revenue-based size standard for industries in the computer services industries (SIC codes 7371–7379). On June 23, 1992, the SBA published an interim final rule in the **Federal Register**, 53 FR 27907, establishing a $14.5 million size standard for all nine industries in the computer service industries. However, in that rule the SBA continued to seek information on the adoption of an employee-based size standard for some or all of the computer service industries. After consideration of the comments received on that issue, the Agency believes that it lacks sufficient information regarding procurement patterns among this group of industries to justify such a significant change as shifting to an employee-based measure of size.

As discussed above, the SBA is now establishing these industries' size standards at $18.0 million in this final rule. In effect, the much larger issue of adjusting SBA's size standards for inflation has at least partially superseded the issue of whether to use a revenue or employee-based size standard for this group of industries. Thus, the Agency has decided to first implement an inflation adjusted revenue-based size standard for these industries and then review its program results with these higher size standards in place. At that time, SBA may propose an appropriate rule change. SBA believes that the higher revenue-based

size standards for the computer services industries established in this final rule may substantially meet many of the concerns of those seeking a employee-based size standard.

As indicated in the proposed rule, four footnotes (footnotes 8, 12, 15 and 16) are adjusted to be consistent with the inflationary adjustments. Size standards for Offshore Marine Services (part of SIC Major Groups 44 and 45), Retail Sale of Aircraft (part of SIC code 5599), Leasing of Building Space to the Federal Government by Owners (part of SIC Major Group 65) and industries without a specific size standard listed in SIC Division I-Services, are being established at $20.5 million, $7.5 million, $15.0 million, and $5.0 million, respectively.

The SBA notes that the size standards for certain industries have either been established by statute or prohibited by statute from change until after September 30, 1996. Thus, the size standards for these industries will remain at their current levels and will not be increased for inflation in this final rule. Title VII of Public Law 100–656, 102 Stat. 3853, 3889, established the Small Business Competitiveness Demonstration Program to test the competitiveness of small business on Federal procurements. That program generally prohibits a change in size standards before September 30, 1996 for the Construction industries (SIC codes 1521–1799); the Engineering, Architecture, Surveying and Mapmaking industries (SIC codes 8711, 8712, 8713, and part of SIC code 7389); and the Refuse Systems and Related Services industries (SIC code 4953). A footnote is being added to the size standard for SIC code 7389, Business Services, Not Elsewhere Classified, to comply with this statutory mandate to retain the $3.5 million size standard for any surveying and mapping activities which may be included in this industry. The description of this industry in the Standard Industrial Classification Manual, 1987 includes some surveying and mapping activities not included in SIC code 8713, Surveying Services. This footnote was not part of the proposed rule due to an oversight as to the full impact of this statutory requirement. However, the SBA is bound by statutory direction to retain the existing $3.5 million size standard for surveying and mapping services whether included in SIC code 8713 or SIC code 7389.

While the Small Business Competitiveness Demonstration Program generally requires the size standards of certain industries to remain unchanged until 1996, the size standards relating to two of the three industries in the engineering category may now be revised as a result of recent legislation. Section 850 of Public Law 103–160, the National Defense Authorization Act for fiscal year 1994, 107 Stat. 1547, 1726, signed into law on November 30, 1993, modified the application of the Small Business Competitiveness Demonstration Program as to SIC code 8711, Engineering Services, to make clear that the subdivisions of Standard Industrial Classification code 8711 for (A) engineering services-military and aerospace equipment and military weapons; and (B) engineering services-marine engineering and naval architecture are not part of the Program and modifications to those size standards could be made by the SBA.

In recognition of this statutory change, this final rule gives an inflationary adjustment to the size standards for engineering services for Military and Aerospace Equipment and Military Weapons, raising it from $13.5 million to $20.0 million in average annual receipts, and to the size standard for engineering services related to Marine Engineering and Naval Architecture, raising it from $9.0 million to $13.5 million in average annual receipts. Although the proposed rule did not contain a similar proposal, it clearly stated that SBA intended to increase all receipt-based size standards by inflation except where SBA was constrained from doing so by law. At the time of the publication of the proposed rule on September 2, 1993, SBA interpreted the requirements relating to the Small Business Competitiveness Demonstration Program as prohibiting size standard increases in these two subdivisions of SIC code 8711. The size standards that are adopted in this final rule reflect the release of these size standards from statutory constraints and adjustments for inflation which, over time, has eroded the real value of these industries' size standards similar to other industries' size standards.

The other statutory provision which constrains SBA from making inflationary adjustments for certain industries is Section 18016 of the Comprehensive Omnibus Reconciliation Act of 1986, Public Law 99–272, 100 Stat. 82, 371, which amended SBA's authority regarding the setting of size standards contained in section 3(a) of the Small Business Act, 15 U.S.C. 632(a). Specifically, pursuant to section 3(a) of the Small Business Act, as amended by Public Law 99–272, an agricultural enterprise shall be deemed to be a small business concern if, including its affiliates, it has annual receipts not in excess of $500,000. SBA has complied with that requirement by retaining the size standard for both Agricultural Production-Crops (SIC codes 0111–0191), and Livestock and Animal Specialties (SIC codes 0212–0291, except SIC code 0211 and 0252) at $500,000.

Comments to Proposed Rule

In response to the September 2, 1993 proposed rule, SBA received a total of one-hundred and thirty-five comments. A thorough review of these comments revealed that out of the one-hundred and thirty-five comments received, ninety seven were supportive (71.9%), with over fifty commenters citing the inflation adjustment of size standards as a reason for supporting the proposal. In addition, about forty commenters generally supported the simplification of size standards, but did not specifically agree or disagree with the SBA's proposed system for simplification. This general support for simplification was not, however, the primary focus of any comment. A general supporting statement was usually followed or preceded by a comment regarding some other specific aspect of the proposal.

The remaining thirty-eight comments included twenty-five which were non-supportive (18.5%) of the proposal, mainly opposing the proposed size standard for the travel agencies industry. Thirteen comments discussed only issues not included within the proposed rule. SBA's evaluation of the public comments yielded the following noteworthy issues:

Although the proposed rule discussed a revision to the size standards for over three hundred industries, the SBA received thirty-three comments (nearly 25 percent of all comments received) specifically on the size standard relating to Travel Agencies (SIC code 4724). The proposed rule would have increased the size standard for this industry from $500,000 to $5.0 million in commission-based income, or a 900 percent increase. The $5.0 million size standard was proposed because it was the lowest of the four receipts-based size standards under the proposed simplification of size standards. The majority of the comments received on the travel agencies size standard, nineteen or nearly 60 percent of the thirty-three comments, opposed increasing the size standard by 900 percent. However, twenty-seven of the commenters (82 percent) favored increasing the existing size standard by at least 100 percent.

The SBA believes that the fourteen comments that agreed with the proposed revision of the Travel

Agencies size standard, coupled with the alternatives recommended in the nineteen opposing comments, demonstrate an overwhelming consensus that the existing size standard is too low. Most of the comments received opposing the $5 million proposed size standard suggested an alternative size standard level that would qualify companies as small whose commission-based receipts were between $1.0 and $2.0 million. SBA notes that none of those submitting opposing comments suggested that the size standard should be increased beyond $2.5 million in commission-based income.

The commenters emphasized that since under the $5.0 million proposal all but 100 of the 35,000 travel companies would be considered small, the result of increasing the size standard to the proposed level would virtually eliminate the benefits provided to smaller companies because they would be unable to compete with companies that were from 10 to 50 times their size. The largest trade association of professional travel agents indicated that doubling the standard to $1.0 million in receipts (commission plus other revenues) would sufficiently accommodate the growth in the size of agencies and the need for some room to grow by travel agencies that are successful in their initial bids for government procurement.

The SBA fully agrees with the prevailing views of the commenters that the current size standard for the travel agency industry is too low and that it does not reflect current market conditions within the industry. Data from the Louis Harris & Associates 1992 U.S. Travel Agency Survey of market conditions indicate that the existing size standard includes 89 percent of travel agencies and that the proposed size standard would result in the inclusion of 99.8 percent of travel agencies. In consideration of the comments reviewed on this specific size standard, the SBA believes that an inflationary adjustment of 48.2 percent coupled with a rounding upwards to the next $0.5 million increment establishes the appropriate size standard for this industry. Therefore, this final rule establishes a $1.0 million commission-based income size standard for the travel agencies industry, SIC code 4724.

A total of nineteen comments, two from firms involved in the construction industry, nine from firms involved in the architectural and engineering industries, and eight from firms involved in various other industries, were received concerning the SBA's decision not to increase the size standards of the construction and engineering industries. As specifically stated in the proposed rule, the SBA is constrained by statute from increasing the size standards in these industries.

Seventeen commenters requested the SBA to further adjust the size standard levels of their respective industries. The most often cited industries were: Management Services & Consulting (SIC codes 7341 and 8742); Testing Laboratories (SIC code 8734); Building Maintenance (SIC code 7349); Computer Services (SIC codes 7371–7379); and Security Guard Services (SIC code 7381). Many of the reasons cited in support of an additional increase to one of these industries' size standards raised issues not considered or evaluated by the SBA in proposing the fixed size standard levels for purposes of simplification or in adjusting the current receipts-based size standards for inflation. The SBA's size standards are generally established based on structural characteristics of an industry. In reviewing the appropriateness of a size standard of a particular industry, the SBA utilizes five primary factors: Industry competition, average firm size, start-up costs, distribution of firms by size and the impact on the SBA's programs. The SBA does not believe that it has the discretion to make changes to size standards based on these considerations without first proposing such changes and affording the public an opportunity to comment on the basis of such proposals. The SBA's proposed rule discussed adjustments to size standards based on inflation in the economy as a whole and based on a further adjustment to achieve simplicity overall. Neither component of the proposed rule discussed characteristics of specific industries.

For purposes of this rule, a straight inflationary adjustment of 48.2 percent has been applied to all industries, with a small further adjustment for rounding purposes. With the elimination of the simplification component of the proposed rule (whereby size standards would have been further adjusted to one of the four receipts-based size standards) the size standards for the Building Maintenance industry, SIC code 7349, becomes $12 million rather than $10 million. The size standards of the other industries cited by these commenters either remain at the same level as established in the proposed rule or are adjusted slightly to achieve the rounding to the nearest $0.5 million. The SBA intends to conduct a separate industry study on these industries on a priority basis, which may or may not lead to further changes in their respective size standards.

Three commenters specifically expressed concern with the disproportionate changes within the size standards resulting from the rounding methodology stipulated in the proposed rule to adjust the industry size standards to one of the four newly established size standard levels. As indicated above, the SBA has decided to give further study to the best way to simplify its size standards, and this rule does not reduce the number of receipts-based size standards to the four proposed standards with their accompanying "disproportionate" changes as feared by these commenters.

Eight commenters specifically suggested that the SBA should establish a policy to review and adjust the receipts-based size standards on a regular and recurring basis. Of the eight commenters, these recommended that the size standards be reviewed and adjusted every four to six years, one recommended that they be reviewed and adjusted biennially, and four suggested annual reviews and adjustments. The SBA is continuing its evaluation of a policy to review the impact of inflation on a regular and recurring basis. This will be part of SBA's further review of the simplification of the size standards.

As part of its proposal to simplify the size standards, SBA attempted to contact all 8(a) Program Participants in the program at the time of the proposed rule and requested them to specifically address the potential impact of the proposed size standards on smaller-sized 8(a) firms. Sixteen commenters addressed this issue. Eleven of the sixteen commenters maintained that the proposed increase in the size standards would be beneficial to smaller-sized firms. Five of the sixteen commenters believed that such increases would be adverse to smaller-sized firms in that the number of 8(a) firms would increase, thus taxing available Federal procurement opportunities and the level of SBA assistance. Overall, the prevailing view of all commenting 8(a) firms is that the increases in the size standards are necessary and beneficial and should be adopted. The SBA believes that any possible adverse impact on the smaller-sized 8(a) firms is out weighed by the desirability of recognizing the effects of inflation.

Four commenters suggested that the SBA adopt employee-based standards in lieu of receipts-based standards for all industries. However, only two commenters provided a rationale for the adoption of employee-based standards for all industries. One of these commenters indicated that utilizing employee-based standards would

eliminate the need for periodic inflationary adjustments. The other commenter stated that equipment and material purchases required by Federal agencies on certain contracts distorted the actual size of a concern by raising a concern's receipts without an accompanying increase in actual business activity. The decision to use receipts or employees as the size standard measure is based on which measure is viewed as the best measure of size for firms involved in that particular industry. The SBA's policy is to evaluate the size standard measure of an industry on a case-by-case basis as part of the SBA's continuing efforts to review industry size standards. However, the issue of whether all industries should be measured by number of employees will be further explored along with other issues on simplifying size standards.

In response to several comments, this rule publishes the entire set of size standards by SIC code designation and their accompanying footnotes. The complete size standards table provides the public with one convenient set of size standards and eliminates the need to have two tables of size standards, one for those size standards revised in this final rule and one for those unaffected by this rule.

Compliance with Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

General

SBA considers that this final rule will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. section 601, *et seq.*). In addition, SBA believes that this final rule constitutes a significant rule for the purpose of Executive Order 12866. Immediately below, the SBA has set forth a summary regulatory impact analysis and a final regulatory flexibility analysis of this final rule.

(1) Description of Entities to Which the Rule Applies

SBA estimates that approximately 20,000 additional firms will be considered small as a result of this rule. These firms will be eligible to seek available SBA assistance, provided they meet other program requirements. Many of these concerns probably had small business status in 1984, when the last comprehensive revision of size standards was issued by SBA, but have since lost eligibility because of general price increases. The current changes, in fact, operate roughly as adjustments for price changes (i.e., inflation) since that data. Approximately 11,000 of the firms gaining eligibility operate in retail trade while approximately 9,000 operate in the services industries (Divisions G and I, respectively, of the SIC systems of classifying industries). Other firms affected by this rule include service firms within the agricultural or mining sectors, or firms in those transportation industries with receipt-based size standards. Firms becoming eligible for SBA assistance as a result of this rule, cumulatively generate $95 billion in annual sales. This figure is less than 5 percent of the total sales in those industries with higher size standards. The new size standards would not impose a regulatory burden because they do not regulator or control business behavior.

(2) Description of Potential Benefits of the Rule

The most significant areas of benefits to business obtaining small business status as a result of this final rule are in the Federal government's procurement arena and the SBA's business loan program. The SBA estimates that businesses gaining small business status could potentially obtain Federal contracts worth approximately $200 million under the small business set-aside program or the 8(a) program. The additional competition for many of these procurements may also result in a lower price to the government for its procurements which have been set aside, but the SBA is not able to quantify this benefit. In the SBA's 7(a) Loan Program, it is estimated that 250 loans amounting to $100 million could be made to the newly defined small businesses. The rule will also make various SBA programs available to business concerns who would otherwise be eligible for such programs but for an increase in their revenues due to inflation. In other words, the rule reinstates business concerns as small that lost their small business status due solely to inflation. As such, those firms which would again be eligible for SBA assistance and for small business procurement preference programs will benefit greatly from this rule.

(3) Description of Potential Costs of the Rule

The changes in size standards as they impact on government procurement should not add any element of cost to the government and, in fact, as described above, may reduce the cost to a procuring Federal agency. Similarly, the rule should not result in any extra costs with respect to the 7(a) loan program. The amount of lending authority SBA can make or guarantee is established by appropriation. The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers, and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors, although smaller-sized small businesses or 8(a) firms may be unsuccessful in competing for some Federal procurement opportunities due to the presence of larger, newly defined small businesses, some of which may well be more competitive in winning Federal procurements.

(4) Description of the Potential Net Benefits from the Rule

From the above discussion, SBA believes that, because the potential costs of this rule are minimal, the potential net benefits would approach fairly closely the total potential benefits. The impact of the new size standard will appear predominantly in the Federal procurement area.

(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule

SBA has provided above a statement of the reasons why the new size standards are established and a statement of the reasons for and objectives of this rule.

(6) Legal Basis for Rule

The legal basis for this rule is sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to the Rules

This final rule establishes the most appropriate individual size standard by which to define those small businesses that are eligible for SBA's assistance programs. There are no significant alternatives to defining a small business.

The SBA certifies that this final rule will not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

The SBA further certifies that this final rule will not add any new reporting or record keeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C.,

Chapter 35. For purposes of Executive Order 12778, the SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

§ 121.601 [Amended]

2. Section 121.601 is amended by revising the table of "Size Standards by SIC Industry" to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts.		
	Division A—Agriculture	
Major Group 01—Agricultural Production—Crops		
0111	Wheat	[1] $0.5
0112	Rice	.5
0115	Corn	.5
0116	Soybeans	.5
0119	Cash Grains, N.E.C	.5
0131	Cotton	.5
0132	Tobacco	.5
0133	Sugarcane and Sugar Beets	.5
0134	Irish Potatoes	.5
0139	Field Crops, Except Cash Grains, N.E.C	.5
0161	Vegetables and Melons	.5
0171	Berry Crops	.5
0172	Grapes	.5
0173	Tree Nuts	.5
0174	Citrus Fruits	.5
0175	Deciduous Tree Fruits	.5
0179	Fruits and Trees Nuts, N.E.C	.5
0181	Ornamental Floriculture Nursery Products	.5
0182	Food Crops Grown Under Cover	.5
0191	General Farms, Primarily Crop	.5
Major Group 02—Livestock and Animal Specialties		
0211	Beef Cattle Feedlots (Custom)	$1.5
0212	Beef Cattle, Except Feedlots	.5
0213	Hogs	.5
0214	Sheep and Goats	.5
0219	General Livestock, Except Dairy and Poultry	.5
0241	Dairy Farms	.5
0251	Broiler, Fryer, and Roaster Chickens	.5
0252	Chicken Eggs	9.0
0253	Turkeys and Turkey Eggs	.5
0254	Poultry Hatcheries	.5
0259	Poultry and Eggs, N.E.C	.5
0271	Fur-Bearing Animals and Rabbits	.5
0272	Horses and Other Equines	.5
0273	Animal Aquaculture	.5
0279	Animal Specialties, N.E.C	.5
0291	General Farms, Primarily Livestock and Animal Specialties	.5
Major Group 07—Agricultural Services		
0711	Soil Preparation Services	$5.0
0721	Crop Planting, Cultivating, and Protecting	5.0
0722	Crop Harvesting, Primarily by Machine	5.0
0723	Crop Preparation Service for Market, Except Cotton Ginning	5.0
0724	Cotton Ginning	5.0
0741	Veterinary Services for Livestock	5.0
0742	Veterinary Services for Animal Specialties	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
0751	Livestock Services, Except Veterinary	5.0
0752	Animal Specialty Services, Except Veterinary	5.0
0761	Farm Labor Contractors and Crew Leaders	5.0
0762	Farm Management Services	5.0
0781	Landscape Counseling and Planning	5.0
0782	Lawn and Garden Services	5.0
0783	Ornamental Shrub and Tree Services	5.0
Major Group 08—Forestry		
0811	Timber Tracts	$5.0
0831	Forest Nurseries and Gathering of Forest Products	5.0
0851	Forestry Services	5.0
Major Group 09—Fishing, Hunting, and Trapping		
0912	Finfish	$3.0
0913	Shellfish	3.0
0919	Miscellaneous Marine Products	3.0
0921	Fish Hatcheries and Preserves	3.0
0971	Hunting and Trapping, and Game Propagation	3.0
Division B—Mining		
Major Group 10—Metal Mining		
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	$5.0
1094	Uranium-Radium-Vanadium Ores	500
1099	Miscellaneous Metal Ores, N.E.C	500
Major Group 12—Coal Mining		
1221*	Bituminous Coal and Lignite Surface Mining	500
1222*	Bituminous Coal Underground Mining	500
1231*	Anthracite Mining	500
1241*	Coal Mining Services	$5.0
Major Group 13—Oil and Gas Extraction		
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	$5.0
1389	Oil and Gas Field Services, N.E.C	$5.0
Major Group 14—Mining and Quarrying of Nonmetallic Minerals, Except Fuels		
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C	500
1481	Nonmetallic Minerals Services, Except Fuels	$5.0
1499	Miscellaneous Nonmetallic Minerals, Except Fuels	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
	Division C—Construction	
Major Group 15—Building Construction—General Contractors and Operative Builders		
1521	General Contractors—Single Family Houses	$17.0
1522	General Contractors—Residential Buildings, Other Than Single-Family	17.0
1531	Operative Builders	17.0
1541	General Contractors—Industrial Buildings and Warehouses	17.0
1542	General Contractors—Nonresidential Buildings, Other Than Industrial Buildings and Warehouses	17.0
Major 16—Heavy Construction Other Than Building Construction—Contractors		
1611	Highway and Street Construction, Except Elevated Highways	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction	17.0
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction	17.0
1629	Heavy Construction, Except Dredging, N.E.C	17.0
1629	Dredging and Surface Cleanup Activities	[2] 13.5
Major Group 17—Construction—Special Trade Contractors		
1711	Plumbing, Heating, and Air-Conditioning	$7.0
1721	Painting and Paper Hanging	7.0
1731	Electrical Work	7.0
1741	Masonry, Stone Setting, and Other Stone Work	7.0
1742	Plastering, Drywall, Acoustical and Insulation Work	7.0
1743	Terrazzo, Tile, Marble, and Mosiac Work	7.0
1751	Carpentry Work	7.0
1752	Floor Laying and Other Floor Work, N.E.C	7.0
1761	Roofing, Siding, and Sheet Metal Work	7.0
1771	Concrete Work	7.0
1781	Water Well Drilling	7.0
1791	Structural Steel Erection	7.0
1793	Glass and Glazing Work	7.0
1794	Excavation Work	7.0
1795	Wrecking and Demolition Work	7.0
1796	Installation or Erection of Building Equipment, N.E.C	7.0
1799	Special Trade Contractors, N.E.C	7.0
	Base Housing Maintenance [20]	7.0
	Division D—Manufacturing [3]	
Major Group 20—Food and Kindred Products		
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products	500
2015*	Poultry Slaughtering and Processing	500
2021	Creamery Butter	500
2022	Natural, Processed, and Imitation Cheese	500
2023	Dry, Condensed, and Evaporated Dairy Products	500
2024	Ice Cream and Frozen Desserts	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies	[4] 500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings	500
2037	Frozen Fruits, Fruit Juices, and Vegetables	500
2038	Frozen Specialties, N.E.C	500
2041	Flour and Other Grain Mill Products	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Prepared Flour Mixes and Doughs	500
2046	Wet Corn Milling	750
2047	Dog and Cat Food	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500
2052	Cookies and Crackers	750
2053*	Frozen Bakery Products, Except Bread	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
2061	Cane Sugar, Except Refining	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2064*	Candy and Other Confectionery Products	500
2066	Chocolate and Cocoa Products	500
2067	Chewing Gum	500
2068*	Salted and Roasted Nuts and Seeds	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2077	Animal and Marine Fats and Oils	500
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C	750
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits	500
2085	Distilled and Blended Liquors	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C	500
2091	Canned and Cured Fish and Seafoods	500
2092	Prepared Fresh or Frozen Fish and Seafoods	500
2095	Roasted Coffee	500
2096*	Potato Chips, Corn Chips, and Similar Snacks	500
2097	Manufactured Ice	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500
2099	Food Preparations, N.E.C	500
Major Group 21—Tobacco Products		
2111	Cigarettes	1,000
2121	Cigars	500
2131	Chewing and Smoking Tobacco and Snuff	500
2141	Tobacco Stemming and Redrying	500
Major Group 22—Textile Mill Products		
2211	Broadwoven Fabric Mills, Cotton	1,000
2221	Broadwoven Fabric Mills, Manmade Fiber and Silk	500
2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)	500
2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber	500
2251	Women's Full-Length and Knee-Length Hosiery, Except Socks	500
2252	Hosiery, N.E.C	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear and Nightwear Mills	500
2257	Weft Knit Fabric Mills	500
2258	Lace and Warp Knit Fabric Mills	500
2259	Knitting Mills, N.E.C	500
2261	Finishers of Broadwoven Fabrics of Cotton	1,000
2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk	500
2269	Finishers of Textiles, N.E.C	500
2273*	Carpets and Rugs	500
2281	Yarn Spinning Mills	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	500
2284	Thread Mills	500
2295	Coated Fabrics, Not Rubberized	1,000
2296	Tire Cord and Fabrics	1,000
2297	Nonwoven Fabrics	500
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C	500
Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials		
2311	Men's and Boys' Suits, Coats and Overcoats	500
2321	Men's and Boys' Shirts, Except Work Shirts	500
2322	Men's and Boys' Underwear and Nightwear	500
2323	Men's and Boys' Neckwear	500
2325*	Men's and Boys' Separate Trousers and Slacks	500
2326*	Men's and Boys' Work Clothing	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
2329	Men's and Boys' Clothing, N.E.C	500
2331	Women's, Misses', and Juniors' Blouses and Shirts	500
2335	Women's, Misses', and Juniors' Dresses	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C	500
2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear	500
2342	Brassieres, Girdles, and Allied Garments	500
2353*	Hats, Caps, and Millinery	500
2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather	500
2384	Robes and Dressing Gowns	500
2385	Waterproof Outerwear	500
2386	Leather and Sheep-Lined Clothing	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C	500
2391	Curtains and Draperies	500
2392	Housefurnishings, Except Curtains and Draperies	500
2393	Textile Bags	500
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade	500
2396	Automotive Trimmings, Apparel Findings, and Related Products	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C	500
Major Group 24—Lumber and Wood Products, Except Furniture		
2411	Logging	500
2421	Sawmills and Planing Mills, General	500
2426	Hardwood Dimension and Flooring Mills	500
2429	Special Product Sawmills, N.E.C	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C	500
2441	Nailed and Lock Corner Wood Boxes and Shook	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components	500
2491	Wood Preserving	500
2493*	Reconstituted Wood Products	500
2499	Wood Products, N.E.C	500
Major Group 25—Furniture and Fixtures		
2511	Wood Household Furniture, Except Upholstered	500
2512	Wood Household Furniture, Upholstered	500
2514	Metal Household Furniture	500
2515	Mattresses, Foundations, and Convertible Beds	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets	500
2519	Household Furniture, N.E.C	500
2521	Wood Office Furniture	500
2522	Office Furniture, Except Wood	500
2531	Public Building and Related Furniture	500
2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers	500
2542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood	500
2591	Drapery Hardware and Window Blinds and Shades	500
2599	Furniture and Fixtures, N.E.C	500
Major Group 26—Paper and Allied Products		
2611	Pulp Mills	750
2621	Paper Mills	750
2631	Paperboard Mills	750

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
2652	Setup Paperboard Boxes	500
2653	Corrugated and Solid Fiber Boxes	500
2655	Fiber Cans, Tubes, Drums, and Similar Products	500
2656*	Sanitary Food Containers, Except Folding	750
2657*	Folding Paperboard Boxes, Including Sanitary	750
2671*	Packaging Paper and Plastics Film, Coated and Laminated	500
2672*	Coated and Laminated Paper, N.E.C	500
2673*	Plastics, Foil, and Coated Paper Bags	500
2674*	Uncoated Paper and Multiwall Bags	500
2675*	Die-Cut Paper and Paperboard and Cardboard	500
2676*	Sanitary Paper Products	500
2677*	Envelopes	500
2678*	Stationery, Tablets, and Related Products	500
2679*	Converted Paper and Paperboard Products, N.E.C	500
Major Group 27—Printing, Publishing, and Allied Industries		
2711	Newspapers: Publishing, or Publishing and Printing	500
2721	Periodical: Publishing, or Publishing and Printing	500
2731	Books: Publishing, or Publishing and Printing	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2752	Commercial Printing, Lithographic	500
2754	Commercial Printing, Gravure	500
2759*	Commercial Printing, N.E.C	500
2761	Manifold Business Forms	500
2771	Greeting Cards	500
2782	Blankbooks, Looseleaf Binders and Devices	500
2789	Bookbinding and Related Work	500
2791	Typesetting	500
2796*	Platemaking and Related Services	500
Major Group 28—Chemicals and Allied Products		
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2835*	In Vitro and In Vivo Diagnostic Substances	500
2836*	Biological Products, Except Diagnostic Substances	500
2841	Soap and Other Detergents, Except Specialty Cleaners	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	500
2861	Gum and Wood Chemicals	500
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869	Industrial Organic Chemicals, N.E.C	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
Major Group 29—Petroleum Refining and Related Industries		
2911	Petroleum Refining	[5]1,500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
2951	Asphalt Paving Mixtures and Blocks	500
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C	500
Major Group 30—Rubber and Miscellaneous Plastics Products		
3011	Tires and Inner Tubes	[6] 1,000
3021	Rubber and Plastics Footwear	1,000
3052*	Rubber and Plastics Hose and Belting	500
3053*	Gaskets, Packing, and Sealing Devices	500
3061*	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods	500
3069	Fabricated Rubber Products, N.E.C.	500
3081*	Unsupported Plastics Film and Sheet	500
3082*	Unsupported Plastics Profile Shapes	500
3083*	Laminated Plastics Plate, Sheet, and Profile Shapes	500
3084*	Plastics Pipe	500
3085*	Plastics Bottles	500
3086*	Plastics Foam Products	500
3087*	Custom Compounding of Purchased Plastics Resins	500
3088*	Plastics Plumbing Fixtures	500
3089*	Plastics Products, N.E.C	500
Major Group 31—Leather and Leather Products		
3111	Leather Tanning and Finishing	500
3131	Boot and Shoe Cut Stock and Findings	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic	500
3144	Women's Footwear, Except Athletic	500
3149	Footwear, Except Rubber, N.E.C	500
3151	Leather Gloves and Mittens	500
3161	Luggage	500
3171	Women's Handbags and Purses	500
3172	Personal Leather Goods, Except Women's Handbags and Purses	500
3199	Leather Goods, N.E.C	500
Major Group 32—Stone, Clay, Glass, and Concrete Products		
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C	750
3231	Glass Products, Made of Purchased Glass	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile	500
3253	Ceramic Wall and Floor Tile	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750
3262	Vitreous China Table and Kitchen Articles	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles	500
3264	Porcelain Electrical Supplies	500
3269	Pottery Products, N.E.C	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick	500
3273	Ready Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
Major Group 33—Primary Metal Industries		
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	1,000
3313	Electrometallurgical Products, Except Steel	750
3315	Steel Wiredrawing and Steel Nails and Spikes	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray and Ductile Iron Foundries	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries	500
3325	Steel Foundries, N.E.C	500
3331	Primary Smelting and Refining of Copper	1,000
3334	Primary Production of Aluminum	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	750
3341	Secondary Smelting and Refining of Nonferrous Metals	500
3351	Rolling, Drawing, and Extruding of Copper	750
3353	Aluminum Sheet, Plate, and Foil	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357	Drawing and Insulating of Nonferrous Wire	1,000
3363*	Aluminum Die-Castings	500
3364*	Nonferrous Die-Castings, Except Aluminum	500
3365*	Aluminum Foundries	500
3366*	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C	750
Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment		
3411	Metal Cans	1,000
3412	Metal Shipping Barrels, Drums, Kegs, and Pails	500
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools and Handsaws	500
3425	Saw Blades and Handsaws	500
3429	Hardware, N.E.C	500
3431	Enameled Iron and Metal Sanitary Ware	750
3432	Plumbing Fixture Fittings and Trim	500
3433	Heating Equipment, Except Electric and Warm Air Furnaces	500
3441	Fabricated Structural Metal	500
3442	Metal Doors, Sash, Frames, Molding, and Trim	500
3443	Fabricated Plate Work (Boiler Shops)	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work	500
3448	Prefabricated Metal Buildings and Components	500
3449	Miscellaneous Structural Metal Work	500
3451	Screw Machine Products	500
3452	Bolts, Nuts, Screws, Rivets, and Washers	500
3462	Iron and Steel Forgings	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	500
3479	Coating, Engraving, and Allied Services, N.E.C	500
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C	500
3491*	Industrial Valves	500
3492*	Fluid Power Valves and Hose Fittings	500
3493	Steel Springs, Except Wire	500
3494	Valves and Pipe Fittings, N.E.C	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products	500
3497	Metal Foil and Leaf	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
3498	Fabricated Pipe and Pipe Fittings	500
3499	Fabricated Metal Products, N.E.C	500
Major Group 35—Industrial and Commercial Machinery and Computer Equipment		
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000
3519	Internal Combustion Engines, N.E.C	1,000
3523	Farm Machinery and Equipment	500
3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment	500
3531	Construction Machinery and Equipment	750
3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment	500
3533	Oil and Gas Field Machinery and Equipment	500
3534	Elevators and Moving Stairways	500
3535	Conveyors and Conveying Equipment	500
3536	Overhead Traveling Cranes, Hoists, and Monorail Systems	500
3537	Industrial Trucks, Tractors, Trailers, and Stackers	750
3541	Machine Tools, Metal Cutting Types	500
3542	Machine Tools, Metal Forming Types	500
3543*	Industrial Patterns	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds	500
3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices	500
3546	Power-Driven Handtools	500
3547	Rolling Mill Machinery and Equipment	500
3548*	Electric and Gas Welding and Soldering Equipment	500
3549	Metalworking Machinery, N.E.C	500
3552	Textile Machinery	500
3553	Woodworking Machinery	500
3554	Paper Industries Machinery	500
3555	Printing Trades Machinery and Equipment	500
3556*	Food Products Machinery	500
3559	Special Industry Machinery, N.E.C	500
3561	Pumps and Pumping Equipment	500
3562	Ball and Roller Bearings	750
3563	Air and Gas Compressors	500
3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment	500
3565*	Packaging Machinery	500
3566	Speed Changers, Industrial High-Speed Drives, and Gears	500
3567	Industrial Process Furnaces and Ovens	500
3568	Mechanical Power Transmission Equipment, N.E.C	500
3569	General Industrial Machinery and Equipment, N.E.C	500
3571*	Electronic Computers	1,000
3572*	Computer Storage Devices	1,000
3575*	Computer Terminals	1,000
3577*	Computer Peripheral Equipment, N.E.C	1,000
3578*	Calculating and Accounting Machines, Except Electronic Computers	1,000
3579	Office Machines, N.E.C	500
3581	Automatic Vending Machines	500
3582	Commercial Laundry, Drycleaning, and Pressing Machines	500
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment	750
3586	Measuring and Dispensing Pumps	500
3589	Service Industry Machinery, N.E.C	500
3592	Carburetors, Pistons, Piston Rings, and Valves	500
3593*	Fluid Power Cylinders and Actuators	500
3594*	Fluid Power Pumps and Motors	500
3596*	Scales and Balances, Except Laboratory	500
3599	Industrial and Commercial Machinery and Equipment, N.E.C	500
Major Group 36—Electronic and Other Electrical Equipment and Components, Except Computer Equipment		
3612	Power, Distribution, and Specialty Transformers	750
3613	Switchgear and Switchboard Apparatus	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products	750
3625*	Relays and Industrial Controls	750
3629	Electrical Industrial Apparatus, N.E.C	500
3631	Household Cooking Equipment	750
3632	Household Refrigerators and Home and Farm Freezers	1,000

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
3633	Household Laundry Equipment	1,000
3634	Electric Housewares and Fans	750
3635	Household Vacuum Cleaners	750
3639	Household Appliances, N.E.C	500
3641	Electric Lamp Bulbs and Tubes	1,000
3643	Current-Carrying Wiring Devices	500
3644	Noncurrent-Carrying Wiring Devices	500
3645	Residential Electric Lighting Fixtures	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	500
3647	Vehicular Lighting Equipment	500
3648	Lighting Equipment, N.E.C	500
3651	Household Audio and Video Equipment	750
3652	Phonograph Records and Prerecorded Audio Tapes and Disks	750
3661	Telephone and Telegraph Apparatus	1,000
3663*	Radio and Television Broadcasting and Communications Equipment	750
3669*	Communications Equipment, N.E.C	750
3671	Electron Tubes	750
3672*	Printed Circuit Boards	500
3674	Semiconductors and Related Devices	500
3675	Electronic Capacitors	500
3676	Electronic Resistors	500
3677	Electronic Coils, Transformers, and Other Inductors	500
3678	Electronic Connectors	500
3679	Electronic Components, N.E.C	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet	1,000
3694	Electrical Equipment for Internal Combustion Engines	750
3695*	Magnetic and Optical Recording Media	1,000
3699	Electrical Machinery, Equipment, and Supplies, N.E.C	750
Major Group 37—Transportation Equipment		
3711	Motor Vehicles and Passenger Car Bodies	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories	750
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C	[17] 1,000
3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000
	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian.	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian.	1,000
3732	Boat Building and Repairing	500
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts	500
3761	Guided Missiles and Space Vehicles	1,000
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C	1,000
3792	Travel Trailers and Campers	500
3795	Tanks and Tank Components	1,000
3799	Transportation Equipment, N.E.C	500
Major Group 38—Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks		
3812*	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments	750
3821*	Laboratory Apparatus and Furniture	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products	500
3824	Totalizing Fluid Meters and Counting Devices	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals	500
3826*	Laboratory Analytical Instruments	500
3827*	Optical Instruments and Lenses	500
3829	Measuring and Controlling Devices, N.E.C	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
3841	Surgical and Medical Instruments and Apparatus	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies	500
3843	Dental Equipment and Supplies	500
3844*	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	500
3845*	Electromedical and Electrotherapeutic Apparatus	500
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts	500
Major Group 39—Miscellaneous Manufacturing Industries		
3911	Jewelry, Precious Metal	500
3914	Silverware, Plated Ware, and Stainless Steel Ware	500
3915	Jewelers' Findings and Materials, and Lapidary Work	500
3931	Musical Instruments	500
3942	Dolls and Stuffed Toys	500
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles	500
3949	Sporting and Athletic Goods, N.E.C	500
3951	Pens, Mechanical Pencils, and Parts	500
3952	Lead Pencils, Crayons, and Artists' Materials	500
3953	Marking Devices	500
3955	Carbon Paper and Inked Ribbons	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal	500
3965*	Fasteners, Buttons, Needles, and Pins	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Specialties	500
3995	Burial Caskets	500
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C	750
3999	Manufacturing Industries, N.E.C	500
Division E—Transportation, Communications, Electric, Gas, and Sanitary Services		
Major Group 40—Railroad Transportation		
4011	Railroads, Line-Haul Operating	1,500
4013	Railroad Switching and Terminal Establishments	500
Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation		
4111	Local and Suburban Transit	$5.0
4119	Local Passenger Transportation, N.E.C	5.0
4121	Taxicabs	5.0
4131	Intercity and Rural Bus Transportation	5.0
4141	Local Bus Charter Service	5.0
4142	Bus Charter Service, Except Local	5.0
4151	School Buses	5.0
4173*	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	5.0
Major Group 42—Motor Freight Transportation and Warehousing		
4212	Local Trucking Without Storage	[7] $18.5
4213	Trucking, Except Local	18.5
4214	Local Trucking With Storage	18.5
4215*	Courier Services, Except by Air	18.5
4221	Farm Product Warehousing and Storage	18.5
4222	Refrigerated Warehousing and Storage	18.5
4225	General Warehousing and Storage	18.5
4226	Special Warehousing and Storage, N.E.C	18.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	5.0
Major Group 44—Water Transportation[8]		
4412	Deep Sea Foreign Transportation of Freight	500
4424*	Deep Sea Domestic Transportation of Freight	500
4432*	Freight Transportation on the Great Lakes—St. Lawrence Seaway	500
4449*	Water Transportation of Freight, N.E.C	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
4481*	Deep Sea Transportation of Passengers, Except by Ferry	500
4482*	Ferries	500
4489*	Water Transportation of Passengers, N.E.C	500
4491*	Marine Cargo Handling	$18.5
4492*	Towing and Tugboat Services	$5.0
4493*	Marinas	$5.0
4499*	Water Transportation Services, N.E.C	$5.0
Major Group 45—Transportation by Air[8]		
4512*	Air Transportation, Scheduled	[9] 1,500
4513*	Air Courier Services	[9] 1,500
4522*	Air Transportation, Nonscheduled	[9] 1,500
4581*	Airports Flying Fields, and Airport Terminal Services	$5.0
Major Group 46—Pipelines, Except Natural Gas		
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500
4619	Pipelines N.E.C	$25.0
Major Group 47—Transportation Services		
4724*	Travel Agencies	[10] $1.0
4725*	Tour Operators	5.0
4729*	Arrangement of Passenger Transportation, N.E.C	5.0
4731*	Arrangement of Transportation of Freight and Cargo	18.5
4741*	Rental of Railroad Cars	5.0
4783*	Packing and Crating	18.5
4785*	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation	5.0
4789	Transportation Services, N.E.C	5.0
Major Group 48—Communications		
4812*	Radiotelephone Communications	1,500
4813*	Telephone Communications, Except Radiotelephone	1,500
4822	Telegraph and Other Message Communications	$5.0
4832	Radio Broadcasting Stations	$5.0
4833	Television Broadcasting Stations	$10.5
4841*	Cable and Other Pay Television Services	$11.0
4899	Communications Services, N.E.C	$11.0
Major Group 49—Electric, Gas, and Sanitary Services		
4911	Electric Services	[22] 4
4922	Natural Gas Transmission	$5.0
4923	Gas Transmission and Distribution	$5.0
4924	Natural Gas Distribution	500
4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution	$5.0
4931	Electric and Other Services Combined	$5.0
4932	Gas and Other Services Combined	$5.0
4939	Combination Utilities, N.E.C	$5.0
4941	Water Supply	$5.0
4952	Sewerage Systems	$5.0
4953	Refuse Systems	[11] $6.0
4959	Sanitary Services, N.E.C	$5.0
4961	Steam and Air-Conditioning Supply	$9.0
4971	Irrigation Systems	$5.0

Division F—Wholesale Trade

(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies)

Major Group 50—Wholesale Trade—Durable Goods		
5012	Automobiles and Other Motor Vehicles	100

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
5013	Motor Vehicle Supplies and New Parts	100
5014	Tires and Tubes	100
5015*	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Homefurnishings	100
5031	Lumber, Plywood, Millwork, and Wood Panels	100
5032*	Brick, Stone, and Related Construction Materials	100
5033*	Roofing, Siding, and Insulation Materials	100
5039	Construction Materials, N.E.C	100
5043	Photographic Equipment and Supplies	100
5044*	Office Equipment	100
5045*	Computers and Computer Peripheral Equipment and Software	100
5046*	Commercial Equipment, N.E.C	100
5047*	Medical, Dental, and Hospital Equipment and Supplies	100
5048*	Ophthalmic Goods	100
5049*	Professional Equipment and Supplies, N.E.C	100
5051	Metals Service Centers and Offices	100
5052	Coal and Other Minerals and Ores	100
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials	100
5064	Electrical Appliances, Television and Radio Sets	100
5065	Electronic Parts and Equipment, N.E.C	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	100
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies	100
5078	Refrigeration Equipment and Supplies	100
5082	Construction and mining (Except Petroleum) Machinery and Equipment	100
5083	Farm and Garden Machinery and Equipment	100
5084	Industrial Machinery and Equipment	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles	100
5091*	Sporting and Recreational Goods and Supplies	100
5092*	Toys and Hobby Goods and Supplies	100
5093	Scrap and Waste Materials	100
5094	Jewelry, Watches, Precious Stones, and Precious Metals	100
5099	Durable Goods, N.E.C	100
Major Group 51—Wholesale Trade—Nondurable Goods		
5111	Printing and Writing Paper	100
5112	Stationery and Office Supplies	100
5113	Industrial and Personal Service Paper	100
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	100
5131*	Piece Goods, Notions, and Other Dry Goods	100
5136	Men's and Boys' Clothing and Furnishings	100
5137	Women's, Children's, and Infants' Clothing and Accessories	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Packaged Frozen Foods	100
5143	Dairy Products, Except Dried or Canned	100
5144	Poultry and Poultry Products	100
5145	Confectionery	100
5146	Fish and Seafood	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables	100
5149	Groceries and Related Products, N.E.C	100
5153	Grain and Field Beans	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C	100
5162*	Plastics Materials and Basic Forms and Shapes	100
5169*	Chemical and Allied Products, N.E.C	100
5171	Petroleum Bulk Stations and Terminals	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	100
5181	Beer and Ale	100
5182	Wine and Distilled Alcoholic Beverages	100
5191	Farm Supplies	100
5192*	Books, Periodicals, and Newspapers	100

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
5193*	Flowers, Nursery Stock, and Florists' Supplies	100
5194	Tobacco and Tobacco Products	100
5198	Paints, Varnishes, and Supplies	100
5199	Nondurable Goods, N.E.C	100
	Division G—Retail Trade (Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies)	
Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers		
5211	Lumber and Other Building Materials Dealers	$5.0
5231	Paint, Glass, and Wallpaper Stores	5.0
5251	Hardware Stores	5.0
5261	Retail Nurseries, Lawn and Garden Supply Stores	5.0
5271	Mobile Home Dealers	9.5
Major Group 53—General Merchandise Stores		
5311	Department Stores	$20.0
5331	Variety Stores	8.0
5399	Miscellaneous General Merchandise Stores	5.0
Major Group 54—Food Stores		
5411	Grocery Stores	$20.0
5421*	Meat and Fish (Seafood) Markets, Including Freezer Provisioners	5.0
5431	Fruit and Vegetable Markets	5.0
5441	Candy, Nut, and Confectionery Stores	5.0
5451	Dairy Products Stores	5.0
5461*	Retail Bakeries	5.0
5499	Miscellaneous Food Stores	5.0
Major Group 55—Automotive Dealers and Gasoline Service Stations		
5511	Motor Vehicle Dealers (New and Used)	$21.0
5521	Motor Vehicle Dealers (Used Only)	17.0
5531	Auto and Home Supply Stores	5.0
5541	Gasoline Service Stations	6.5
5551	Boat Dealers	5.0
5561	Recreational Vehicle Dealers	5.0
5571	Motorcycle Dealers	5.0
5599	Automotive Dealers, N.E.C.[12]	5.0
Major Group 56—Apparel and Accessory Stores		
5611	Men's and Boys' Clothing and Accessory Stores	$6.5
5621	Women's Clothing Stores	6.5
5632*	Women's Accessory and Specialty Stores	5.0
5641	Children's and Infants' Wear Stores	5.0
5651	Family Clothing Stores	6.5
5661	Shoe Stores	6.5
5699	Miscellaneous Apparel and Accessory Stores	5.0
Major Group 57—Home Furniture, Furnishings, and Equipment Stores		
5712	Furniture Stores	$5.0
5713	Floor Covering Stores	5.0
5714	Drapery, Curtain, and Upholstery Stores	5.0
5719	Miscellaneous Homefurnishings Stores	5.0
5722	Household Appliance Stores	6.5
5731*	Radio, Television, and Consumer Electronics Stores	6.5
5734*	Computer and Computer Software Stores	6.5
5735*	Record and Prerecorded Tape Stores	5.0
5736*	Musical Instrument Stores	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
Major Group 58—Eating and Drinking Places		
5812	Eating Places, Except Food Service, Institutional	$5.0
5812	Food Service, Institutional	15.0
5813	Drinking Places (Alcoholic Beverages)	5.0
Major Group 59—Miscellaneous Retail		
5912	Drug Stores and Proprietary Stores	$5.0
5921	Liquor Stores	5.0
5932*	Used Merchandise Stores	5.0
5941	Sporting Goods Stores and Bicycle Shops	5.0
5942	Book Stores	5.0
5943	Stationery Stores	5.0
5944	Jewelry Stores	5.0
5945	Hobby, Toy, and Game Shops	5.0
5946	Camera and Photographic Supply Stores	5.0
5947	Gift, Novelty, and Souvenir Shops	5.0
5948	Luggage and Leather Goods Stores	5.0
5949	Sewing, Needlework, and Piece Goods Stores	5.0
5961	Catalog and Mail-Order Houses	18.5
5962	Automatic Merchandising Machine Operators	5.0
5963	Direct Selling Establishments	5.0
5983	Fuel Oil Dealers	9.0
5984	Liquefied Petroleum gas (Bottled Gas) Dealers	5.0
5989*	Fuel Dealers, N.E.C	5.0
5992	Florists	5.0
5993	Tobacco Stores and Stands	5.0
5994	News Dealers and Newsstands	5.0
5995*	Optical Goods Stores	5.0
5999	Miscellaneous Retail Stores, N.E.C	5.0
Division H—Finance, Insurance, and Real Estate [13]		
Major 60—Depository Institutions		
		(million)
6021*	National Commercial Banks	[14] $100
6022	State Commercial Banks	[14] 100
6029*	Commercial Banks, N.E.C	[14] 100
6035*	Savings Institutions, Federally Chartered	[14] 100
6036*	Savings Institutions, Not Federally Chartered	[14] 100
6061	Credit Unions, Federally Chartered	[14] 100
6062	Credit Unions, Not Federally Chartered	[14] 100
6081	Branches and Agencies of Foreign Banks	[14] 100
6082	Foreign Trade and International Banks	[14] 100
6091	Nondeposit Trust Facilities	5.0
6099	Functions Related to Depositor Banking, N.E.C	5.0
Major Group 61—Nondepository Institution		
6141	Personal Credit Institutions	$5.0
6153	Short-Term Business Credit Institutions, Except Agriculture	5.0
6159	Miscellaneous Business Credit Institutions	5.0
6162	Mortgage Bankers and Loan Correspondents	5.0
6163	Loan Brokers	5.0
Major Group 62—Security and Commodity Brokers, Dealers, Exchanges and Services		
6211	Security Brokers, Dealers and Flotation Companies	$5.0
6221	Commodity Contracts Brokers and Dealers	5.0
6231	Security and Commodity Exchanges	5.0
6282	Investment Advice	5.0
6289	Services Allied With the Exchange of Securities or Commodities, N.E.C	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
Major Group 63—Insurance Carriers		
6311	Life Insurance	$5.0
6321	Accident and Health Insurance	$5.0
6324	Hospital and Medical Service Plans	$5.0
6331	Fire, Marine, and Casualty Insurance	1,500
6351	Surety Insurance	$5.0
6361	Title Insurance	$5.0
6371	Pension, Health and Welfare Funds	$5.0
6399	Insurance Carriers, N.E.C	$5.0
Major Group 64—Insurance Agents, Brokers, and Service		
6411	Insurance Agents, Brokers, and Service	$5.0
Major Group 65—Real Estate		
6512	Operators of Nonresidential Buildings	$5.0
6513	Operators of Apartment Buildings	5.0
6514	Operators of Dwellings Other Than Apartment Buildings	5.0
6515	Operators of Residential Mobile Home Sites	5.0
	Leasing of Building Space to Federal Government by Owners	[15] 15.0
6517	Lessors of Railroad Property	5.0
6519	Lessors of Real Property, N.E.C	5.0
6531	Real Estate Agents and Managers	[10] 1.5
6541	Title Abstract Offices	5.0
6552	Land Subdividers and Developers, Except Cemeteries	5.0
6553	Cemetery Subdividers and Developers	5.0
Major Group 67—Holding and Other Investment Offices		
6712	Offices of Bank Holding Companies	$5.0
6719	Offices of Holding Companies, N.E.C	5.0
6722	Management Investment Offices, Open-End	5.0
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices	5.0
6732	Educational, Religious, and Charitable Trusts	5.0
6733	Trusts, Except Educational, Religious, and Charitable	5.0
6792	Oil Royalty Traders	5.0
6794	Patent Owners and Lessors	5.0
6798	Real Estate Investment Trusts	5.0
6799	Investors, N.E.C	5.0
Division I—Services [16]		
Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places		
7011	Hotels and Motels	$5.0
7021	Rooming and Boarding Houses	5.0
7032	Sporting and Recreational Camps	5.0
7033	Recreational Vehicle Parks and Campsites	5.0
7041	Organization Hotels and Lodging Houses, on Membership Basis	5.0
Major Group 72—Personal Services		
7211	Power Laundries, Family and Commercial	$10.5
7212	Garment Pressing, and Agents for Laundries and Drycleaners	5.0
7213	Linen Supply	10.5
7215	Coin-Operated Laundries and Drycleaning	5.0
7216	Drycleaning Plants, Except Rug Cleaning	3.5
7217	Carpet and Upholstery Cleaning	3.5
7218	Industrial Launderers	10.5
7219	Laundry and Garment Services, N.E.C	5.0
7221	Photographic Studios, Portrait	5.0
7231	Beauty Shops	5.0
7241	Barber Shops	5.0
7251	Shoe Repair Shops and Shoeshine Parlors	5.0
7261	Funeral Service and Crematories	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
7291*	Tax Return Preparation Services	5.0
7299	Miscellaneous Personal Services, N.E.C	5.0
Major Group 73—Business Services		
7311	Advertising Agencies	$5.0
7312	Outdoor Advertising Services	5.0
7313	Radio, Television, and Publishers' Advertising Representatives	5.0
7319	Advertising, N.E.C	5.0
7322*	Adjustment and Collection Services	5.0
7323*	Credit Reporting Services	5.0
7331	Direct Mail Advertising Services	5.0
7334*	Photocopying and Duplicating Services	5.0
7335*	Commercial Photography	5.0
7336*	Commercial Art and Graphic Design	5.0
7338*	Secretarial and Court Reporting Services	5.0
7342	Disinfecting and Pest Control Services	5.0
7349	Building Cleaning and Maintenance Services, N.E.C	12.0
7352*	Medical Equipment Rental and Leasing	5.0
7353*	Heavy Construction Equipment Rental and Leasing	5.0
7359*	Equipment Rental and Leasing, N.E.C	5.0
7361	Employment Agencies	5.0
7363*	Help Supply Services	5.0
7371*	Computer Programming Services	18.0
7372	Prepackaged Software	18.0
7373*	Computer Integrated Systems Design	18.0
7374	Computer Processing and Data Preparation and Processing Services	18.0
7375*	Information Retrieval Services	18.0
7376*	Computer Facilities Management Services	18.0
7377*	Computer Rental and Leasing	18.0
7378*	Computer Maintenance and Repair	18.0
7379	Computer Related Services, N.E.C	18.0
7381*	Detective, Guard, and Armored Car Services	9.0
7382*	Security Systems Services	9.0
7383*	News Syndicates	5.0
7384*	Photofinishing Laboratories	5.0
7389*	Business Services, N.E.C.[21]	5.0
Major Group 75—Automotive Repair, Services, and Parking		
7513	Truck Rental and Leasing, Without Drivers	$18.5
7514*	Passenger Car Rental	18.5
7515*	Passenger Car Leasing	18.5
7519	Utility Trailer and Recreational Vehicle Rental	5.0
7521*	Automobile Parking	5.0
7532*	Top, Body, and Upholstery Repair Shops and Paint Shops	5.0
7533*	Automotive Exhaust System Repair Shops	5.0
7534	Tire Retreading and Repair Shops	10.5
7536*	Automotive Glass Replacement Shops	5.0
7537*	Automotive Transmission Repair Shops	5.0
7538	General Automotive Repair Shops	5.0
7539	Automotive Repair Shops, N.E.C	5.0
7542	Carwashes	5.0
7549	Automotive Services, Except Repair and Carwashes	5.0
Major Group 76—Miscellaneous Repair Services		
7622	Radio and Television Repair Shops	$5.0
7623	Refrigeration and Air-Conditioning Service and Repair Shops	5.0
7629	Electrical and Electronic Repair Shops, N.E.C	5.0
7631	Watch, Clock, and Jewelry Repair	5.0
7641	Reupholstery and Furniture Repair	5.0
7692	Welding Repair	5.0
7694	Armature Rewinding Shops	5.0
7699	Repair Shops and Related Services, N.E.C	[17] 5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
Major Group 78—Motion Pictures		
7812*	Motion Picture and Video Tape Production	$21.5
7819	Services Allied to Motion Picture Production	21.5
7822*	Motion Picture and Video Tape Distribution	21.5
7829	Services Allied to Motion Picture Distribution	5.0
7832	Motion Picture Theaters, Except Drive-In	5.0
7833	Drive-In Motion Picture Theaters	5.0
7841*	Video Tape Rental	5.0
Major Group 79—Amusement and Recreation Services		
7911	Dance Studios, Schools, and Halls	$5.0
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services	5.0
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	5.0
7933	Bowling Centers	5.0
7941	Professional Sports Clubs and Promoters	5.0
7991*	Physical Fitness Facilities	5.0
7993	Coin-Operated Amusement Devices	5.0
7996	Amusement Parks	5.0
7997	Membership Sports and Recreation Clubs	5.0
7999	Amusement and Recreation Services, N.E.C	5.0
Major Group 80—Health Services		
8011	Offices and Clinics of Doctors of Medicine	$5.0
8021	Offices and Clinics of Dentists	5.0
8031	Offices and Clinics of Doctors of Osteopathy	5.0
8041	Offices and Clinics of Chiropractors	5.0
8042	Offices and Clinics of Optometrists	5.0
8043*	Offices and Clinics of Podiatrists	5.0
8049	Offices and Clinics of Health Practitioners, N.E.C	5.0
8051	Skilled Nursing Care Facilities	5.0
8052*	Intermediate Care Facilities	5.0
8059	Nursing and Personal Care Facilities, N.E.C	5.0
8062	General Medical and Surgical Hospitals	5.0
8063	Psychiatric Hospitals	5.0
8069	Specialty Hospitals, Except Psychiatric	5.0
8071	Medical Laboratories	5.0
8072	Dental Laboratories	5.0
8082*	Home Health Care Services	5.0
8092*	Kidney Dialysis Centers	5.0
8093*	Specialty Outpatient Facilities, N.E.C	5.0
8099*	Health and Allied Services, N.E.C	5.0
Major Group 81—Legal Services		
8111	Legal Services	$5.0
Major Group 82—Educational Services		
8211	Elementary and Secondary Schools	$5.0
8221	Colleges, Universities, and Professional Schools	5.0
8222	Junior Colleges and Technical Institutes	5.0
8231	Libraries	5.0
8243	Data Processing Schools	5.0
8244	Business and Secretarial Schools	5.0
8249	Vocational Schools, N.E.C	5.0
8299	Schools and Educational Services, N.E.C	5.0
8299	Flight Training Services	18.5
Major Group 83—Social Services		
8322*	Individual and Family Social Services	$5.0
8331	Job Training and Vocational Rehabilitation Services	5.0
8351	Child Day Care Services	5.0
8361	Residential Care	5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, not used in 1972)	Description (N.E.C.=Not elsewhere classified)	Size standards in number of employees or millions of dollars
8399	Social Services, N.E.C	5.0
Major Group 84—Museums, Art Galleries, and Botanical and Zoological Gardens		
8412*	Museums and Art Galleries	$5.0
8422*	Arboreta and Botanical or Zoological Gardens	5.0
Major Group 86—Membership Organizations		
8611	Business Associations	$5.0
8621	Professional Membership Organizations	5.0
8631	Labor Unions and Similar Labor Organizations	5.0
8641	Civic, Social, and Fraternal Associations	5.0
8651	Political Organizations	5.0
8661	Religious Organizations	5.0
8699	Membership Organizations, N.E.C	5.0
Major Group 87—Engineering, Accounting, Research, Management, and Related Services		
8711*	Engineering Services:	
	Military and Aerospace Equipment and Military Weapons	$20.0
	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	20.0
	Marine Engineering and Naval Architecture	13.5
	Other Engineering Services	2.5
8712*	Architectural Services (Other Than Naval)	2.5
8713*	Surveying Services	2.5
8721*	Accounting, Auditing, and Bookkeeping Services	6.0
8731*	Commercial Physical and Biological Research: [18]	
	Aircraft	1,500
	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
	Other Commercial Physical and Biological Research	500
8732*	Commercial Economic, Sociological, and Educational Research	5.0
8733*	Noncommercial Research Organizations	5.0
8734*	Testing Laboratories	5.0
8741*	Management Services	5.0
8742*	Management Consulting Services	5.0
8743*	Public Relations Services	5.0
8744*	Facilities Support Management Services [19]	5.0
	Base Maintenance [20]	20.0
8748*	Business Consulting Services, N.E.C	5.0
Major Group 89—Services, Not Elsewhere Classified		
8999	Services, N.E.C	$5.0

Footnotes

[1] Size standards preceded by a dollar sign ($) are in millions of dollars of annual receipts. All others are in number of employees unless specified otherwise.

[2] SIC code 1629—Dredging: To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

[3] SIC Division D—Manufacturing: "Rebuilding on a factory basis or equivalent." For rebuilding machinery or equipment on a factory basis, use SIC code applicable for new manufactured product. The appropriate size standard is not limited to manufacturers. Ordinary repair services or preservation operations, however, are not considered rebuilding activities.

[4] SIC code 2033: For purposes of Government procurement for food canning and preserving under SIC code 2033, the standard of 500 employees shall be exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

[5] SIC code 2911: For purposes of Government procurement, the firm may not have more than 1,500 employees, nor may it have more than 75,000 barrels per day capacity. This capacity may be measured in terms of either crude oil or bona fide feedstocks or both, but the sum total of the various petroleum-based inputs into the process may not exceed 75,000 barrels. In addition to the direct-owned capacity of the concern in question, counted capacity will include any leased facilities or any facilities made available to the concern under an arrangement such as (but not limited to) an exchange agreement or a throughput, or other form, or processing agreement (whereby another party processes the concern's own crude or feedstocks). Such an arrangement would have the same effect as though such facilities had been leased, and this would have to be included in the concern's own capacity. The total product to be delivered in the performance of the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[6] SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

[7] SIC code 4212: The component "Garbage and Refuse, Collecting and Transporting, Without Disposal" shall have a size standard of $6.0 million. This is the same size standard as SIC code 4953, Refuse Systems.

[8] Offshore Marine Services: The applicable size standard shall be $20.5 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

[9] SIC codes 4512, 4513, and 4522: Includes passenger or cargo transportation requiring the use of one or more helicopters or fixed-wing aircraft. This does not include offshore marine transportation services as defined in footnote 8.

[10] SIC codes 4724 and 6531: As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received would be included as revenue.

[11] SIC code 4953: "Garbage and Refuse, Collecting and Transporting, Without Disposal," a component of SIC code 4212, has the same size standard as SIC code 4953.

[12] SIC code 5599: For retail firms whose principal line of business is the retail sale of aircraft, a $7.5 million size standard shall apply.

[13] Most in Division H: Finance, Insurance and Real Estate—are excluded from SBA assistance.

[14] Major Group 60: As measured by total assets.

[15] Major Group 65—Leasing of building space to the Federal Government by Owners: For the purpose of Government procurement, a size standard of $15.0 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standard for these procurements shall apply to the owner of the property and not to those acting as an agent for the owner. There is no size standard concerning the agent in a leasing arrangement.

[16] Division J—Services: For all industries not specifically listed in this division, the size standard is $5.0 million.

[17] SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis will be classified under SIC code 3728.

[18] SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard to use is that of the manufacturing industry in which the specific products is classified.

Research and Development, as defined in the SIC Manual, means laboratory or other physical research and development on a contractor fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.7 of these regulations.

Research and development for guided missiles and space vehicles includes evaluation and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

[19] Facilities Management, a component of SIC code 8744, has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[20] SIC code 8744: If one of the activities of base maintenance, as defined below, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.) all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

[21] The size standard for map drafting services, mapmaking (including aerial), and photogrammetric mapping services, part of SIC code 7389, is $3.5 million.

[22] Million megawatt hours.

Dated: March 30, 1994.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 94-8274 Filed 4-6-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93-4-000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued April 1, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order accepting data sets and implementation guide.

SUMMARY: On December 23, 1993, the Commission issued a final rule in this proceeding requiring pipelines to implement standards and protocols by June 1, 1994. The Commission is accepting standardized data sets providing information related to released capacity and an implementation guide for downloading this information using Electronic Data Interchange according to standards promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12.

DATES: Pipelines must implement the data sets and implementation guide by June 1, 1994.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order Accepting Data Sets and Implementation Guide

Issued April 1, 1994.

On December 23, 1993, the Commission issued a final rule in this proceeding requiring pipelines to implement standards and protocols by June 1, 1994.[1] The rule required pipelines to provide information included in standardized data sets on their Electronic Bulletin Boards and to permit users to download this information using Electronic Data Interchange according to standards promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12.

In the rule, the Commission recognized that as pipelines began the implementation process, they might discover that changes or modifications to the standardized data sets were necessary. The Commission also recognized that an ASC X12 implementation guide would need to be developed to correspond with the final data sets. The revisions to the data sets and the implementation guide were to be developed by the industry Working Groups that had been working on these standards, and the Working Groups were to provide the required documents to the Commission in sufficient time to permit implementation by June 1, 1994.

On March 4, 1994, Working Groups 1 & 2 filed revised capacity release data sets and an implementation guide for downloading these data sets using Electronic Data Interchange according to ASC X12 standards. Public notice of this filing was issued on March 7, 1994, with comments due by March 15, 1994. Only one comment was received, from the National Registry of Capacity Rights, Inc., which supported acceptance of the data sets.

The Commission is accepting the data sets and implementation guide to be implemented by the pipelines by June 1, 1994, subject to the order on rehearing in this proceeding. Pipelines should not delay implementation of the data sets until the Commission's rehearing order. Should the Commission grant rehearing and eliminate any data elements, those fields simply would be left blank. If the Commission determines to add fields to the data sets, the Commission will not require those fields to be implemented by June 1, 1994. The Working Groups would be given the opportunity to design the new data fields for later implementation. The data sets will be made available at the Commission's Public Reference and Files Maintenance Branch, 941 North Capitol Street as soon as is possible.

In the final rule, the Commission required pipelines to provide downloads using a standard ASCII format. On March 10, 1994, public notice was given of an ASCII file structure submitted by Enron Gas Service, with comments due by March 17, 1994. On March 18, 1994, the Interstate Natural Gas Association of America (INGAA) filed a comment to clarify that the ASCII file structure was not a consensus product of the Working Group. INGAA also asserts work is underway on an alternative approach that would make ASCII files available to users without requiring the pipelines to maintain two separate standards, ASC X12 and ASCII. Numerous parties also have sought rehearing of the requirement to provide ASCII downloads.

The Commission will determine whether to require an ASCII download, and the implementation date if it is required, in the rehearing order. If the industry or Working Groups formulate an alternative approach, they should inform the Commission of that approach as soon as possible.

The Commission Orders

The data sets and implementation guide filed on March 4, 1994, in this proceeding are accepted to be implemented by June 1, 1994, subject to the order on rehearing in this docket.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8301 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards For Electronic Bulletin Boards Required Under part 284 Of The Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993).

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve an amendment to the approved Utah permanent regulatory program (the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201–1328. The amendment consists of changes to provisions of the Utah Coal Mining Rules pertaining to the definitions of "affected area," "road," and "public road." The amendment revises the Utah program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the

Utah program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval, appears 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. Submission of Proposed Amendment

By letter dated September 17, 1992 (administrative record No. UT–782), Utah submitted to OSM, under SMCRA and the Federal regulations implementing SMCRA at 30 CFR chapter VII (the Federal regulations), a proposed amendment to the Utah program. Utah submitted the proposed amendment in response to a September 4, 1992, agreement (administrative record No. UT–778) between Utah and OSM concerning the regulation of coal mine access and haul roads (mine roads) in Utah and as required by OSM at 30 CFR 944.16 (n) and (o). The proposed amendment consists of revised definitions of the terms "affected area," "road," and "public road" at Utah Administrative Rule (Utah Admin. R.) 645–100–200.

OSM announced receipt of the proposed amendment in the November 16, 1992, **Federal Register** (57 FR 54032), and, in the same notice, opened the public comment period and offered to hold a hearing on the substantive adequacy of the proposed amendment (administrative record No. UT–800). The public comment period closed on December 16, 1992.

Following the close of the comment period and during its review of the proposed amendment, OSM identified certain concerns regarding whether the proposed amendment was, as required by 30 CFR 732.15(a), in accordance with SMCRA and consistent with the Federal regulations. OSM notified Utah of these concerns by letter dated January 21, 1993 (administrative record No. UT–817).

By letter dated February 16, 1993, Utah submitted to OSM additional material, including a revision to the proposed amendment (administrative record No. UT–824). However, OSM identified certain concerns with this revision and notified Utah of these concerns by telephone on March 4, 1993 (administrative record No. UT–825).

By letter dated March 24, 1993, Utah submitted to OSM additional revisions to the proposed amendment (administrative record No. UT–827).

OSM announced receipt of the March 24, 1993, revisions to the proposed amendment in the April 8, 1993, **Federal Register** (58 FR 18187), and, in the same notice, reopened the public comment period on the revised proposed amendment (administrative record No. UT–830). The comment period ended on April 23, 1993.

By letter to Utah dated May 19, 1993 (administrative record No. UT–842), OSM found that provision II.1 of the September 4, 1992, agreement was not valid. In addition, OSM qualified the applicability of provision II.2 of the same agreement.

By letter dated June 22, 1993 (administrative record No. UT–847), Utah responded to OSM's May 19, 1993, letter and stated its interpretation of and intentions with respect to the September 4, 1992, agreement.

By letter dated July 1, 1993 (administrative record No. UT–845), the Joint National Coal Association/ American Mining Congress Committee on Surface Mining Regulations requested that OSM reopen the comment period for Utah's proposed amendment to allow additional public comment on the effect of OSM's May 19, 1993, letter on the September 4, 1992, agreement and the proposed amendment.

OSM published a notice in the July 29, 1993, **Federal Register** (58 FR 40608) reopening and extending the public comment period to allow the public the opportunity to comment on the effect that the invalid part of the September 4, 1992, agreement would have on Utah's proposed amendment (administrative record No. UT–850). The extended public comment period ended on August 13, 1993. The proposed amendment, as revised on March 24, 1993, is the subject of this notice.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that Utah's proposed amendment to its definitions of "affected area," "road," and "public road," as submitted by Utah on September 17, 1992, and as revised by it on March 24, 1993, is no less stringent than SMCRA and no less effective than the Federal regulations.

A. Background on Proposed Amendment

On February 25, 1991, Utah adopted certain revisions to its definitions of "road" and "public road" at Utah Admin. R. 645–100–200, along with a supplemental policy statement. On March 1, 1991, Utah, as required by 30 CFR 732.17, submitted those revisions and the supplemental policy statement to OSM for approval (administrative record No. UT–610).

OSM did not approve in part the March 1, 1991, submittal in a final rule published in the **Federal Register** (56 FR 58846, November 22, 1991) (the final roads rule). In the final roads rule, OSM found that the definition of "surface coal mining operations" at section 701(28) of SMCRA, 30 U.S.C. 1291(28), and its counterpart in the Utah program require the regulation of certain public roads (56 FR 58846, 68847–49, November 22, 1991). OSM also found that, when determining whether a road is subject to regulation under SMCRA and the Utah program, the regulatory authority must consider the extent and effect of the mining-related use of the road (56 FR 58846, 58847–49, 58851–52, 58854–55, November 22, 1991). Based on these findings, OSM did not approve Utah's revision to its definition of "road" and its supplemental policy statement because, when considered together, they would have exempted all public roads from regulation, regardless of their mining-related use (56 FR 58846, 58847–49, November 22, 1991). OSM approved Utah's revision to its definition of "public road," but only in the limited context of the rules in the Utah program for designating lands unsuitable for mining (56 FR 58846, 58849–50, November 22, 1991). OSM also required Utah to make certain amendments to its regulatory definitions of "road" and "public road" and to withdraw its supplemental policy statement (56 FR 58846, 58857–58, November 22, 1992.) These required program amendments are codified at 30 CFR 944.16 (n) and (o).

On January 17, 1992, Utah brought an action in the U.S. District Court for the District of Utah, pursuant to section 526 of SMCRA, for judicial review of the final roads rule (*Utah* v. *Lujan*, No. 92–C–063–G (D. Utah)). On September 4, 1992, OSM and Utah resolved *Utah* v. *Lujan* by entering into an agreement (the September 4, 1992, agreement). Under the September 4, 1992, agreement, Utah agreed, among other things, to withdraw its claims in *Utah* v. *Lujan*, confirm the withdrawal, effective December 5, 1991, from the Utah program of its supplemental policy statement, and to submit to OSM a proposed amendment to the Utah program that would revise the definitions of "affected area," "road," and "public road" at Utah Admin. R. 645–100–200 to read the same as the corresponding definitions in the Federal regulations at 30 CFR 701.5 and 761.5. For its part, OSM agreed to a blanket exemption of certain Utah

mine roads from regulation under SMCRA and the Utah program.

Pursuant to the September 4, 1992, agreement, Utah filed a motion with the district court to dismiss *Utah* v. *Lujan*. However, Utah did not submit the agreement to the court for review or approval. On September 24, 1992, the court granted Utah's motion and dismissed the case with prejudice. Also pursuant to the agreement, Utah submitted to OSM the proposed amendment that is the subject of this notice. Subsequently, OSM sent to Utah a letter dated May 19, 1993, invalidating the September 4, 1992, agreement to the extent that it exempted certain mine roads existing on September 4, 1992, from regulation under SMCRA (administrative record No. UT–842).

B. Description of Proposed Amendment

As noted above, Utah proposed to revise its definitions of "affected area," "road," and "public road" at Utah Admin. R. 645–100–200. Specifically, Utah proposed to revise its definition of "affected area" as follows, with the italicized language to be added:

"Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, coal mining and reclamation operations, *except as provided in this definition;* any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings. *The affected area shall include every road used for purposes of access to, or for hauling coal to or from, coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use. Editorial Note: The definition of Affected area, insofar as it excludes roads which are included in the definition of Surface coal mining operations, was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."*

Utah proposed to revise its definition of "road" as follows, with the capitalized language in brackets to be removed and the italicized language to be added:

"Road" means a surface right-of-way for purposes of travel by land vehicles used in [COAL EXPLORATION OR] coal mining and reclamation operations *or coal exploration*. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in [COAL EXPLORATION, OR WITHIN THE AFFECTED AREA OF] coal mining and reclamation operations *or coal exploration*, including use by coal hauling vehicles [LEADING] to *and from* transfer, processing, or storage areas. The term does not include [ROADS] *ramps and routes of travel* within the immediate mining [PIT] area *or within spoil or coal mine waste disposal areas*.

Finally, Utah proposed to revise its definition of "public road" as follows, with the capitalized language in brackets to be removed and the italicized language to be added:

"Public road", *for the purposes of part R645–103–200, R645–301–521.123, and R645–301–521.133* means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located [.]; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction [, AND]; (c) *for which there is substantial (more than incidental) public use; and (d) which meets road classification standards for other public roads of the same classification in the local jurisdiction.*

C. Specific Findings

For the following reasons, OSM finds that Utah's proposed amendment to its definitions of "affected area," "road," and "public road" at Utah Admin. R. 645–100–200 is in accordance with SMCRA and consistent with the Federal regulations. OSM finds that, except for some differences in wording, Utah's proposed amendment to its definitions of "affected area," "road," and "public road" at Utah Admin. R. 645–100–200 is substantively identical to the corresponding Federal definitions of "affected area" and "road" at 30 CFR 701.5 and "public road" at 30 CFR 761.5. As discussed below, these differences in wording are necessary to maintain consistency throughout Utah's regulations and make the proposed amendment conform to the Utah program.

1. Definition of "Affected Area"

As noted above, Utah's proposed amendment to its definition of "affected area" at Utah Admin. R. 645–100–200 states, in part, as follows:

Editorial Note: The definition of *Affected area*, insofar as it excludes roads which are included in the definition of *Surface coal mining operations*, was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."

In this note, Utah suspended its definition of "affected area" insofar as it excluded roads that were included in the definition of "coal mining and reclamation operations" at Utah Admin. R. 645–100–200. This is consistent with the November 20, 1986, partial suspension of the Federal definition of "affected area" (51 FR 41960).

A difference between Utah's proposed definition of "affected area" and its Federal regulatory counterpart is that Utah's proposed definition of "affected area" uses the term "coal mining and reclamation operations, " while the Federal definition of "affected area" uses the term "surface coal mining and reclamation operations." This difference, however, is not substantive. The Utah regulatory term "coal mining and reclamation operations," as defined at Utah Admin. R. 645–100–200, is substantively identical to the Federal regulatory term "surface coal mining operations," as defined at 30 CFR 700.5. In addition, the Utah regulatory term "coal mining and reclamation operations" specifically incorporates the term "surface coal mining and reclamation operations," which is defined at Utah Code Annotated (U.C.A.) 40–10–3(17). The Utah statutory definition of "surface coal mining and reclamation operations" is substantively identical to the corresponding Federal statutory definition of "surface coal mining and reclamation operations" at section 701(27) of SMCRA and the Federal regulatory definition of that term at 30 CFR 700.5. Furthermore, the term "coal mining and reclamation operations" is used throughout Utah's regulations at Utah Admin. R. 645, which implement the provisions of the Utah Coal Mining and Reclamation Act (the State Act) at Title 40, Chapter 10, of the U.C.A. Thus, the use of the term "coal mining and reclamation operations" in Utah's proposed definition of "affected area" is both consistent with Utah's regulations at Utah Admin. R. 645 and is consistent with and no less effective than the term "surface coal mining and reclamation operations," as used in the Federal definition of "affected area."

For the reasons stated above, the Director approves Utah's proposed

amendment to the term "affected area" at Utah Admin. R. 645–100–200.

2. Definition of "Road"

The only difference between Utah's proposed definition of "road" at Utah Admin. R. 645–100–200 and the Federal definition of "road" at 30 CFR 701.5 is that Utah uses the term "coal mining and reclamation operations" in its definition, while the Federal definition of "road" uses the term "surface coal mining and reclamation operations." As discussed in finding No. III.C.1. above, this difference is not substantive. Thus, Utah's use of the term "coal mining and reclamation operations" in its proposed definition of "road" is consistent with and no less effective than the Federal definition of "road." In addition, as was discussed in item No. III.A. above, Utah agreed, as part of the September 4, 1992, agreement (provision I.2.a.), to conform the withdrawal of its supplemental policy statement. By letter dated June 10, 1992, Utah notified OSM that the Board of Oil, Gas and Mining did, in fact, withdraw the supplemental policy statement, effective December 5, 1991 (administrative record No. UT–771). Accordingly, the Director approves Utah's proposed amendment to the term "road" at Utah Admin. R. 645–100–200, accepts Utah's withdrawal of the supplemental policy statement, and removes the required amendments codified at 30 CFR 944.16(n)(1) and (2).

3. Definition of "Public Road"

Utah's proposed definition of "public road" at Utah Admin. R. 645–100–200, among other things, adds language that limits the use of this term to the purposes of parts Utah Admin. R. 645–103–200, 645–301–521.123, and 645–301–521.133. These parts of the Utah program contain rules for designating lands unsuitable for coal mining and reclamation operations. Thus, Utah's proposed definition of "public road" is applicable only to the Utah rules for designating lands unsuitable for such mining. This limitation is consistent with the Federal definition of "public road" at 30 CFR 761.5, which applies only in the limited context of areas designated by Act of Congress as being unsuitable for surface coal mining operations (56 FR 58846, 58849, November 22, 1991). Thus, Utah's proposed addition of the above-referenced language to its definition of "public road" at Utah Admin. R. 645–100–200 is consistent with and no less effective than the Federal definition of "public road" at 30 CFR 761.5. The Director approves Utah's proposed amendment to the term "public road" and removes the required amendment at 30 CFR 944.16(o).

IV. Summary and Disposition of Comments

A. Public Comments

1. Support for Utah's Proposed Amendment: Processing of Amendments

Two commenters said they supported the proposed amendments and encouraged their approval as quickly as possible. The commenters further noted that approval of these definitions, which are identical to the Federal definitions, will remove any ambiguity recognized with respect to Utah's responsibilities to permit roads used primarily for coal mining purposes. In addition, the commenters stated that, according to OSM regulations at 30 CFR 732.17(h)(7), approval of the proposed amendments was required by January 15, 1993, 30 days after the close of the comment period (December 16, 1992), and that in doing so, OSM must, as required by 30 CFR 732.17(h)(10), apply the criteria set forth in 30 CFR 732.15 when determining whether to approve such amendment. Finally, the commenters said that because the proposed amendments are identical to the existing Federal regulations, there should be no question that the amendments should be approved within the mandatory 30-day time period.

OSM concurs with the commenter's interpretation regarding the above-cited Federal regulations. However, OSM also believes it necessary to provide clarification regarding the applicability of amendment processing procedures and the comment that approval of the proposed amendments was required by January 15, 1993, 30 days after the close of the comment period following publication of the proposed rule notice in the **Federal Register**.

Each State program amendment raises different legal and technical issues that require differing levels of analysis. Therefore, unless a proposed amendment is a verbatim copy of the comparable Federal regulation, it may require extensive review and analysis by Federal authorities in consultation with their State counterparts. The process involves review of widely varying amendments that must comport with Federal and State laws and court cases. Rather than simply disapprove a deficient proposal, OSM attempts to work with the State to bring the proposal up to a level where it is comparable to and no less effective than the Federal regulations. This process can be time consuming. Thus, the potential for delays in the process is a constant.

With respect to Utah's September 17, 1992, proposed amendment, OSM identified deficiencies regarding Utah's definitions of "affected area," "road," and "public road." Accordingly, OSM notified Utah of the deficiencies by an issue letter dated January 21, 1993. The issue letter provided Utah with an opportunity to correct the specified deficiencies. Utah responded to the issue letter in a revised amendment dated March 24, 1993. OSM then announced receipt of the revised proposed amendment in the April 8, 1993, **Federal Register** (58 FR 18187), and, in the same notice, reopened and extended the public comment period for 15 days. The extended comment period closed on April 23, 1993. Therefore, according to OSM regulations at 30 CFR 732.17(h)(7), approval or disapproval of Utah's proposed amendment was required by May 24, 1993, the first work day 30 days after the close of the extended comment period.

However, with respect to timely processing of amendments, the general rule is that a statutory or regulatory time period for agency action is not mandatory unless it specifies a consequence for the agency's failure to meet the prescribed deadline. Where no such consequence is specified, the time period is regarded as directory only, intended to guide agency procedures but not to set inflexible requirements. (See, *Brock* v. *Pierce County*, 476 U.S. 253, 259, 106 S. Ct. 1834, 1838, 90 L. Ed. 248, 255 (1986); *In re Barr Laboratories, Inc.*, 930 F.2d 72, 74 (D.C. Cir. 1991); and, 1A N. Singer, Sutherland Statutory Construction § 25.03 (5th ed. 1991)).

In the case of the State program amendment process, the regulation at 30 CFR 732.17(h)(7), which requires OSM to approve or disapprove the proposed amendment within 30 days of the close of the comment period, and the regulation at 30 CFR 732.17(h)(13), which establishes the 6-month period for the completion of action on State program amendments, do not impose any consequence in the event OSM fails to meet the deadlines. Thus, these deadlines are directory, rather than mandatory.

2. Additional Support for Utah's Proposed Amendment

One commenter, who resides in a rural county in Utah that contains extensive coal reserves, responded with support of Utah's proposed amendment. The commenter further noted that (1) because of the small population base and large geographic parameters of the

county, which contains mostly Federal lands, it is important to have Utah's proposed definitions in place in order to develop the local economy and (2) the coal mining industry is a large part of the local economy providing employment for the citizens of the area. OSM acknowledges these comments.

3. Terms of the September 4, 1992, Agreement

Several commenters expressed concerns about the September 4, 1992, agreement. That agreement provides in pertinent part as follows:

I. The [Utah] Division [of Oil, Gas and Mining] agrees to:

* * * * *

2. In recognition of the direction of the Director of OSM as set forth in OSM's final rule published on November 22, 1991, 56 FR 58846 (the final rule):

* * * * *

b. Submit a program amendment of the Division's definition of the term "Road", to read the same as the corresponding federal definition at 30 CFR 701.5;

c. Submit a program amendment of the Division's definition of the term "Public Road", to read the same as the corresponding federal definition at 30 CFR 761.5 and, in addition, provide that the definition applies only in the context of Utah Admin. R645–103–100, *et seq.*, Areas unsuitable for Coal Mining and Reclamation Operations; and

d. Submit a program amendment of the Division's definition of the term "Affected Area" to read the same as the corresponding federal definition at 30 CFR 701.5.

II. OSM and the Division agree that:

1. If a road in Utah has not previously been determined to be part of an existing surface coal mining operation, the road will not be required to be included within a permit, based on current federal statute and regulations and the current Utah statute and rules; and

2. With respect to any application for a permit to conduct surface coal mining and reclamation operations under the Utah Coal Regulatory Program, including any application pending at the time of this agreement, the state will apply the Utah statute and rules existing on the date of permit approval.

One commenter asserted that the Federal regulatory definitions of "road," "public road," and "affected area," and Utah's proposed amendment to its regulatory definitions of those terms, do not clearly define OSM's and Utah's jurisdiction over public roads. The commenter stated that until OSM and Utah clarify their jurisdiction over public roads, they must only impose on operators regulations that conform to the specific terms of the September 4, 1992, agreement. The commenter noted that this agreement requires Utah to submit to OSM a program amendment to Utah's regulatory definitions of "road," "public road," and "affected area" that "reads the same as" the corresponding Federal regulatory definitions of those terms. In line with this position, the commenter stated that Utah's proposed amendment must be changed because the proposed definitions of "road," "public road," and "affected area" use terms, such as "coal mining and reclamation operations," that are not contained in the corresponding Federal regulatory definitions of "road," "public road," and "affected area." Alternatively, the commenter stated that OSM may approve Utah's proposed amendment, but only after OSM formally changes its own regulatory definitions of "road," "public road," and "affected area" to use such terms as "coal mining and reclamation operations." Also, the facilitate this position, the commenter stated that OSM's and Utah's regulations must be modified to include the specific terms of the September 4, 1992, agreement. Two additional commenters stated that, in accordance with the September 4, 1992, agreement, all Utah mine roads existing as of that date were "grandfathered," i.e., exempted from regulation. The commenters further said that under that agreement, if a road had not been included within a permitted surface coal mining operation prior to September 4, 1992, it will not be incorporated into a permit. The commenters then requested that the Utah program be amended to specifically incorporate this grandfather provision.

OSM agrees with the comment that the Federal regulatory definitions of "road," "public road," and "affected area," and Utah's proposed amendment to its regulatory definitions of those terms, do not, respectively, clearly define OSM's and Utah's jurisdiction over public roads. Those definitions, however, do not purport, in and of themselves, to define jurisdiction over public roads. In the preamble to the final roads rule, OSM said that it currently relies on the applicable language of the Federal definitions of "surface coal mining operations" at section 710(28) of SMCRA and the Federal regulations at 30 CFR 700.5, and that Utah must, among other things, also rely on its statutory definition of that term at U.C.A. 40–10–3(18) in determining jurisdiction over public roads (56 FR 58846, 58848–49, November 22, 1991). Also, in the final roads rule, as discussed under part III.A. of this notice, OSM found that, when determining whether a public road is subject to regulation under SMCRA and the Utah program, the regulatory authority must consider the extent and effect of the mining-related use of the road (56 FR 58846, 58847–49, 58851–52, 58854–55, November 22, 1991). Thus, OSM's and Utah's jurisdiction over public roads is determined, respectively, under the Federal and Utah definitions of "surface coal mining operations" and other guidance such as the preamble to the final roads rule.

OSM disagrees with the comment that the Federal and Utah regulatory definitions of "road," "public road," and "affected area" must literally "read the same." Pursuant to 30 CFR 732.15(a), OSM may approve a proposed amendment to a State program if, among other things, the proposed amendment is in accordance with SMCRA and consistent with the Federal regulations implementing SMCRA. OSM interprets paragraphs I.2.b., c., and d. of the September 4, 1992, agreement to only require Utah to submit to OSM a proposed amendment meeting those requirements. For the reasons discussed above under part III of this notice, OSM finds that Utah's proposed amendment meets, upon the stated conditions, the requirements of 30 CFR 732.15(a) and provisions I.2.b., c., and d. of the September 4, 1992, agreement.

OSM disagrees with the comment that the Federal and Utah regulations must be modified to include the specific terms of the September 4, 1992, agreement. Nothing in SMCRA, the Federal regulations, the Utah program, or the September 4, 1992, agreement requires Utah or OSM to modify their respective regulations to include specific terms of that agreement.

In addition, OSM notified Utah, by letter dated May 19, 1993, of its determination that paragraph II.1. of the September 4, 1992, agreement, which would have exempted certain Utah mine roads from regulation under SMCRA and the Utah program, is contrary to law and thus is not binding on OSM. The September 4, 1992, agreement was not reviewed, approved, or adopted by the court in *Utah* v. *Lujan*. Thus, it is nothing more than a contract between OSM and Utah. Under general contract law, a Federal agency cannot contract with a body it regulates in a manner contrary to its statutory authority or in a manner that does not give full effect to the intent of the Congress (*Board of Directors and Officers, Forbes Federal Credit Union* v. *National Credit Union Admin.*, 477 F.2d 777, 784 (10th Cir. 1973)). Contracts entered in violation of statutory or regulatory law are unenforceable if enforcement would "offend the essential purpose of the enactment"

(*United States* v. *Mississippi Valley Co.*, 364 U.S. 520, 563 (1961). See also *Quinn* v. *Gulf Western Corp.*, 644 F.2d 89, 93–94 (2d Cir. 1981); *D.M. Yates*, 74 IBLA 159, 161 (1983). See generally E. Farnsworth, Contracts sections 5.5–5.6 (2d ed. 1982); 15 S. Williston, Contracts section 1763 (3d ed. 1972)). In other words, OSM is free to enter into contracts or agreements with other parties, but when a provision of a contract or agreement conflicts with OSM's statutory responsibilities under SMCRA such that its enforcement would offend an essential purpose of SMCRA, that provision is unenforceable.

Under paragraph II.1. of the September 4, 1992, agreement, Utah and OSM agreed to a blanket exemption from regulation under SMCRA and the Utah program of all unpermitted mine roads existing prior to September 4, 1992. SMCRA jurisdiction over mine roads derives from the statutory definition of the term "surface coal mining operations" at section 701(28). SMCRA defines this term, in pertinent part, to mean:

(A) Activities conducted on the surface of lands in connection with a surface coal mine * * *; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include * * * *all lands affected by the construction of new roads to gain access to the site of those activities and for haulage* * *

(emphasis added). This definition of "surface coal mining operations" is substantively identical to the Federal regulatory definition of that term at 30 CFR 700.5 and Utah's statutory definition of that term at U.C.A. 40–10–3(18).

Under those definitions, OSM and Utah are required to regulate certain mine roads, based, in part, on the extent and effect of mining-related use of the road (see 56 FR at 58847–49 (1991); 55 FR 13773, 13775 (1990); 53 FR 54190, 54192 (1988)). Nothing in SMCRA or the Utah program provides for a blanket exemption of mine roads from regulation. To the contrary, jurisdiction over mine roads must be made on a case-by-case basis (see 56 FR at 58848 (1991); 55 FR 13773, 13775 (1990); 53 FR 54190, 54193 (1988)).

By granting a blanket exemption to existing, unpermitted mine roads without any consideration given to the amount of their mining-related use, paragraph II.1. of the September 4, 1992, agreement would have exempted roads which, under SMCRA and the Utah program, OSM and Utah are required to regulate. Thus, paragraph II.1. is contrary to SMCRA and the Utah program.

Moreover, the enforcement of paragraph II.1. of the September 4, 1992, agreement offends an essential purpose of SMCRA and the Utah program (See *Mississippi Valley*, 364 U.S. at 563). One of SMCRA's essential purposes is "to protect the environment and ensure the reclamation of mined areas" (*Daniel Brothers Coal Co.*, 2 IBSMA 45, 49 (1980); see also section 102(a) of SMCRA). Also, as U.C.A. 40–10–2(3) indicates, one of the purposes of the Utah program is to "[a]ssure that surface coal mining operations are conducted so as to protect the environment." Given the significant environmental harm that can result from unregulated mine access and haul roads, these statutory purposes cannot be fully met by an agreement, such as paragraph II.1., to grant an unauthorized regulatory exemption.

For the reasons given above, paragraph II.1. of the September 4, 1992, agreement is contrary to SMCRA and the Utah program, and because its enforcement would offend an essential purpose of these laws it is unenforceable. Accordingly, paragraph II.1. must not be applied by OSM or Utah to any permitting or enforcement decisions in Utah.

Under paragraph II.2. of the September 4, 1992, agreement, Utah agreed to "apply the Utah statute and rules existing on the date of permit approval" to any permit applications pending on September 4, 1992, and to any future permit applications. In the aforementioned letter to Utah dated May 19, 1993, OSM stated that this provision is valid as long as (1) the phrase "Utah statutes and rules" is interpreted to mean the approved Utah State program; (2) any application of the Utah statute and rules to a permitting decision is consistent with the Department of the Interior's actions in approving or not approving such statutes and rules (see, *e.g.*, 56 FR 58846, November 22, 1991); and (3) the provision is not interpreted to prevent Utah or OSM from taking action subsequent to permit approval, where appropriate under the approved program (e.g., requiring a permit revision to reflect changes in applicable law).

For these reasons, the Federal regulations and the Utah program must not be modified to include the specific terms of paragraphs II.1. and II.2. of the September 4, 1992, agreement.

4. Basis for Submission of Utah's Proposed Amendment and the Effect of OSM's Invalidation of Provision II.1. of the September 4, 1992, Agreement on Utah's Proposed Amendment

One commenter stated that OSM's May 19, 1993, letter, which notified Utah that a portion of the September 4, 1993, agreement between Utah and OSM was contrary to law and therefore not binding on OSM, constitutes an abrupt reversal of position and abdication of the agreement that forms the basis for the amendment addressed in this notice. Notwithstanding OSM's action on the agreement, the commenter requested that OSM approve the amendment.

OSM disagrees with the commenter s inference that the agreement was the sole reason that Utah submitted the amendment to OSM. When OSM and Utah drafted the agreement, they ensured that the required amendments of the Director's decision in the November 22, 1991, **Federal Register** would be satisfied by Utah complying with provisions I.2. b., c., and d. of the agreement. Therefore, when Utah submitted proposed definitions of "road," "public road," and "affected area," it did so not only in accordance with provisions I.2. b., c., and d. of the agreement, but also in response to required program amendments at 30 CFR 944.16 (n) and (o) that OSM placed on the Utah program in the November 22, 1991, notice. Had OSM and Utah not entered into the agreement, Utah still would have had to submit proposed definitions to satisfy the required amendments at 30 CFR 944.16 (n) and (o).

OSM also disagrees with the commenter's assertion that OSM's approval of the amendment would be inconsistent with OSM's notification to Utah that a part of the agreement was contrary to law and not binding on OSM. The agreement consisted of two parts. The first part (provision I) addressed actions by Utah (1) to withdraw with prejudice its lawsuit on certain roads violations that OSM issued in Utah (provision I.1.) and (2) to withdraw a policy statement and revise its definitions of "road," "public road," and "affected area" in a manner consistent with the corresponding Federal definitions at 30 CFR 701.5 and 761.5 (provisions I.2. a., b., c., and d.). The second part (provision II.) addressed the implementation of the Federal and State statutes and regulations with respect to (1) existing roads that were not, as of September 4, 1992, previously determined to be part of an existing surface coal mining

operation and required to be permitted (provision II.1.) and (2) permit applications pending Utah's approval or disapproval as of September 4, 1992 (provision II.2.). While OSM by its May 19, 1993, letter notified Utah that provision II.1. of the September 4, 1993, agreement between Utah and OSM was not binding on OSM, provisions I.1., I.2. a., b., c., and d., and II.2. remained in effect. Therefore, contrary to the commenter's statement, OSM could approve the amendment as long as Utah's proposed definitions of "road," "public road," and "affected area," which are the subject of provisions I.2. a., b., c., and d., of the agreement, were not inconsistent with the corresponding Federal definitions at 30 CFR 701.5 and 761.5.

In addition, the commenter raised several arguments concerning the legal validity of the reasons OSM set forth in its May 19, 1993, notification to Utah that provision II.1. of the September 4, 1993, agreement between Utah and OSM was contrary to law and therefore not binding on OSM. The Director notes these arguments but does not respond to them because they are outside the scope of this rulemaking to the extent that Utah did not submit in this amendment proposed rules incorporating provision II.1. of the agreement.

5. Jurisdiction

Two commenters expressed concerns that Utah's proposed definitions of "road," "public road," and "affected area," would inappropriately broaden the State's jurisdiction under the State Act to regulate "public roads" that service coal mining operations, coal exploration activities, and most haulage. The commenters noted that the term "public road" would no longer be applied in determining areas that should be permitted under the State Act since that term, as proposed, would be limited to defining areas unsuitable for mining. The commenters stated that, accordingly, the definition of "public road," which includes criterion (d) indicating that a public road must meet construction standards for other public roads of the same classification in the local jurisdiction, will no longer be applied in determining whether or not a road should be permitted under the State Act.

OSM disagrees with the comment that Utah's proposed definitions will inappropriately broaden the State's jurisdiction under the State Act to regulate "public roads." As discussed above under part III.A. of this notice, on February 25, 1991, Utah adopted certain revisions to its definitions of "road" and "public road" at Utah Admin. R. 645-100-200, along with a supplemental policy statement that, considered together, would exempt all public roads from regulation under the Utah program. That adoption by Utah, however, did not take effect because it was never approved by OSM, as required by 30 CFR 732.17(g). Thus, the term "public road," as adopted by Utah on February 25, 1991, was never effective as a matter of law. Consequently, Utah's proposed amendment does not serve to broaden its jurisdiction to regulate a "public road." In addition, and more importantly, even if Utah's proposed definition of "public road" is mistakenly interpreted as broadening jurisdiction, it is not inappropriate since it is no less effective than the corresponding Federal definition of "public road."

6. Public Roads and the Phrase "Substantial (More Than Incidental)" Public Use

Two commenters stated that Utah's proposed definition of the term "affected area" appears to exclude public roads and requested that Utah further defined the phrase "substantial (more than incidental)" public use, as used in the definition of "affected area." In addition, one of the commenters said the definition of "affected area" should be clarified to state a percentage of vehicle traffic other than mining that would constitute public use.

OSM acknowledges the comment that Utah's proposed definition of "affected area" appears to exclude public roads. However, as discussed above under part III.C.1. of this notice, the editorial note in Utah's proposed definition of "affected area" has the effect of including in the "affected area" all roads that are included in the definition of "coal mining and reclamation operations."

OSM disagrees with the comments that Utah further define the phrase "substantial (more than incidental)" public use and that Utah provide a percentage of vehicle traffic other than mining that would constitute public use. In the preamble to a final rule establishing performance standards for roads associated with surface coal mining operations, OSM said that:

> State laws vary widely in their road classification systems. OSMRE [OSM] is concerned that roads constructed to serve mining operations not avoid compliance with the performance standards by being deeded to public entities. However, it is not OSMRE's intention automatically to extend jurisdiction over roads into the existing public road network. Jurisdiction under the Act [SMCRA] and applicability of the performance standards are best determined on a case-by-case basis by the regulatory authority.

(53 FR 45190, 45193, November 8, 1988). Thus, a case-by-case approach is necessary in determining the applicability of the Utah program to public roads. Utah's proposed amendment, as discussed under part IV.A.3. of this notice, provides guidance that is no less effective than that specified in the Federal definition of "surface coal mining operations" at 30 CFR 700.5 regarding which public roads are subject to Utah's jurisdiction.

Another commenter suggested that the Utah term "public road" additionally include roads to which the public has access. As indicated in finding No. III.C.3., Utah adds language that limits the use of this term to parts R645-103-200, R645-301-521.123, and R645-301-521.133 of Utah's rules, which pertain only to designating lands unsuitable for coal mining and reclamation operations. While OSM appreciates the commenter's suggestion, it cannot require Utah to amend its definition further because the proposed definition has been determined to be no less effective than the corresponding Federal definition.

7. Definition of "Road"

Two commenters stated that Utah's proposed definition of the term "road" is so broad that it includes almost any road that carries coal in intrastate and interstate commerce, and should be amended to clarify that the term "road" does not include "public roads" or roads excluded under the term "affected area."

OSM disagrees with these comments. Utah's proposed definition of the term "road" is substantively identical to the Federal regulatory definition of that term at 30 CFR 701.5. Both of those definitions of "road" are clear on their respective terms as to which roads are to be regulated as surface coal mining operations. The determination as to whether a particular road will be regulated as part of a surface coal mining operation must be made on a case-by-case basis by the regulatory authority, and must be based upon the mining-related use of the road (53 FR 45190, 45192, November 8, 1988; 56 FR 58846, 58848-9, November 22, 1991).

8. Application of Mining-Related Use of Roads as Criteria To Determine Whether a Road Is Subject to SMCRA Permitting Requirements

A commenter stated that OSM's application of the extent and effect of the mining-related use of roads as criteria in determining whether a road is

subject to SMCRA permitting requirements is contrary to OSM's announced deference to State decision making, whereby States with primacy should be allowed to determine, on a case-by-case basis, which roads must be included within the permit area. Specifically the commenter asserted that nothing in SMCRA or the Federal regulations grants OSM the authority to make case-by-case determinations in primacy States of which roads must be included within a permit area. The commenter next stated that OSM has no standards in place that define the point at which mining-related use requires the inclusion of a road within a permit area. The commenter further stated that there are no Federal standards defining what constitutes a *de minimus* use of a road. Instead, OSM has allowed States to determine the point at which jurisdiction begins and ends through individual State permitting decisions. Thus, the commenter concluded that the Federal regulatory definition of "affected area" no longer provides relevant guidance in light of OSM's deference to State decision making.

With respect to the first comment that OSM relies on the extent and effect of the mining-related use of roads as criteria in determining whether a road is subject to SMCRA permitting requirements, OSM wishes to emphasize that the regulation of public roads as part of a surface coal mining operation is not solely dependent upon the use of a road. Factors such as the purpose and time of its construction, the extent to which the road is directly part of a surface coal minng operation, the degree to which the road is altered to accommodate mining operations, and the impact of mining operations on the road and its surrounding environment may be major considerations in determining whether a road is subject to regulation under SMCRA. In addition, under the Federal definition of "surface coal mining operations" at 30 CFR 700.5, a road may be subject to regulation under SMCRA notwithstanding the lack of demonstrable impacts associated with its mining-related construction, maintenance, and use. Therefore, even in the absence of such evidence, it may be appropriate to regulate a road in order to ensure, through the SMCRA permitting, inspection, and enforcement processes, that the purposes of SMCRA are achieved (56 FR 58846, 58852, November 22, 1991).

With respect to the comments regarding the lack of Federal standards for determining when mining-related use requires the inclusion of a road within the permit area, the definitions of "affected area" and "surface coal mining and reclamation operations" provide guidance in these instances.

OSM has modified its regulations in accordance with court decisions to provide guidance to States and other interested parties for determining when roads will be regulated as part of a surface coal mining operation. OSM, pursuant to court order in *In re Permanent Surface Mining Regulation Litigation (In re Permanent)*, 620 F. Supp. 1519, 1581–82 (D.D.C. 1985), *modified sub. nom., National Wildlife Federation* v. *Hodel*, 839 F.2d 694 (DC Cir. 1988), modified its interpretation of the extent to which SMCRA applied to public roads. Specifically, OSM suspended the Federal regulatory definition of "affected area" to the extent that it excluded public roads that are included in the Federal regulatory definition of "surface coal mining operations" (51 FR 41952, November 20, 1986). OSM stated that "[t]he suspension will have the effect of including in the 'affected area' *all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the regulated activities or for haulage*" (51 FR 41952, 41953, emphasis added).

In determining which mining-related roads are subject to regulation, OSM currently relies on the applicable language of the Federal definitions of "surface coal mining operations" at section 701(28) of SMCRA and 30 CFR 700.5. This may require, in appropriate circumstances, that OSM and State regulatory authorities issue, and surface coal mine operators obtain, permits for certain public roads (56 FR 58846, 58848, November 22,1991).

With respect to the comment on the scope of OSM's oversight authority in primacy States to review the States' case-by-case determinations on roads, OSM will not respond here. This issue is pertinent to Utah's implementation of its statute and rules and OSM's oversight of Utah's actions in accordance with section 201 of SMCRA, but is not pertinent to this State program amendment.

9. Proper Interpretation of "Affected Area"

A commenter asserted that OSM has failed to consider the extent to which a broad interpretation of the term "affected area" may conflict with other regulations that define which public roads are entitled to environmental protection. As an example, the commenter cited section 522(e)(4) of SMCRA, which states that no surface coal mining operations shall be permitted within 100 feet of the outside right-of-way line of any public road, and the definition of "public road" at 30 CFR 761.5, which implements section 522(e)(4) of SMCRA and lists the following criteria a road must meet in order to qualify as a public road: the road has been designated as a public road by the State or local law, it is maintained with public funds, there is substantial, or more than incidental, public use, and the road meets applicable road construction standards. The commenter continued that OSM should not apply one definition of "public road" for the purpose of implementing the SMCRA section 522(e) prohibitions and another definition for determining whether a road falls within the scope of "surface coal mining operations" subject to permitting requirements. The commenter concluded that OSM should avoid construing the definition of "affected area" in a manner that would conflict with other statutory and regulatory requirements.

OSM does not agree with these comments. As discussed below, OSM is constrained by the court's decision in *In re Permanent* in how it regulates roads.

The Federal definition of "affected area" once included a "substantial (more than incidental) public use" criterion, as the current definition of "public roads" also does. However, paragraph (c) of the Federal definition of "affected area" at 30 CFR 701.5, in which OSM previously interpreted the term "affected area" as not applying to roads for which "there is substantial (more than incidental) public use," was successfully challenged in *In re Permanent*. As a result, and as stated above in response to comment IV.A.8., OSM modified its interpretation of the extent to which SMCRA applied to public roads and suspended the definition of "affected area" "to the extent that it excludes public roads that are included in the definition of "surface coal mining operations" (51 FR 41952, 41953, November 20, 1986). The Federal definition of "public road" at 30 CFR 761.5 was not challenged and the "substantial (more than incidental) public use" criterion in that definition remains in force in the context of lands unsuitable for mining.

The commenter addressed the editorial note that Utah proposes for the definition of "affected area." This note indicates that a portion of the definition is suspended insofar as it excludes roads that are included in the definition of "coal mining and reclamation operations" at Utah Admin. R. 645–100–200. The commenter stated that this clarification is not necessary

because the State's proposed definition of "affected area" clearly delineates the regulatory authority's jurisdiction.

OSM disagrees with this comment. As finding No. III.C.1. indicates, Utah's proposed definition of "affected area" and accompanying editorial note are, with only a few nonsubstantive differences, verbatim copies of the Federal definition of "affected area" and accompanying editorial note. As discussed above, the editorial note accompanying the Federal definition is necessary to bring the definition into compliance with the court decision In re Permanent. The same is also the case with the State definition. Without the editorial note or other equivalent revision to Utah's rules, the Utah program would not be consistent with the Federal regulations that were revised in response to the court decision.

B. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on Utah's proposed amendment from the Administrator of the U.S. Environmental Protection Agency (EPA), the Secretary of the U.S. Department of Agriculture, and the heads of other Federal agencies with an actual or potential interest in the Utah program.

By letter dated January 21, 1993, the U.S. Forest Service (USFS) commented that forest development roads (FDR'S) are not public roads (23 U.S.C. 101(a)) in the same sense as roads that are under the jurisdiction of public agencies, such as States or counties (administrative record No. UT–821) and are not intended to meet the transportation needs of the public at large. Instead, they are authorized only for the administration and utilization of National Forest System lands. Although FDR's are generally open and available for public use, that use is at the discretion of the Secretary of Agriculture. Through authorities delegated by the Secretary, USFS may restrict or control use to meet specific management direction. Commercial users, permittees, or contractors also may be required to share in the cost of developing, improving, and maintaining FDR's.

USFS also stated that it may regulate use and restrict public travel on FDR's regardless of whether there is substantial or incidental use. The USFS added that sometimes there are FDR's with seasonal adjusted daily traffic of less than 10 vehicles per day "open to public travel" when these roads serve large blocks of Forest lands, serve important resources, or are the only access routes within the block of land.

USFS recommended that because it has the legal right to control or regulate FDR's, Utah Admin. R. 645–301–200 (defining "public road") should be modified to (1) include FDR's with those roads that have been designated public roads pursuant to the jurisdiction in which it is located and (2) exclude FDR's from the use restriction that there be substantial (more than incidental) public use of a road in order for it to qualify as a public road. USFS stated that with these recommended changes, it could concur with the formal amendment.

By a second letter dated September 9, 1993 (administrative record No. UT–870), USFS restated its concern regarding rules that attempt to dictate standards of development or maintenance relating to roads under the jurisdiction of public road agencies or Federal agencies providing public access to lands of the United States. USFS further stated that

> SMCRA regulations must be limited to restrictions on coal hauling activities rather than orders to reclaim or otherwise modify the transportation facility. The proposed amendment does not clarify this issue sufficiently to present [sic] unilateral decisions by OSM and DOGM [(the Division)] on roads managed for public access.

OSM appreciates USFS's concerns as stated in its January 21, 19923, and September 9, 1993, letters. OSM cannot, however, require the State to adopt the recommended changes to the proposed definition of "public road" at Utah Admin. R. 645–301–200 because the proposed definition is substantively identical to the Federal definition at 30 CFR 761.5 and is, therefore, no less effective than the corresponding Federal definition.

Further, as explained below, the existing Federal definition and proposed State definition of "public road," will not interfere with USFS jurisdiction over FDR's and will protect FDR's from the adverse effects of surface mining to the extent allowed under SMCRA and the State Act.

The term "public road" is defined at 30 CFR 761.5 and at proposed Utah Admin. R. 645–301–200 so that it may be used in determining when a surface coal mining operation may be conducted within 100 feet of a road:

> [No surface coal mining operations shall be conducted] within 100 feet, measured horizontally, of the outside right-of-way line of any *public* road * * *

(30 CFR 761.11(d) and Utah Admin. R. 645–103–234, emphasis added).

In order to be considered a "public road," a road must be one

> (a) Which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;
>
> (b) Which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;
>
> (c) For which there is substantial (more than incidental) public use; and
>
> (d) Which meets road construction standards for other public roads of the same classification in the local jurisdiction.

(30 CFR 761.5 and proposed Utah Admin. R. 645–301–200).

In its comments, USFS implies that, although FDR's may not meet, in certain instances, the requirements of "public designation" and "substantial public use" in subsections (a) and (c) above, FDR's should be treated as "public roads" for purposes of determining when a surface coal mining operation may be conducted within 100 feet of a road. As explained below, when appropriate, FDR's will constitute "public roads" under the existing Federal and proposed State language. Changes to specifically add FDR's to these regulations are thus unnecessary.

The phrase, "which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located," under subsection (a) of the definition of "public road," is interpreted by OSM to include USFS jurisdiction over FDR's. Therefore, FDR's that USFS designates as "public" meet the "designation" requirement of the definition. There is no need to add specific language concerning FDR's to this requirement of the definition.

As for the "public use" requirement of the definition, if an FDR, like any other road, receives substantial public use, the FDR will satisfy this requirement of the definition.

USFS, from its comments of September 9, 1993, also appears concerned that OSM's and Utah's definitions of "public road" will improperly allow OSM's and Utah's regulatory authority to extend to the "development" and "maintenance" of FDR's. USFS further asserts that "SMCRA regulations must be limited to restrictions on coal hauling activities rather than orders to reclaim or otherwise modify the transportation facility." Again, these concerns are addressed by the existing Federal and proposed State regulations.

With respect the USFS's first concern, except for a road that is part of a surface coal mining operation, neither OSM nor Utah has the authority to regulate the "development" or "maintenance" of a road located on USFS lands. Moreover, the Federal and State "public road" definition, rather than providing such

authority, actually provides FDR's with protection from the adverse effects of surface coal mining operations by prohibiting surface coal mining operations from being conducted within 100 feet of any FDR that constitutes of "public road." Finally, it should be noted that surface coal mining operations may be conducted on USFS lands only if the operation in question meets the stringent land conservation requirements of 30 CFR 761.11(b), which include the power of the Secretary of Agriculture, in certain circumstances, to prohibit such mining.

With respect to USFS's second concern, even if OSM desired to limit its regulatory power to only coal hauling activities, rather than to the transportation facility itself, it could not do so. OSM is required by section 515(b)(17) of SMCRA (30 U.S.C. 1265(b)(17)) to regulate the construction, maintenance, and reclamation of roads used in connection with a surface coal mining operation. Such regulation, should it extend to FDR's, is not a usurping of USFS's authority to control roads under its jurisdiction, but it rather OSM fulfilling its mandate, under SMCRA, to ensure that lands disturbed by surface coal mining operations are not permanently damaged.

Therefore, on the basis of the above discussion, OSM does not required Utah to amend its program in response to USFS's comments.

By letters dated October 29, 1992, and August 16, 1993, the Army Corps of Engineers responded that the proposed changes to the Utah program were satisfactory to that agency (administrative record Nos. UT–796 and UT–859).

By letter dated November 2, 1992, the Bureau of Land Management said that it had no concerns regarding the proposed amendment (administrative record No. UT–797).

By letter dated October 22, 1992, the U.S. Bureau of Mines (BOM) said that it had no comments in response to the proposed amendment (administrative record No. UT–793). By additional letters dated April 12 and August 10, 1993, BOM responded that because the revised definitions of the terms "affected area," "road," and "public road" do not affect the production of mineral resources other than coal, it had no comment (administrative record Nos. UT–831 and UT–854).

By letters dated October 23, 1992, and May 3 and August 12, 1993, the U.S. Fish and Wildlife Service (USFWS) said that it found nothing of significant concern and had no comments on the proposed amendment (administrative record Nos. UT–795, 838, and 856).

By letters dated January 14, May 12, and August 18, 1993, the Mine Safety and Health Administration (MSHA) stated that the proposed amendment did not conflict with current MSHA regulations (administrative record Nos. UT–818, UT–841, and UT–860).

By letters dated June 10 and August 11, 1993, the Environmental Protection Agency (EPA) responded that it had no comments on the proposed amendment (administrative record Nos. UT–844 and UT–855).

By letter dated April 14, 1993, the Soil Conservation Service (SCS) commented that, with respect to Utah's proposed definition of the term "road," "hydrologic and erosion control measures" need to be included as part of the road as described in the second sentence of the definition. SCS further stated that this addition is needed because such measures may be needed to mitigate the effects of drainage areas and watersheds of road construction and use (administrative record No. UT–832).

In response, OSM has found in finding No. III.C.2. that Utah's proposed definition of the term "road" is substantively identical to the Federal regulatory definition of "road" at 30 CFR 701.5. In addition, Utah's rules at Utah Admin. R. 645–301–752.200, .210, .220, and .250 set performance standards for primary and ancillary roads that include hydrologic measures that are no less effective than the corresponding Federal regulations at 30 CFR 816.150(b)(1), (3), and (5) and 817.150(b)(1), (3), and (5). These State rules read as follows:

752.200. Road Drainage. Roads will be located, designed, constructed, reconstructed, used, maintained, and reclaimed in according to R645–301–732.400, R645–301–742–400 and R645–301–762 and to achieve the following:

R645–301–752.210. Control or prevent erosion, siltation, and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

R645–301–752.220. Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

* * * * *

R645–301–752.250. Refrain from significantly altering the normal flow of water in streambeds or drainage channels.

Therefore, although Utah's proposed definition of "road" at Utah Admin. R. 645–100–200 does not include SCS's recommended term "hydrologic and erosion control measures," the aforementioned State rules do include performance standards that mitigate the effects on drainage areas and watersheds of road construction and use them in a manner no less effective than the corresponding Federal regulations. On this basis, OSM cannot require Utah to revise its program in response to SCS's comment.

C. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. By letters dated October 16, 1992, and March 31, 1993, OSM solicited comments from these offices (administrative record Nos. UT–791 and UT–828). Neither the SHPO nor the ACHP commented on the proposed amendment.

D. U.S. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the Administrator of EPA with respect to those aspects of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Clean Air Act, as amended, (42 U.S.C. 7401 *et seq.*). EPA gave its written concurrence with the proposed amendment by letter dated February 17, 1993 (administrative record No. UT–826).

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on September 17, 1992, and revised on March 24, 1993. As discussed in finding No. III.C.1., the Director approves Utah's proposed amendment to the term "affected area." As discussed in finding No. III.C.2., the Director approves Utah's proposed amendment to the term "road," accepts Utah's withdrawal of the supplemental policy statement, and removes the required program amendments codified at 30 CFR 944.16(n) (1) and (2). As discussed in finding No. III.C.3., the Director approves Utah's proposed amendment to the term "public road" and removes the required program amendment at 30 CFR 944.16(o). The Director is approving these proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the

required amendment section at 30 CFR 944.16 that, within 60 days of the publishing of this notice, Utah would have to either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR chapter VII and a timetable for enactment that is consistent with Utah's established administrative or legislative procedures.

The Federal regulations at 30 CFR part 944, which codify decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

A. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

B. 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.

C. 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 of 1969 (42 U.S.C. 4332(2)(C)).

D. 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.*).

E. 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 that 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 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 31, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (x) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(x) Revisions to Utah's definitions of "affected area," "road," and "public road" at Utah Admin. R. 645–100–200, as submitted to OSM on September 17, 1992, and as subsequently revised on March 24, 1993, as well as Utah's December 5, 1991, withdrawal of its supplemental policy statement, are approved effective April 7, 1994.

3. Section 944.16 is revised to read as follows:

§ 944.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Utah is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR chapter VII and a timetable for enactment that is consistent with Utah's established administrative or legislative procedures.

(a) [Reserved]

(b) [Reserved]

[FR Doc. 94–8320 Filed 4–6–94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 580

Haitian Transaction Regulations; Blocked Individuals of Haiti

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Treasury Department is amending appendix A to the Haitian Transactions Regulations to add as section I of appendix A the names of individuals whom the Director of the Office of Foreign Assets Control has determined are blocked individuals of Haiti, either because they are included within the definition of the "*de facto* regime in Haiti" as defined in Executive Order 12755, or because they meet criteria for blocking set forth in Executive Orders 12853 and 12872. Property of these individuals that is located in the United States or within the possession or control of U.S. persons, including their overseas branches, is blocked, and transactions with these persons are prohibited.

EFFECTIVE DATE: April 7, 1994.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, NW, Washington, DC 20220 (tel.: 202/622-2520). The full list of persons blocked pursuant to economic sanctions programs administered by the Office of Foreign Assets Control is available electronically on *The Federal Bulletin Board* (see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division (tel.: 202/622-2420), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign

Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

The Office of Foreign Assets Control ("FAC") is amending appendix A to the Haitian Transactions Regulations, 31 CFR part 580 (the "Regulations"), to add a list of blocked individuals of Haiti as new section I to appendix A. Section I identifies individuals whose assets are blocked pursuant to Executive Order 12755 of October 4, 1991, Executive Order 12853 of June 30, 1993, or Executive Order 12872 of October 18, 1993. It supplements the list of blocked entities in section II of appendix A.

On July 27, 1993, FAC published in the **Federal Register** (58 FR 40043) appendix A to Part 580, establishing a list of persons and entities whose assets were blocked, based upon a determination by the Director of FAC pursuant to § 580.305(a) of the Regulations that they were included within the definition of the "*de facto* regime in Haiti." Section I of appendix A identified individuals and section II identified entities of the *de facto* regime whose assets were blocked.

Effective August 31, 1993, section I of appendix A was revoked consistent with United Nations Security Council Resolution ("UNSCR") 841 calling for the suspension of certain sanctions against Haiti in light of the Governors Island Agreement. See 58 FR 46540 (September 2, 1993). The assets of individuals identified in section I were unblocked, while the assets of entities identified in section II were, and remain, blocked. On October 18, 1993, trade and other sanctions against Haiti were reimposed pursuant to Executive Order 12853, consistent with UNSCR Resolution 873. Reimposition of U.S. sanctions included the blocking of assets of certain classes of individuals.

This amendment incorporates in new section I to appendix A a list of individuals whose assets have been blocked subsequent to the reimposition of sanctions against Haiti. Included in section I are individuals who were identified in a November 1, 1993 notice in the **Federal Register** (58 FR 58480) as blocked individuals of Haiti, as well as individuals whose assets were later blocked. The persons identified in section I are included for one or more of the following reasons:

A. They are persons who seized power illegally from the democratically elected government of President Jean-Bertrand Aristide on September 30, 1991, or who, since October 4, 1991 (the effective date of Executive Order 12775), have acted or purported to act directly or indirectly on behalf of, or under the asserted authority of, such persons or of any agencies, instrumentalities, or entities purporting to act on behalf of the *de facto* regime in Haiti, or under the asserted authority thereof, or any extraconstitutional successor thereto;

B. They are Haitian nationals (as defined in Executive Order 12853) who have provided substantial financial or material contributions to the *de facto* regime in Haiti or done substantial business with the *de facto* regime in Haiti; or

C. They have (1) contributed to the obstruction of the implementation of UNSCR Resolution 841 and 873, the Governors Island Agreement of July 3, 1993, or the activities of the United Nations Mission in Haiti, (2) perpetuated or contributed to the violence in Haiti, or (3) materially or financially supported any of the activities described in items (1) or (2) of this paragraph.

The designations in this amendment are made by FAC pursuant to the exercises of authority in Executive Orders 12775, 12779, 12853 and 12872, the International Emergency Economic Powers Act, 50 U.S.C. 1701 through 1706, the United Nations Participation Act, 11 U.S.C. 287c, and the Regulations. These provisions block all property and interests in property of the blocked individuals that is located in the United States or within the possession or control of U.S. persons, including their overseas branches. U.S. persons are prohibited from engaging in transactions with these individuals unless the transactions are licensed in advance by FAC.

Payments and transfers of funds owed to blocked individuals may be made, pursuant to a specific license issued by FAC, into a blocked account held in the name of the blocked individual at a U.S. financial institution located in the United States.

This list is not all-inclusive and will be updated from time to time. One cannot assume that an individual is not a blocked person based solely on his or her non-inclusion in section I of appendix A. In particular, it should be noted that all members of the Haitian armed forces are deemed to be blocked individuals of Haiti, as they are deemed to constitute part of the *de facto* regime in Haiti within the meaning of §§ 580.303 and 580.305(a) of the Regulations. Accordingly, all assets in the United States or in the possession or control of U.S. persons of these individuals are blocked, and U.S. persons are prohibited from engaging in transactions with them unless licensed by FAC. Section II of appendix A, listing blocked entities of the *de facto* regime in Haiti, remains in full effect and force.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 580

Administrative practice and procedure, Banking, Blocking of assets, Exports, Finance, Haiti, Imports, Penalties, Reporting and recordkeeping requirements, Shipping, Specially designated nationals, Transfers of assets, Vessels.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as set forth below:

PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 is revised to read as follows:

Authority: 50 U.S.C. 1701–1706; 22 U.S.C. 287c; E.O. 12775, 3 CFR, 1991 Comp., p. 349; E.O. 12779, 3 CFR, 1991 Comp., p. 367; E.O. 12853, 58 FR 35843, July 2, 1993; E.O. 12872, 58 FR 54029, October 20, 1993.

2. Appendix A to part 580 is amended to revise the heading and the introductory note and to add a new section I to read as follows:

Appendix A to Part 580—Blocked Persons of Haiti

Note: Section I of appendix A lists the names of individuals whom the Director of the Office of Foreign Assets Control has determined are blocked individuals of Haiti, either because they are included within the definition of the "*de facto* regime in Haiti" as defined in Executive Order 12755, or because they meet criteria for blocking set forth in Executive Orders 12853 and 12872. Section II of appendix A identifies entities of the *de facto* regime in Haiti whose assets are blocked. Property of these individuals and entities that is located in the United States or within

the possession or control of U.S. persons, including their overseas branches, is blocked, and transactions with these individuals and entities are prohibited.

The information listed below is the most complete information now available to the Office of Foreign Assets Control. The absence of any particular person from appendix A is not to be construed as evidence that the person is not a part of, or owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the *de facto* regime in Haiti, or is not otherwise a blocked individual or entity of Haiti pursuant to Executive Orders 12755, 12799, 12853 and 12872.

I. Blocked Individuals of Haiti

Name/Rank	Organization	Identifying Information	Date of Birth
ACCLUCHE, Alberic L., Lieutenant	Haitian Armed Forces	Haiti	29 October 1944
ADOLPHE, Francois J., Lieutenant	Haitian Armed Forces	Haiti	7 April 1947
AIMABLE, Jacques Jean, Lieutenant	Haitian Armed Forces	Haiti	21 January 1942
ALCENAT, Jean-Dugas, Lieutenant	Haitian Armed Forces	Haiti	25 June 1940
ALCEUS, Raoul, Captain	Haitian Armed Forces	Haiti	15 April 1953
ALCIDE, Anthony, Major	Haitian Armed Forces	Haiti	15 September 1944
ALCY, Pierre-Antoine, Lieutenant	Haitian Armed Forces	Haiti	15 August 1940
ALEUS, Louisme, Lieutenant	Haitian Armed Forces	Haiti	8 May 1956
ALEXANDRE, Amos, Lieutenant	Haitian Armed Forces	Haiti	24 July 1946
ALEXANDRE, Carel Camille, Lieutenant	Haitian Armed Forces	Haiti	19 July 1963
ALEXANDRE, Dusner, Lieutenant	Haitian Armed Forces	Haiti	27 July 1960
ALEXANDRE, Jean Charlaime, Lieutenant	Haitian Armed Forces	Haiti	1 February 1945
ALEXANDRE, Johel, Lieutenant	Haitian Armed Forces	Haiti	28 March 1954
ALEXANDRE, Joseph Dieunor, Captain	Haitian Armed Forces	Haiti	23 April 1958
ALEXANDRE, Kebeau, Ensign	Haitian Armed Forces	Haiti	30 December 1952
ALEXANDRE, Paul Francois, Captain	Haitian Armed Forces	Haiti	27 October 1945
ALEXANDRE, Samuel, Captain	Haitian Armed Forces	Haiti	5 October 1955
ALEXIS, Dioget, Lieutenant	Haitian Armed Forces	Haiti	10 July 1959
ALEXIS, Jean Carlo, Captain	Haitian Armed Forces	Haiti	19 January 1958
ALEXIS, Joseph B., Lieutenant Colonel	Haitian Armed Forces	Haiti	16 January 1942
ALEXIS, Roland, Lieutenant	Haitian Armed Forces	Haiti	22 April 1961
ALFRED, Joseph Brice, Lieutenant	Haitian Armed Forces	Haiti	14 November 1946
ALMONOR, Herard, Lieutenant	Haitian Armed Forces	Haiti	12 August 1948
ALTIDOR, Garie, Captain	Haitian Armed Forces	Haiti	11 April 1958
ALTIDOR, Rodrigue, Lieutenant	Haitian Armed Forces	Haiti	30 November 1950
ALZUPHAR, Aldof, Major	Haitian Armed Forces	Haiti	16 December 1946
ALZUPHAR, Jean-Marie B., Lieutenant	Haitian Armed Forces	Haiti	21 November 1960
ANDOU, Adolphe, Captain	Haitian Armed Forces	Haiti	24 May 1953
ANDRE, Charles Altenor, Commander	Haitian Armed Forces	Les Cayes, Haiti	1 December 1953
ANDRE, Louis-Frito, Lieutenant	Haitian Armed Forces	Haiti	7 June 1948
ANDRE, Ruguins, Lieutenant	Haitian Armed Forces	Haiti	1 October 1964
ANDRE, Voltaire, Lieutenant	Haitian Armed Forces	Haiti	15 December 1950
ANDRESOL, Mario, Lieutenant	Haitian Armed Forces	Haiti	20 July 1960
ANTOINE, Jean Edouard M., Lieutenant	Haitian Armed Forces	Haiti	28 April 1940
ANTOINE, Jonas, Lieutenant	Haitian Armed Forces	Haiti	30 November 1942
ANTOINE, Raynald Fritz, Captain	Haitian Armed Forces	Haiti	24 September 1961
ASMATH, Luc Roger, Lieutenant	Haitian Armed Forces	Haiti	4 June 1953
ATOURISTE, Antoine, Colonel	Haitian Armed Forces	Delmas 31, Rue Verly 9, Port-au-Prince, Haiti; Passport No. 79-039396	3 July 1951
AUDATE, Frantz, Lieutenant	Haitian Armed Forces	Haiti	16 June 1968
AUGUSTIN, Anne Mario, Lieutenant	Haitian Armed Forces	Haiti	10 July 1961
AUGUSTIN, Edner, Captain	Haitian Armed Forces	Haiti	19 May 1949
AUGUSTIN, Henry Robert, Colonel	Haitian Armed Forces	Haiti	21 June 1951
AUGUSTIN, Michel, Lieutenant	Haitian Armed Forces	Haiti	4 June 1937
AVRIL, Buteau, Lieutenant	Haitian Armed Forces	Haiti	19 October 1955
BARTHELEMY, Joseph Luma, Lieutenant	Haitian Armed Forces	Haiti	14 January 1954
BARTHELUS, Joseph, Lieutenant	Haitian Armed Forces	Haiti	28 October 1948
BASTIEN, Baker, Lieutenant Colonel	Haitian Armed Forces	Haiti	31 May 1946
BASTIEN, Karl-Henry, Lieutenant	Haitian Armed Forces	Haiti	13 December 1958
BASTIEN, Ludwig, Lieutenant	Haitian Armed Forces	Haiti	14 June 1963
BASTIEN, Patrick Henri, Captain	Haitian Armed Forces	Haiti	26 April 1958
BAZARD, Louis Eric, Lieutenant	Haitian Armed Forces	Haiti	4 April 1937
BAZELAIS, Antoine, Major	Haitian Armed Forces	Haiti	20 February 1940
BAZILE, David, Major	Haitian Armed Forces	Haiti	4 August 1955
BAZILE, Franck, Lieutenant	Haitian Armed Forces	Haiti	16 December 1958
BAZILE, Serge, Lieutenant	Haitian Armed Forces	Haiti	15 April 1950
BEAUBIEN, Fontane, Major	Haitian Armed Forces	Haiti	20 August 1954
BEAUBRUN, Mondesir, Colonel	Haitian Armed Forces	Delmas 75, Port-au-Prince, Haiti	10 May 1949
BEAUBRUN, Noel Sylvatt, Captain	Haitian Armed Forces	Haiti	25 December 1938
BEAUDOUIN, Louis Jacques, Major	Haitian Armed Forces	Haiti	21 July 1948
BEAUGE, Hugo, Lieutenant	Haitian Armed Forces	Haiti	22 May 1961
BEAULIEU, Serge	*Radio Liberté*	Haiti; New York, NY, U.S.A; political commentator	
BELHOMME, Patrick, Lieutenant	Haitian Armed Forces	Haiti	4 May 1959
BELNEAU, Sylvio, Lieutenant	Haitian Armed Forces	Haiti	18 August 1938
BELZIR, Ecclesiaste, Lieutenant	Haitian Armed Forces	Haiti	19 February 1954

Name/Rank	Organization	Identifying Information	Date of Birth
BENECHE, Ery, Lieutenant	Haitian Armed Forces	Haiti	19 December 1949
BENOIT, Etienne, Lieutenant Colonel	Haitian Armed Forces	Haiti	13 January 1935
BERTRAND, Dezile, Major	Haitian Armed Forces	Haiti	31 March 1951
BERTRAND, Dominique, Lieutenant	Haitian Armed Forces	Haiti	14 April 1953
BIAMBY, Philippe, Brigadier General	Haitian Armed Forces	Haiti	21 September 1952
BIJOUX, Frantz, Lieutenant	Haitian Armed Forces	Haiti	20 May 1962
BLAISE, Jean-Baptiste P., Lieutenant	Haitian Armed Forces	Haiti	16 March 1964
BLANC, Andree G., Lieutenant	Haitian Armed Forces	Haiti	21 September 1956
BOISNORD, Lherisse, Lieutenant	Haitian Armed Forces	Haiti	3 February 1948
BOUCARD, Rosevald, Lieutenant	Haitian Armed Forces	Haiti	18 October 1960
BOUCHER, Edner, Major	Haitian Armed Forces	Haiti	24 March 1956
BOULIN, Marie-Carmelle, Captain	Haitian Armed Forces	Haiti	15 July 1955
BOURDEAU, Serge, Lieutenant Colonel	Haitian Armed Forces	Haiti	29 August 1945
BOYER, Christophe D., Lieutenant	Haitian Armed Forces	Haiti	19 September 1955
BRICE, Francois, Lieutenant	Haitian Armed Forces	Haiti	15 May 1953
BROSSARD, Harry Alix, Lieutenant	Haitian Armed Forces	Haiti	4 April 1950
BRUNEAU, Jean-Rotchild, Captain	Haitian Armed Forces	Haiti	5 June 1954
CADET, Emmanuel, Captain	Haitian Armed Forces	Haiti	5 February 1946
CALIXTE, Alix Calice, Lieutenant	Haitian Armed Forces	Haiti	25 August 1944
CALIXTE, Geriles, Captain	Haitian Armed Forces	Haiti	4 March 1955
CANTAVE, Jean-Rociny, Lieutenant	Haitian Armed Forces	Haiti	16 May 1938
CARRENARD, Philippe, Colonel	Haitian Armed Forces	Haiti	14 May 1949
CAZEAU, Jean-Lucien, Lieutenant Colonel	Haitian Armed Forces	Haiti	4 January 1951
CEDRAS, Raoul, Lieutenant General	Haitian Armed Forces	Haiti	9 July 1949
CELESTIN, Yves, Lieutenant Commander	Haitian Armed Forces	Haiti	19 October 1954
CELIN, Franck, Lieutenant Colonel	Haitian Armed Forces	Haiti	10 September 1950
CENAFILS, Castera, Captain	Haitian Armed Forces	Haiti	22 October 1953
CENEAC, Rony, Lieutenant	Haitian Armed Forces	Haiti	18 January 1960
CESAR, Abelar, Lieutenant	Haitian Armed Forces	Haiti	8 January 1956
CESAR, Jean-Kermichel, Lieutenant	Haitian Armed Forces	Haiti	9 September 1943
CHAM, Julio, Lieutenant	Haitian Armed Forces	Haiti	5 November 1947
CHAMBLAIN, Louis Judel	Revolutionary Front for Advancement and Progress of Haiti (FRAPH)	Haiti	
CHAMPAGNE, Jean Yves Hancy, Captain	Haitian Armed Forces	Haiti	6 February 1960
CHAMPAGNE, Leisner, Lieutenant	Haitian Armed Forces	Haiti	14 July 1959
CHAPUSETTE, Marie Carline, Lieutenant	Haitian Armed Forces	Haiti	24 January 1960
CHARLES, Astrel, Lieutenant	Haitian Armed Forces	Haiti	25 December 1950
CHARLES, Benoit, Lieutenant	Haitian Armed Forces	Haiti	12 May 1959
CHARLES, Faustin, Lieutenant	Haitian Armed Forces	Haiti	20 August 1951
CHARLES, Jean Clement, Lieutenant	Haitian Armed Forces	Haiti	8 September 1948
CHARLES, Josel, Major	Haitian Armed Forces	Haiti	23 February 1951
CHARLES, Joseph, Lieutenant	Haitian Armed Forces	Haiti	6 March 1938
CHARLES, Martin Laerte, Lieutenant	Haitian Armed Forces	Haiti	27 July 1957
CHARLES, Mercidieu, Lieutenant	Haitian Armed Forces	Haiti	5 August 1953
CHARLES, Pierre Gerald, Captain	Haitian Armed Forces	Haiti	9 July 1959
CHARLES, Pierre-Hemeric, Captain	Haitian Armed Forces	Haiti	6 July 1957
CHARLES, Soifaite, Lieutenant	Haitian Armed Forces	Haiti	21 December 1936
CHARLES, Webert, Lieutenant	Haitian Armed Forces	Haiti	15 April 1957
CHARLES-PIERRE, Jean-Marie, Lieutenant	Haitian Armed Forces	Haiti	8 August 1959
CHARLES-PIERRE, Lima J., Captain	Haitian Armed Forces	Haiti	2 December 1955
CHARLES-PIERRE, Sandry F.M., Captain	Haitian Armed Forces	Haiti	2 June 1961
CHARLEUS, Joseph Rivaud, Lieutenant	Haitian Armed Forces	Haiti	18 January 1940
CHARLIER, Antony, Captain	Haitian Armed Forces	Haiti	27 October 1958
CHARLOTIN, Fritz, Lieutenant	Haitian Armed Forces	Haiti	15 December 1953
CHATELIN, Lucien A., Captain	Haitian Armed Forces	Haiti	6 June 1941
CHERENEFANT, Tony, Lieutenant	Haitian Armed Forces	Haiti	8 August 1937
CHERFILS, Serge, Lieutenant	Haitian Armed Forces	Haiti	10 March 1947
CHERISKA, Eric, Lieutenant	Haitian Armed Forces	Haiti	16 September 1962
CHERY, Fritzner, Lieutenant	Haitian Armed Forces	Haiti	11 October 1960
CHERY, Georges Fils, Lieutenant	Haitian Armed Forces	Haiti	30 May 1951
CHERY, Pierre-Andre, Lieutenant	Haitian Armed Forces	Haiti	9 July 1959
CHERY, Victor Louis, Captain	Haitian Armed Forces	Haiti	24 December 1938
CINEAS, Charles R.E., Major	Haitian Armed Forces	Haiti	24 May 1951
CINEAS, Victor, Lieutenant Colonel	Haitian Armed Forces	Haiti	14 October 1942
CINEUS, Auguste Ulrick, Lieutenant	Haitian Armed Forces	Haiti	21 February 1962
CINTELLUS, Antoine A.H., Lieutenant	Haitian Armed Forces	Haiti	14 October 1959
CLEMENT, Antony, Captain	Haitian Armed Forces	Haiti	7 May 1954
CLEMENT, Jacques, Lieutenant	Haitian Armed Forces	Haiti	27 January 1959
CLERJEUNE, Leopold, Colonel	Haitian Armed Forces	Delmas 31, Rue E. Laforest, Port-au-Prince, Haiti; Passport No. 90678797	24 August 1950
CLERMONT, Jean-Roger, Captain	Haitian Armed Forces	Haiti	24 October 1938
COFFY, Gesner, Lieutenant	Haitian Armed Forces	Haiti	20 August 1955

Name/Rank	Organization	Identifying Information	Date of Birth
CONSTANT, Emmanuel "Toto"		Haiti	27 December 1956
CORENTIN, Willio, Lieutenant	Haitian Armed Forces	Haiti	20 February 1953
CORIDON, Clausel, Lieutenant	Haitian Armed Forces	Haiti	29 September 1959
COUTARD, Marie E.C., Captain	Haitian Armed Forces	Haiti	19 November 1954
CREVECOEUR, Rodrigue, Lieutenant Colonel	Haitian Armed Forces	Haiti	10 February 1955
CYPRIEN, Jean Thomas, Lieutenant Colonel	Haitian Armed Forces	Haiti	24 April 1958
CYRILLE, Denis, Lieutenant Colonel	Haitian Armed Forces	Haiti	18 November 1944
DAGRIN, Pleno, Lieutenant	Haitian Armed Forces	Haiti	12 August 1946
DEBROSSE, Neptune M., Captain	Haitian Armed Forces	Haiti	21 May 1944
DEEB, Joel		Haiti; U.S.A	28 June 1954
DEGRAFF, Jean Ernst, Lieutenant	Haitian Armed Forces	Haiti	24 November 1943
DELAUNAY, Joseph Gracien, Colonel	Haitian Armed Forces	Haiti	21 January 1949
DELILE, Jehova, Lieutenant	Haitian Armed Forces	Haiti	14 July 1948
DELTOR, Pierre Camil, Lieutenant	Haitian Armed Forces	Haiti	6 February 1961
DELVA, Reginald, Lieutenant	Haitian Armed Forces	Haiti	31 August 1967
DENIS, Jacques, Major	Haitian Armed Forces	Haiti	9 March 1955
DERVIL, Elie-Franc, Lieutenant	Haitian Armed Forces	Haiti	10 September 1955
DERVILUS, Andre Labanet, Lieutenant	Haitian Armed Forces	Haiti	28 December 1940
DESAMOURS, Antoinius, Lieutenant	Haitian Armed Forces	Haiti	16 October 1948
DESARMES, Louis, Lieutenant	Haitian Armed Forces	Haiti	2 May 1938
DESIR, Roland, Captain	Haitian Armed Forces	Haiti	24 November 1955
DESPLANTES, Serge, Major	Haitian Armed Forces	Haiti	18 February 1955
DESROSE, Jean-Philippe, Lieutenant	Haitian Armed Forces	Haiti	7 January 1949
DESROSIERS, Eddy, Lieutenant	Haitian Armed Forces	Haiti	3 November 1961
DESROSIERS, Jean-Guy, Lieutenant	Haitian Armed Forces	Haiti	4 March 1946
DESROSIERS, Joseph Hubert, Lieutenant	Haitian Armed Forces	Haiti	12 November 1940
DESSANT, Joseph Franck, Lieutenant	Haitian Armed Forces	Haiti	7 June 1955
DESSIN, Jean Baptiste C., Captain	Haitian Armed Forces	Haiti	15 January 1944
DEUS, Damas, Lieutenant	Haitian Armed Forces	Haiti	1 August 1939
DEVILMA, Joseph M., Lieutenant Colonel	Haitian Armed Forces	Haiti	4 December 1948
DIEUDONNE, Brutus M., Colonel	Haitian Armed Forces	Haiti	3 December 1938
DIEUDONNE, Louicin, Lieutenant	Haitian Armed Forces	Haiti	25 September 1961
DIMANCHE, Jean-Robert, Lieutenant	Haitian Armed Forces	Haiti	4 August 1945
DOLCINE, Jean-Marty, Captain	Haitian Armed Forces	Haiti	26 October 1939
DOMINIQUE, Jean Claude, Lieutenant	Haitian Armed Forces	Haiti	2 September 1951
DOMINIQUE, Ralph, Lieutenant	Haitian Armed Forces	Haiti	11 February 1961
DORELIEN, Carl, Colonel	Haitian Armed Forces	Haiti; Passport No. 82-57899	24 January 1949
DORGELUS, Ludovic, Lieutenant	Haitian Armed Forces	Haiti	7 September 1940
DORVAL, Ilertant, Lieutenant	Haitian Armed Forces	Haiti	4 July 1943
DORVAL, Paul, Major	Haitian Armed Forces	Haiti	8 November 1949
DORVIL, Roland, Lieutenant	Haitian Armed Forces	Haiti	20 October 1953
DORVILIER, Jean Christian, Lieutenant	Haitian Armed Forces	Haiti	9 September 1939
DORZIN, Abner, Ensign	Haitian Armed Forces	Haiti	7 August 1950
DOUBY, Frantz, Colonel	Haitian Armed Forces	Rue Cheriez 9, Rue 4 No. 8, Port-au-Prince, Haiti	19 January 1948
DOUILLON, Lamartine, Lieutenant Colonel	Haitian Armed Forces	Haiti	22 July 1948
DOURA, Stagne, Captain	Haitian Armed Forces	Haiti	18 January 1958
DUBIC, Joseph Raoul, Lieutenant	Haitian Armed Forces	Haiti	8 February 1941
DUBUCHE, Berrier, Captain	Haitian Armed Forces	Haiti	18 May 1945
DUCHEMIN, Guy, Colonel	Haitian Armed Forces	Haiti	29 September 1931
DUFRESNE, Jean Roland, Major	Haitian Armed Forces	Haiti	11 June 1956
DUMAS, Joseph Laurent, Major	Haitian Armed Forces	Haiti	9 July 1947
DUMERGEANT, Gilius J., Captain	Haitian Armed Forces	Haiti	17 January 1941
DUMORIN, Ls. Maoari, Lieutenant	Haitian Armed Forces	Haiti	25 January 1948
DUPERVAL, Jean-Claude, Major General	Haitian Armed Forces	Haiti	19 February 1947
DUPOUX, Serge, Major	Haitian Armed Forces	Haiti	22 January 1956
DUVERNE, Jean Emmanuel, Major	Haitian Armed Forces	Haiti	22 November 1951
DUVERSEAU, Jean-Robert, Lieutenant	Haitian Armed Forces	Haiti	27 May 1954
EDOUARD, Charles, Lieutenant	Haitian Armed Forces	Haiti	12 January 1946
EDOUARD, Eddy, Lieutenant	Haitian Armed Forces	Haiti	19 November 1962
EDOUARZIN, Jean Maurice, Captain	Haitian Armed Forces	Haiti	25 October 1944
ELIE, Jean-Nesly, Lieutenant	Haitian Armed Forces	Haiti	2 December 1960
ELYSEE, Antoine Fenelon, Lieutenant	Haitian Armed Forces	Haiti	13 June 1936
EMILE, Jean Abner, Captain	Haitian Armed Forces	Haiti	29 January 1956
EMILE, Saint-Louis, Lieutenant	Haitian Armed Forces	Haiti	1 July 1940
EMILIEN, Michel, Lieutenant	Haitian Armed Forces	Haiti	12 June 1939
EMMANUEL, Exaus, Lieutenant	Haitian Armed Forces	Haiti	5 January 1940
ESTIMABLE, Sedeine, Lieutenant	Haitian Armed Forces	Haiti	7 March 1949
ETIENNE, Ariste Harry, Lieutenant	Haitian Armed Forces	Haiti	27 October 1958
ETIENNE, Jean-Mary, Major	Haitian Armed Forces	Haiti	21 September 1952
ETIENNE, Joasilien, Lieutenant	Haitian Armed Forces	Haiti	10 July 1954
ETIENNE, Lord Warner, Major	Haitian Armed Forces	Haiti	22 March 1952
ETIENNE, Renan, Lieutenant	Haitian Armed Forces	Haiti	17 August 1964

Name/Rank	Organization	Identifying Information	Date of Birth
EUGENE, Antoine, Lieutenant	Haitian Armed Forces	Haiti	21 July 1942
EUSTACHE, Wilson, Colonel	Haitian Armed Forces	Haiti	20 November 1942
EXCELLENT, Bertrand Ronald, Lieutenant	Haitian Armed Forces	Haiti	24 May 1961
EXCEUS, Rock, Lieutenant	Haitian Armed Forces	Haiti	16 August 1961
FAIETON, Dieudonne, Lieutenant	Haitian Armed Forces	Haiti	31 December 1953
FELIX, Jean-Daniel, Lieutenant	Haitian Armed Forces	Haiti	13 May 1959
FELIX, Jean-Rabel, Lieutenant	Haitian Armed Forces	Haiti	15 February 1957
FETIERE, Edmond, Captain	Haitian Armed Forces	Haiti	9 March 1962
FIDELE, Jean-Luckner, Lieutenant	Haitian Armed Forces	Haiti	5 August 1960
FILS-AIME, Gerard, Lieutenant	Haitian Armed Forces	Haiti	2 October 1944
FILS-AIME, Herve, Lieutenant	Haitian Armed Forces	Haiti	10 January 1963
FILTIDOR, Louis Jean, Lieutenant	Haitian Armed Forces	Haiti	27 February 1946
FLEURY, Antoine, Lieutenant	Haitian Armed Forces	Haiti	27 July 1963
FLORESTANT, Joseph Lemoine, Colonel	Haitian Armed Forces	Haiti	18 November 1949
FLOREXIL, Edwin, Major	Haitian Armed Forces	Haiti	4 February 1955
FORCANT, Carol, Captain	Haitian Armed Forces	Haiti	26 January 1939
FRANCE, Pierre-Noel, Lieutenant	Haitian Armed Forces	Haiti	18 December 1952
FRANÇOIS, Evans Macfarland		Haiti; Dominican Republic; Passport No. 466-91; Diplomatic Passport No. 92-012658	6 May 1952
FRANÇOIS, Jean Hervay, Lieutenant	Haitian Armed Forces	Haiti	9 November 1947
FRANÇOIS, Jean-Pierre, Major	Haitian Armed Forces	Haiti	18 March 1951
FRANÇOIS, Jerome, Lieutenant	Haitian Armed Forces	Haiti	4 April 1944
FRANÇOIS, Joseph Michel, Lieutenant Colonel	Haitian Armed Forces	Route Aeroport, Rue Bergera, Imp. Beauchamp No. 2, Port-au-Prince, Haiti; Passport No. 81151112	8 May 1957
FRANÇOIS, Paul Audmar, Lieutenant	Haitian Armed Forces	Haiti	20 August 1962
GABRIEL, Jean Robert, Colonel	Haitian Armed Forces	Haiti	11 August 1953 or 1958
GARCON, Alterme Maurice, Lieutenant	Haitian Armed Forces	Haiti	26 July 1945
GASSAN, Jean Necker, Lieutenant Colonel	Haitian Armed Forces	Haiti	12 February 1942
GAUBERT, Carlyle, Lieutenant	Haitian Armed Forces	Haiti	9 March 1959
GAY, Pierre Gerald, Ensign	Haitian Armed Forces	Haiti	23 December 1963
GEDEON, Jean Evans, Lieutenant-Colonel	Haitian Armed Forces	Haiti	11 April 1944
GEORGEON, Joseph Horres, Lieutenant	Haitian Armed Forces	Haiti	14 January 1951
GEORGES, Francois Arnold, Lieutenant	Haitian Armed Forces	Haiti	4 September 1942
GEORGES, Reynald		Haiti; U.S.A	16 October 1946
GERMAIN, Anglade, Lieutenant	Haitian Armed Forces	Haiti	13 July 1939
GERMAIN, Destorel, Lieutenant	Haitian Armed Forces	Haiti	4 September 1951
GERMAIN, Henri P., Lieutenant-Colonel	Haitian Armed Forces	Haiti	6 September 1951
GERMAIN, Petiel, Lieutenant	Haitian Armed Forces	Haiti	9 January 1938
GILLES, Joseph Harry, Lieutenant	Haitian Armed Forces	Haiti	22 January 1962
GIRAUD, Michel P. L., Captain	Haitian Armed Forces	Haiti	14 December 1940
GOBY, Jean Brunel, Colonel	Haitian Armed Forces	Haiti	28 September 1951
GONEL, Bertrand, Lieutenant	Haitian Armed Forces	Haiti	10 April 1961
GRACIA, Diderot, Captain	Haitian Armed Forces	Haiti	13 March 1954
GREFFIN, Jean Gary, Captain	Haitian Armed Forces	Haiti	6 December 1958
GROSHOMME, Belony, Colonel	Haitian Armed Forces	Haiti; Passport No. 81-161845	12 February 1948
GUERRIER, Derby, Lieutenant-Colonel	Haitian Armed Forces	Drouillard Sarthe Village, Port-au-Prince, Haiti; Passport No. 85-271932	14 October 1949
GUERRIER, Jean Roger, Major	Haitian Armed Forces	Haiti	20 April 1957
GUILLAUME, Flobert, Lieutenant	Haitian Armed Forces	Haiti	28 June 1961
GUILLAUMETTE, Antoine, Lieutenant	Haitian Armed Forces	Haiti	8 November 1951
GUSTAVE, Christian, Lieutenant	Haitian Armed Forces	Haiti	3 February 1943
HAGE, Mona Isable, Captain	Haitian Armed Forces	Haiti	29 May 1952
HENRY, Jean-Mary Fritz, Major	Haitian Armed Forces	Haiti	8 June 1951
HENRY, Vemarie, Lieutenant	Haitian Armed Forces	Haiti	10 April 1955
HENRYS, Antoine Gracia, Lieutenant	Haitian Armed Forces	Haiti	20 January 1944
HERMANN, Michel-Ange, Lieutenant Colonel	Haitian Armed Forces	Haiti	3 October 1952
HEROLD, Andre, Lieutenant	Haitian Armed Forces	Haiti	23 March 1959
HILAIRE, Max, Captain	Haitian Armed Forces	Haiti	3 July 1960
HILMAIN, Adrien D., Lieutenant	Haitian Armed Forces	Haiti	7 February 1945
IRA, Joseph Miracle, Major	Haitian Armed Forces	Haiti	14 March 1951
JACOB, Joseph Pierre, Colonel	Haitian Armed Forces	Haiti	22 April 1940
JACOT, Eristhene, Captain	Haitian Armed Forces	Haiti	22 June 1951
JACQUES, Antoine, Lieutenant	Haitian Armed Forces	Haiti	24 November 1950
JACQUES, Georges I., Lieutenant	Haitian Armed Forces	Haiti	28 December 1940
JACQUES, Herard-Leblanc, Lieutenant	Haitian Armed Forces	Haiti	16 October 1944
JACQUES, Joseph Yvon, Lieutenant	Haitian Armed Forces	Haiti	8 March 1947
JACQUES, Josue, Lieutenant	Haitian Armed Forces	Haiti	17 April 1945
JACQUES-LOUIS, Max, Lieutenant	Haitian Armed Forces	Haiti	4 June 1964
JACQUET, Henrius, Captain	Haitian Armed Forces	Haiti	18 September 1951
JACQUITTE, Jean Wener, Lieutenant	Haitian Armed Forces	Haiti	17 March 1967
JANVIER, Jean-Jacques, Lieutenant	Haitian Armed Forces	Haiti	18 March 1935

Name/Rank	Organization	Identifying Information	Date of Birth
JASMIN, Jacques-Guy, Lieutenant	Haitian Armed Forces	Haiti	22 November 1945
JEAN, Hasler A., Lieutenant	Haitian Armed Forces	Haiti	15 October 1950
JEAN, Jonas, Colonel	Haitian Armed Forces	Haiti	12 September 1951
JEAN, Phito, Captain	Haitian Armed Forces	Haiti	2 April 1954
JEAN, Rigaud, Lieutenant	Haitian Armed Forces	Haiti	19 November 1942
JEAN-BAPTISTE, Charles Eusebe, Colonel	Haitian Armed Forces	Haiti	19 July 1942
JEAN-BAPTISTE, Elysee, Lieutenant	Haitian Armed Forces	Haiti	17 September 1946
JEAN-BAPTISTE, James, Captain	Haitian Armed Forces	Haiti	30 July 1959
JEAN-BAPTISTE, Jean Occelus, Lieutenant	Haitian Armed Forces	Haiti	16 April 1944
JEAN-BAPTISTE, Lyonel, Captain	Haitian Armed Forces	Haiti	1 March 1947
JEAN-BAPTISTE, Michel-Ange, Lieutenant	Haitian Armed Forces	Haiti	5 June 1960
JEAN-BAPTISTE, Rodiny, Captain	Haitian Armed Forces	Haiti	5 October 1959
JEAN-BART, Thomas Kerns, Captain	Haitian Armed Forces	Haiti	7 March 1959
JEAN-BRICE, Ralph Stanley, Lieutenant	Haitian Armed Forces	Haiti	25 March 1968
JEAN-CHARLES, Frantz S., Captain	Haitian Armed Forces	Haiti	17 December 1960
JEAN-FRANÇOIS, Frantz, Lieutenant	Haitian Armed Forces	Haiti	23 June 1960
JEAN-FRANÇOIS, Serge, Lieutenant	Haitian Armed Forces	Haiti	15 February 1950
JEAN-GILLES, Andre M., Colonel	Haitian Armed Forces	Haiti	19 April 1931
JEAN-JACQUES, Yvon, Captain	Haitian Armed Forces	Haiti	25 November 1958
JEAN-PAUL, Innocent J.-C, Lieutenant	Haitian Armed Forces	Haiti	24 April 1949
JEAN-PHILIPPE, Joseph Nevert, Lieutenant	Haitian Armed Forces	Haiti	3 October 1950
JEAN-PIERRE, Gannel, Lieutenant	Haitian Armed Forces	Haiti	13 May 1961
JEAN-PIERRE, Mignard, Lieutenant	Haitian Armed Forces	Haiti	13 October 1968
JEANNITE, Alfred, Lieutenant	Haitian Armed Forces	Haiti	11 July 1946
JEROME, Auguste Raphael, Major	Haitian Armed Forces	Haiti	8 September 1949
JEUDY, Jean-Claude, Lieutenant Colonel	Haitian Armed Forces	Haiti	28 March 1944
JEVOUSAIME, Max, Lieutenant	Haitian Armed Forces	Haiti	26 May 1946
JOACHIM, Marie Gina, Lieutenant	Haitian Armed Forces	Haiti	30 September 1960
JOANIS, Jackson, Captain	Haitian Armed Forces	Ruelle Alix Roy, Imp. Telemaque No. 22, Port-au-Prince, Haiti	25 October 1958
JOAZILE, Jean-Rodolphe, Lieutenant	Haitian Armed Forces	Haiti	15 September 1962
JOCELYN, Fritz, Colonel	Haitian Armed Forces	Haiti	12 November 1941
JOLICOEUR, Olius, Lieutenant	Haitian Armed Forces	Haiti	18 March 1949
JONASSAINT, Renold, Lieutenant	Haitian Armed Forces	Haiti	6 February 1953
JONQUIS, Antoine, Lieutenant	Haitian Armed Forces	Haiti	19 June 1946
JOSAPHAT, Andre Claudel, Lieutenant Colonel	Haitian Armed Forces	Haiti	17 August 1956
JOSE, Jean-Eugene, Colonel	Haitian Armed Forces	Haiti	10 June 1952
JOSEPH, Antoine Th., Lieutenant	Haitian Armed Forces	Haiti	2 July 1945
JOSEPH, Claude, Captain	Haitian Armed Forces	Haiti	12 August 1956
JOSEPH, Claudy, Lieutenant	Haitian Armed Forces	Haiti	14 September 1961
JOSEPH, Demes G., Lieutenant	Haitian Armed Forces	Haiti	4 April 1943
JOSEPH, Jean Ronel, Captain	Haitian Armed Forces	Haiti	15 March 1954
JOSEPH, Jean Ulrique, Lieutenant	Haitian Armed Forces	Haiti	23 September 1937
JOSEPH, Jethro, Lieutenant	Haitian Armed Forces	Haiti	17 April 1946
JOSEPH, Louisiane, Lieutenant	Haitian Armed Forces	Haiti	26 May 1956
JOSEPH, Milarion Odamus, Lieutenant	Haitian Armed Forces	Haiti	29 April 1941
JOSEPH, Raphael Attilio, Lieutenant	Haitian Armed Forces	Haiti	20 May 1948
JOSEPH, Ricot, Major	Haitian Armed Forces	Haiti	30 October 1950
JOSEPH, St-Fort, Lieutenant	Haitian Armed Forces	Haiti	3 August 1943
JULES, Jean Ader, Lieutenant	Haitian Armed Forces	Haiti	15 October 1961
JULISSE, Rosemond, Lieutenant	Haitian Armed Forces	Haiti	7 March 1952
JUSTAFORT, Coulange, Lieutenant Colonel	Haitian Armed Forces	Haiti	18 April 1950
JUSTAFORT, Serge, Major	Haitian Armed Forces	Haiti	12 June 1955
KERCY, Garry Michel, Captain	Haitian Armed Forces	Haiti	21 September 1960
KERNIZAN, Marc, Major	Haitian Armed Forces	Delmas 45, No. 8, Port-au-Prince, Haiti	5 September 1955
KERSAINT, Esnaider, Major	Haitian Armed Forces	Haiti	2 January 1953
LAFOND, Jean-Dorcin, Lieutenant	Haitian Armed Forces	Haiti	15 June 1945
LAMANDE, Rene Raymond, Lieutenant	Haitian Armed Forces	Haiti	20 May 1942
LAMOUR, Phalange, Lieutenant	Haitian Armed Forces	Haiti	18 November 1946
LAROCHELLE, Gerald, Captain	Haitian Armed Forces	Haiti	4 April 1958
LAROQUE, Serge, Lieutenant	Haitian Armed Forces	Haiti	17 December 1943
LASSEGUE, Pierre Philippe	National Port Authority of Haiti	Haiti; U.S.A; port captain	
LATORTUE, Youri, Lieutenant	Haitian Armed Forces	Haiti	13 November 1967
LAURORE, Appolos, Colonel	Haitian Armed Forces	Haiti	11 March 1954
LAZARRE, Schubert, Lieutenant	Haitian Armed Forces	Haiti	18 February 1950
LEANDRE, Edrick, Captain	Haitian Armed Forces	Haiti	29 September 1952
LEMITHE, Felix, Lieutenant Colonel	Haitian Armed Forces	Haiti	30 April 1943
LENESCAT, Joseph Charlot, Lieutenant	Haitian Armed Forces	Haiti	10 June 1949
LEONIDAS, Bernardo R., Lieutenant-Colonel	Haitian Armed Forces	Rue Oscar No. 23, Port-au-Prince, Haiti	28 February 1942
LESSAGE, Jodel, Colonel	Haitian Armed Forces	Haiti	19 February 1954
LEVASSEUR, Iliovert, Lieutenant	Haitian Armed Forces	Haiti	31 December 1954
LOISEAU, Joel, Major	Haitian Armed Forces	Haiti	11 November 1954

Name/Rank	Organization	Identifying Information	Date of Birth
LOUIS, Cassinir, Major	Haitian Armed Forces	Haiti	26 July 1952
LOUIS, Dieuphene, Lieutenant	Haitian Armed Forces	Haiti	1 February 1957
LOUIS, Edy, Colonel	Haitian Armed Forces	Haiti	21 June 1951
LOUIS, Gerard E., Jr., Lieutenant	Haitian Armed Forces	Haiti	5 December 1964
LOUIS, Jean Sagesse, Lieutenant	Haitian Armed Forces	Haiti	27 August 1946
LOUIS, Marc Albert, Major	Haitian Armed Forces	Haiti	26 May 1952
LOUIS, Max-Gabriel, Lieutenant	Haitian Armed Forces	Haiti	6 March 1964
LOUIS, Michel, Colonel	Haitian Armed Forces	Haiti	28 September 1949
LOUIS-JACQUES, Richelet S., Major	Haitian Armed Forces	Haiti	16 November 1950
LOUISY, Franck, Lieutenant	Haitian Armed Forces	Haiti	7 April 1951
LUBIN, Emmanuel, Lieutenant	Haitian Armed Forces	Haiti	25 December 1944
LUBIN, Ernst J. M., Major	Haitian Armed Forces	Haiti	1 January 1955
LUMAS, Jean Justin, Lieutenant	Haitian Armed Forces	Haiti	29 September 1943
MAHAUTIERE, Pierre Charles, Lieutenant	Haitian Armed Forces	Haiti	31 August 1944
MARCEL, Fritz Gerald, Lieutenant	Haitian Armed Forces	Haiti	12 August 1964
MARCELIN, Eddy, Captain	Haitian Armed Forces	Haiti	20 May 1958
MARIUS, Hyppolite, Lieutenant	Haitian Armed Forces	Haiti	20 March 1957
MARIUS, Mireille, Lieutenant	Haitian Armed Forces	Haiti	5 May 1962
MARS, Briere, Captain	Haitian Armed Forces	Haiti	30 November 1954
MASSENA, Somner, Captain	Haitian Armed Forces	Haiti	7 June 1947
MASSENART, Boniface E., Lieutenant	Haitian Armed Forces	Haiti	5 June 1957
MATHURIN, Frerot, Lieutenant Colonel	Haitian Armed Forces	Haiti	26 October 1950
MAURICE, Joel, Major	Haitian Armed Forces	Haiti	10 December 1953
MAURICE, Joseph Francois, Lieutenant	Haitian Armed Forces	Haiti	8 March 1946
MAXIME, Jean Miguelite, Lieutenant	Haitian Armed Forces	Haiti	28 October 1960
MAYARD, Henry (Henri) Max, Brigadier General	Haitian Armed Forces	Haiti	7 February 1947
MEDACIER, Appolin, Major	Haitian Armed Forces	Haiti	4 October 1951
MEHU, Irving, Lieutenant Colonel	Haitian Armed Forces	Haiti	9 June 1954
MENARD, Jean-Emmanuel, Captain	Haitian Armed Forces	Haiti	26 April 1944
MENELAS, Jean Gael, Lieutenant	Haitian Armed Forces	Haiti	25 June 1960
MERILUS, Exantus, Lieutenant	Haitian Armed Forces	Haiti	15 February 1949
METELLUS, Marc Antoine, Lieutenant Colonel	Haitian Armed Forces	Haiti	18 November 1952
MICHAUD, Eugene Henry, Lieutenant	Haitian Armed Forces	Haiti	4 November 1937
MICHEL, Fils, Lieutenant	Haitian Armed Forces	Haiti	31 May 1952
MICHEL, Francis, Lieutenant	Haitian Armed Forces	Haiti	25 December 1952
MICHEL, Fritz, Lieutenant	Haitian Armed Forces	Haiti	23 November 1960
MICHEL, Jean-Fritz, Lieutenant	Haitian Armed Forces	Haiti	9 October 1937
MICHEL, Joseph, Captain	Haitian Armed Forces	Haiti	15 October 1957
MICHEL, Stanislas A., Lieutenant	Haitian Armed Forces	Haiti	13 November 1940
MINGOT, Marc, Lieutenant	Haitian Armed Forces	Haiti	17 October 1939
MINISTE, Yves Plaisimond, Lieutenant	Haitian Armed Forces	Haiti	15 August 1956
MITTON, Jacky, Captain	Haitian Armed Forces	Haiti	2 November 1957
MOMBES, Tessier, Lieutenant	Haitian Armed Forces	Haiti	22 January 1956
MOMPOINT, Fred Renaud, Lieutenant	Haitian Armed Forces	Haiti	7 October 1967
MOMPOINT, Herntz, Captain	Haitian Armed Forces	Haiti	25 May 1959
MONDELUS, Gilbert, Lieutenant	Haitian Armed Forces	Haiti	19 November 1953
MONFORT, Jean-Mathild, Lieutenant	Haitian Armed Forces	Haiti	24 November 1946
MONTHERVIL, Josue, Lieutenant	Haitian Armed Forces	Haiti	5 March 1959
MONUMA, Pradel J., Major	Haitian Armed Forces	Haiti	17 April 1950
MUSSET, Odius, Lieutenant	Haitian Armed Forces	Haiti	4 February 1950
NARCISSE, Margareth I., Lieutenant	Haitian Armed Forces	Haiti	3 March 1962
NASSAR, Marie Elva S., Lieutenant	Haitian Armed Forces	Haiti	10 October 1959
NELSON, Jean Thomas, Captain	Haitian Armed Forces	Haiti	1 June 1960
NEPTUNE, Pierre E.C., Captain	Haitian Armed Forces	Haiti	25 May 1958
NICOLAS, Marie Greta, Lieutenant	Haitian Armed Forces	Haiti	27 December 1949
NOEL, Pierre Edriss, Lieutenant	Haitian Armed Forces	Haiti	22 March 1960
OCCENAD, Jean-Claude, Lieutenant Colonel	Haitian Armed Forces	Haiti	2 October 1955
OCCIL, Jean-Raymond, Lieutenant	Haitian Armed Forces	Haiti	23 May 1963
OLIVIER, Jean Wodchil, Lieutenant	Haitian Armed Forces	Haiti	16 August 1948
ORMILICE, Antoine O.P., Lieutenant	Haitian Armed Forces	Haiti	13 July 1942
OVIL, Michel Jerome, Lieutenant	Haitian Armed Forces	Haiti	29 September 1960
OVILMAR, Sagesse, Lieutenant	Haitian Armed Forces	Haiti	20 February 1963
PAUL, Max		Bourdon, Impasse Iginac No. 7, Haiti; La Saline Boulevard, P.O. Box 616, Port-au-Prince, Haiti; P.O. Box 1792, Port-au-Prince, Haiti; Passport No. 90-705113	17 May 1945
PASCAL, Jean Benes, Lieutenant	Haitian Armed Forces	Haiti	15 January 1952
PASCAL, Jose, Lieutenant	Haitian Armed Forces	Haiti	20 April 1949
PASCAL, Paul, Lieutenant	Haitian Armed Forces	Haiti	30 June 1951
PAUL, Benedict, Ensign	Haitian Armed Forces	Haiti	23 April 1962

Name/Rank	Organization	Identifying Information	Date of Birth
PAUL, Mario, Lieutenant	Haitian Armed Forces	Haiti	2 August 1953
PAUL, Normeus, Lieutenant	Haitian Armed Forces	Haiti	13 July 1936
PAUL, Patrick, Lieutenant	Haitian Armed Forces	Haiti	20 February 1963
PAULEMON, Joseph Willy, Lieutenant	Haitian Armed Forces	Haiti	11 March 1942
PAULIN, Jean-Benito, Lieutenant	Haitian Armed Forces	Haiti	18 August 1947
PERMISSION, Jean Jacob, Lieutenant	Haitian Armed Forces	Haiti	15 January 1932
PETION, Mendes Lesly, Lieutenant	Haitian Armed Forces	Haiti	20 July 1960
PETIT-FRERE, Charles P., Lieutenant	Haitian Armed Forces	Haiti	25 May 1939
PETIT-PHAT, Jean Marcel, Lieutenant	Haitian Armed Forces	Haiti	12 January 1958
PHILIPPE, Cruz Daniel, Colonel	Haitian Armed Forces	Haiti	3 May 1933
PHILIPPE, Jean-Luther, Lieutenant	Haitian Armed Forces	Haiti	26 July 1953
PHILIPPE, Leonard, Lieutenant	Haitian Armed Forces	Haiti	21 October 1941
PHILOGENE, Jacques Joseph, Major	Haitian Armed Forces	Haiti	30 December 1945
PIERRE, Bancks, Lieutenant	Haitian Armed Forces	Haiti	21 June 1947
PIERRE, Chevenel, Lieutenant	Haitian Armed Forces	Haiti	6 January 1960
PIERRE, Edward, Lieutenant	Haitian Armed Forces	Haiti	15 February 1961
PIERRE, Edwige, Captain	Haitian Armed Forces	Haiti	5 November 1958
PIERRE, Enelite, Lieutenant	Haitian Armed Forces	Haiti	27 October 1959
PIERRE, Jean Daniel, Captain	Haitian Armed Forces	Haiti	5 June 1959
PIERRE, Jean Palies, Lieutenant	Haitian Armed Forces	Haiti	16 January 1949
PIERRE, Jean Ulrick, Captain	Haitian Armed Forces	Haiti	4 October 1958
PIERRE, Jean Winel, Lieutenant	Haitian Armed Forces	Haiti	13 December 1951
PIERRE, Joseph Fils-Aime, Lieutenant	Haitian Armed Forces	Haiti	8 February 1937
PIERRE, Joseph Reynold, Lieutenant	Haitian Armed Forces	Haiti	14 June 1947
PIERRE, Joseph Wistong, Lieutenant	Haitian Armed Forces	Haiti	1 September 1940
PIERRE, Luc, Lieutenant	Haitian Armed Forces	Haiti	26 May 1959
PIERRE, Marie Jessie, Lieutenant	Haitian Armed Forces	Haiti	27 August 1951
PIERRE, Patrick Rene, Captain	Haitian Armed Forces	Haiti	9 April 1960
PIERRE, Pierre Gerard, Major	Haitian Armed Forces	Haiti	19 July 1948
PIERRE, Raguel, Lieutenant	Haitian Armed Forces	Haiti	7 November 1940
PIERRE, Remy, Lieutenant Colonel	Haitian Armed Forces	Haiti	17 May 1947
PIERRE, Rene, Lieutenant	Haitian Armed Forces	Haiti	23 January 1938
PIERRE, Robert, Lieutenant	Haitian Armed Forces	Haiti	5 January 1966
PIERRE, Ulrick, Captain	Haitian Armed Forces	Haiti	15 November 1942
PIERRE-ANTOINE, Joseph, Colonel	Haitian Armed Forces	Haiti	19 March 1951
PIERRE-CHARLES, Frantz, Captain	Haitian Armed Forces	Haiti	27 February 1958
PIERRE-FILS, Aniceau, Lieutenant	Haitian Armed Forces	Haiti	6 October 1944
PIERRE-FILS, Israel, Lieutenant	Haitian Armed Forces	Haiti	18 September 1937
PIERRE-FRANÇOIS, Jean Dany, Captain	Haitian Armed Forces	Haiti	5 May 1960
PIERRE-FRANÇOIS, Marc-Henry, Captain	Haitian Armed Forces	Haiti	30 June 1961
PIERRE-JEROME, Gream Innocent, Lieutenant	Haitian Armed Forces	Haiti	28 October 1965
PIERRE-LOUIS, Hubert Michel, Captain	Haitian Armed Forces	Haiti	24 December 1952
PIERRE-PAUL, Edda, Lieutenant	Haitian Armed Forces	Haiti	1 December 1958
POISSON, Bernadin, Colonel	Haitian Armed Forces	Haiti	16 February 1948
POULARD, Duval, Lieutenant	Haitian Armed Forces	Haiti	9 May 1957
PRATO, Nicolas A., Lieutenant	Haitian Armed Forces	Haiti	4 July 1965
PREVAL, Alland, Lieutenant	Haitian Armed Forces	Haiti	3 September 1950
PROPHETE, Gerard, Lieutenant	Haitian Armed Forces	Haiti	21 December 1950
PRUD'HOMME, Ernst, Colonel	Haitian Armed Forces	Haiti	22 September 1954
PYRAM, Jean Emery, Lieutenant	Haitian Armed Forces	Haiti	14 June 1953
RAPHAEL, Francois, Lieutenant Colonel	Haitian Armed Forces	Haiti	14 November 1943
RAPHAEL, Rigo, Captain	Haitian Armed Forces	Haiti	27 May 1941
RAVILUS, Raymond M., Captain	Haitian Armed Forces	Haiti	17 March 1961
RAYNALD, Paul, Lieutenant	Haitian Armed Forces	Haiti	19 July 1938
REMEUS, Daniel, Lieutenant	Haitian Armed Forces	Haiti	2 December 1940
REMY, Jean Sergo, Lieutenant	Haitian Armed Forces	Haiti	11 April 1955
REMY, Jean-Luc, Lieutenant	Haitian Armed Forces	Haiti	6 June 1946
REMY, Jean-Thomas, Lieutenant	Haitian Armed Forces	Haiti	14 April 1948
RENAUD, Lener, Major	Haitian Armed Forces	Haiti	22 March 1956
RENE, Jacques, Lieutenant	Haitian Armed Forces	Haiti	8 March 1949
RENE, Jean Robert, Lieutenant Colonel	Haitian Armed Forces	Haiti	3 May 1953
RENE, Jean Roosevelt, Lieutenant	Haitian Armed Forces	Haiti	2 October 1966
RENE, Jean-Nissage, Captain	Haitian Armed Forces	Haiti	29 December 1940
RENE, Marie Alix, Colonel	Haitian Armed Forces	Haiti	28 July 1951
RENE, Yolette M., Lieutenant	Haitian Armed Forces	Haiti	24 September 1952
RICHARD, Denis, Lieutenant	Haitian Armed Forces	Haiti	2 March 1943
RICHARD, Louis-Marie M., Lieutenant	Haitian Armed Forces	Haiti	15 June 1951
RICOT, Myrtho, Major	Haitian Armed Forces	Haiti	11 June 1937
ROBERT, Jean-Edwige, Lieutenant	Haitian Armed Forces	Haiti	15 August 1962
RODNEY, Francois Dukene, Captain	Haitian Armed Forces	Haiti	29 October 1958
ROLAND, Louis-Charles, Captain	Haitian Armed Forces	Haiti	18 September 1948
ROLLAND, Jean-Clausel, Major	Haitian Armed Forces	Haiti	23 April 1949
ROMAIN, Franck		Haiti	29 January 1936

Name/Rank	Organization	Identifying Information	Date of Birth
ROMULUS, Dumarsais, Colonel	Haitian Armed Forces	Haiti	16 or 18 August 1948
ROMULUS, Jean Maceres, Captain	Haitian Armed Forces	Haiti	23 August 1957
ROMULUS, Martial P., Colonel	Haitian Armed Forces	Haiti; 11903 Coronada Place, Kensington, MD 29895, U.S.A.; SSN 214-02-7585	26 February 1949
ROSARION, Jean Romann, Lieutenant	Haitian Armed Forces	Haiti	17 November 1967
ROSEMBERG, Yves Marie R, Captain	Haitian Armed Forces	Haiti	26 December 1955
ROY, Chiller, Lieutenant	Haitian Armed Forces	Haiti	6 September 1964
SAIDEL, Jean Fricot, Lieutenant	Haitian Armed Forces	Haiti	14 May 1962
SAINVIL, Ramus, Colonel	Haitian Armed Forces	Delmas 68, Rue C. Henry No. 2, Port-au-Prince, Haiti; Passport No. 84-161640	15 September 1952
SAINT GERMAIN, Rubens, Lieutenant	Haitian Armed Forces	Haiti	2 May 1963
SAINT-ELOI, Inereste, Lieutenant	Haitian Armed Forces	Haiti	4 March 1945
SAINT-FLEUR, Alix-Robert, Lieutenant	Haitian Armed Forces	Haiti	12 May 1946
SAINT-FLEUR, Aristhote, Captain	Haitian Armed Forces	Haiti	22 May 1943
SAINT-FLEUR, Erick, Lieutenant	Haitian Armed Forces	Haiti	30 October 1960
SAINT-FLEUR, Michaud, Major	Haitian Armed Forces	Haiti	1 December 1955
SAINT-JEAN, Jonique, Lieutenant	Haitian Armed Forces	Haiti	3 October 1965
SAINT-JOY, Jean Armand, Major	Haitian Armed Forces	Haiti	7 November 1956
SAINT-JUSTE, Joseph, Lieutenant	Haitian Armed Forces	Haiti	10 March 1940
SAINT-LOUIS, Herve, Lieutenant	Haitian Armed Forces	Haiti	10 July 1941
SAINT-LOUIS, Jacques N., Lieutenant	Haitian Armed Forces	Haiti	5 December 1947
SAINT-PHAT, Cetelus, Lieutenant	Haitian Armed Forces	Haiti	20 April 1940
SAINT-PIERRE, Jean Claude, Lieutenant	Haitian Armed Forces	Haiti	28 October 1952
SAINT-PIERRE, Reynald, Lieutenant	Haitian Armed Forces	Haiti	29 August 1965
SAINT-VIL, Jean Adzor, Lieutenant	Haitian Armed Forces	Haiti	26 February 1949
SAINTIL, Agnes, Lieutenant	Haitian Armed Forces	Haiti	26 February 1945
SAINTIL, Sadrac, Colonel	Haitian Armed Forces	Haiti	29 January 1953
SAINTILAIRE, Joseph Odes, Lieutenant Colonel	Haitian Armed Forces	Haiti	4 February 1945
SALOMON, Richard, Lieutenant	Haitian Armed Forces	Haiti	18 January 1960
SANON, Anthony, Lieutenant	Haitian Armed Forces	Haiti	18 June 1943
SANON, Mercidieu, Captain	Haitian Armed Forces	Haiti	27 June 1948
SANZ, Joseph Lesly, Major	Haitian Armed Forces	Haiti	26 April 1953
SCOTT, Emmanuel E.L.E., Lieutenant	Haitian Armed Forces	Haiti	3 March 1951
SEIDE, Ambroise Lucien, Captain	Haitian Armed Forces	Haiti	19 August 1952
SHOUTE, Jean Michelet, Lieutenant	Haitian Armed Forces	Haiti	14 June 1960
SIMEON, Jean-Claude, Lieutenant	Haitian Armed Forces	Haiti	21 July 1943
SIMILIEN, Frito, Lieutenant	Haitian Armed Forces	Haiti	4 April 1947
SIMON, Estimien, Lieutenant Colonel	Haitian Armed Forces	Haiti	3 March 1941
SOUFFRANT, Yves Jean-Marie, Captain	Haitian Armed Forces	Haiti	11 October 1957
ST-FLEUR, Jean, Lieutenant	Haitian Armed Forces	Haiti	28 June 1961
ST-FLEUR, Martial Raynald, Major	Haitian Armed Forces	Haiti	3 August 1948
ST-JULIEN, Adrien, Lieutenant	Haitian Armed Forces	Haiti	15 August 1937
SUPRIEN, Jean-Fleurant, Lieutenant	Haitian Armed Forces	Haiti	10 January 1953
SURIN, Gerard, Captain	Haitian Armed Forces	Haiti	1 February 1942
SYDNEUS, Damaxe, Colonel	Haitian Armed Forces	Haiti	10 April 1944
SYLVAIN, Andre, Lieutenant	Haitian Armed Forces	Haiti	4 October 1939
SYLVAIN, Diderot Lyonel (Lionel), Colonel	Haitian Armed Forces	Haiti	10 June 1950
TACHOUTE, Livingsma, Lieutenant	Haitian Armed Forces	Haiti	22 January 1953
TELFORT, Adrien, Lieutenant	Haitian Armed Forces	Haiti	28 July 1949
TELUSMA, Joseph, Lieutenant	Haitian Armed Forces	Haiti	7 October 1954
THELISMA, Mac Gregor, Lieutenant	Haitian Armed Forces	Haiti	1 September 1968
THERANUS, Mario, Lieutenant	Haitian Armed Forces	Haiti	17 December 1966
THERLONGE, Jean-Claude, Lieutenant	Haitian Armed Forces	Haiti	15 December 1945
THIBAUD, Emmanuel, Lieutenant	Haitian Armed Forces	Haiti	15 June 1964
THOMAS, Joseph Jacques, Major	Haitian Armed Forces	Haiti	15 March 1955
TIMO, Raynald, Captain	Haitian Armed Forces	Haiti	9 August 1957
TOUSSAINT, Henrio, Lieutenant	Haitian Armed Forces	Haiti	11 March 1962
TOUSSAINT, Ludovic P., Lieutenant	Haitian Armed Forces	Haiti	17 July 1942
TOUSSAINT, Tacite, Lieutenant	Haitian Armed Forces	Haiti	2 March 1964
TRAVERSIERE, Jacques, Ensign	Haitian Armed Forces	Haiti	6 June 1945
TRECILE, Jean-Yonel, Lieutenant	Haitian Armed Forces	Haiti	22 December 1961
TUFFET, Jean-Victor, Lieutenant	Haitian Armed Forces	Haiti	24 September 1942
TURENNE, Jean Alfone, Lieutenant	Haitian Armed Forces	Haiti	16 March 1944
ULYSSE, Michaelle, Lieutenant	Haitian Armed Forces	Haiti	21 September 1962
VALET, Jean-Edmon, Leutenant	Haitian Armed Forces	Haiti	3 November 1941
VALET, Paul Ludovic, Lieutenant	Haitian Armed Forces	Haiti	13 June 1943
VALLES, Emmanuel A.M.J., Captain	Haitian Armed Forces	Haiti	30 March 1956
VALME, Marc, Major	Haitian Armed Forces	Avenue Martin Luther King No. 152, Port-au-Prince, Haiti; Passport No. 81-142979	5 December 1953
VALMOND, Hebert, Colonel	Haitian Armed Forces	Haiti	17 May 1949

Name/Rank	Organization	Identifying Information	Date of Birth
VELIA, Guy Gerard, Lieutenant	Haitian Armed Forces	Haiti	11 December 1949
VILLARD, Montfort, Lieutenant	Haitian Armed Forces	Haiti	17 August 1948
VILME, Abner, Lieutenant	Haitian Armed Forces	Haiti	23 October 1964
VILSON, Lineau, Captain	Haitian Armed Forces	Haiti	24 March 1953
VOLTAIRE, Anatin O., Lieutenant	Haitian Armed Forces	Haiti	15 September 1944
WAGNAC, Joseph Jean M., Ensign	Haitian Armed Forces	Haiti	14 September 1962
WILLIAM, Donald G., Lieutenant	Haitian Armed Forces	Haiti	18 January 1964
WILLIAMS, Nixon, Lieutenant	Haitian Armed Forces	Haiti	16 July 1964
WILSON, Eustache, Colonel	Haitian Armed Forces	Haiti	20 November 1942
YVON, Jules, Captain	Haitian Armed Forces	Haiti	16 March 1936
ZAMOR, Claudel, Captain	Haitian Armed Forces	Haiti	5 October 1960
ZAMOR, Jean Denis, Lieutenant	Haitian Armed Forces	Haiti	7 April 1962

* * * * *

Dated: March 22, 1994.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 23, 1994.

John P. Simpson,

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

[FR Doc. 94–8367 Filed 4–5–94; 8:45 am]

BILLING CODE 4810–25–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 93–079]

RIN 2115–AE68

Simplified Alternative Procedure for Resolving Civil Penalty Cases

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is issuing an Interim Final Rule (IFR) to allow for greater delegation by the District Commander, and to allow for a simplified alternative procedure for resolving civil penalty cases to be tested in three pilot ports for a period of six months. This procedure should streamline the civil penalty process for certain oil discharge and pollution prevention civil penalty cases by allowing a Coast Guard official to present a Notice of Violation and proposed penalty to a party in the field. Results of the pilot program will be used in determining whether the program should be implemented nationally and amending the final rule, if appropriate.

DATES: This rule is effective on April 7, 1994.

Comments must be received by October 7, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–079), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, Unless otherwise indicated, documents referenced in this preamble are available for inspection and copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday though Friday, except Federal holidays. The telephone number is (202) 267–6234.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Richard Gaudiosi, Project Manager, Marine Environmental Protection Division (G–MEP), (202) 267–6714.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard is encouraging comments on this interim rule in order to consider as many perspectives as possible on the impacts of employing this process and to evaluate its use as an enforcement tool prior to national implementation. Interested persons should submit written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–079) and the specific section of this interim rule to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. This interim final rule may be changed in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing in a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Richard Gaudiosi, Project Manager, Marine Environmental Protection Division, and C.G. Green, Project Counsel, Office of the Chief Counsel.

Background and Purpose

The current procedures for assessing civil penalties by the Coast Guard are contained in 33 CFR 1.07. Generally this process begins when an alleged violation is detected by or reported to a Coast Guard official. The alleged violation is investigated, and if it appears that the elements for a violation case exist, civil enforcement action is initiated by preparing a case report with a recommended penalty and forwarding it with the case file to the appropriate Coast Guard District office for review. The District office reviews the report to determine whether there is in fact evidence of a prima facie case and whether the assessment of the recommended penalty by a Hearing Officer is appropriate. It then transmits the case file with a recommended action to the Hearing Officer. Based on this case file, the Hearing Officer makes an independent determination as to whether a violation appears to have been committed. If so, the Hearing

Officer sends a Letter of Notification to the alleged violator that specifies, among other matters, the alleged violation(s) and a penalty amount that appears to be appropriate.

A party may pay the penalty amount specified as being appropriate by the Hearing Officer, request an in-person hearing, or provide written evidence or arguments in lieu of a hearing. If the party pays the penalty, the case is closed and no further action is required. If the party chooses either of the latter two options, the Hearing Officer either conducts an in-person hearing or reviews the written evidence and arguments, and then issues a written decision assessing a penalty or dismissing the case. The Hearing Officer's decision may be administratively appealed to the Commandant of the Coast Guard.

As applied to small (under 100 gallons) oil discharges and pollution prevention violations, the current civil penalty assessment process is not administratively efficient for many uncontested cases. Further, the time required to process these violations minimizes the deterrent effect of the sanction. It is not uncommon for a party to have additional violations before being notified of the initiation of action for the first violation.

There is a need for a process where notice of violation can be given in the field to allow for early resolution of apparent small oil spill and pollution prevention violations. Such a process would save the time and cost of unnecessary internal review, improve deterrence, and enable corrective action by providing a party with earlier notice of violations. Each party would have the option of paying a proposed penalty or pursuing their right to a hearing.

Notice of Violation

This rule amends 33 CFR 1.07 to provide a simplified procedure to expedite processing of certain civil penalty violation cases. An interim final rule is being published to test the simplified procedure. A pilot program will be conducted in three ports, prior to a final rule which would be implemented nationwide. The pilot program will be conducted for six months in the ports of Charleston, SC, Galveston, TX, and Los Angeles, CA.

The procedures will allow settlement of cases following the issuance by a Coast Guard issuing officer of a Notice of Violation containing a proposed penalty. A Coast Guard issuing officer will be a commissioned, warrant, or petty officer, with specific training and authority to issue a Notice of Violation.

A party will have the option of either paying the proposed penalty, requesting determination by a Hearing Officer, or taking no action on the Notice of Violation. Where a party decides to pay the proposed penalty indicated on a Notice of Violation, there will be no District Program Manager or Hearing Officer involved and the case will be closed. Where a party requests a determination by a Hearing Officer or takes no action, a full case file will be sent to the District Commander, in accordance with present procedure, for review prior to forwarding to the Hearing Officer. Upon receipt by the Hearing Officer, the case will be processed under the current procedures. Any adverse action by the Hearing Officer will be subject to administrative appeal under the current procedures. A party who takes no action on a Notice of Violation or who requests determination by a Hearing Officer may find the preliminary assessment issued by the Hearing Officer to be equal to or greater than that specified on the Notice of Violation.

Use of the simplified procedure will initially be limited, by internal guidance, to certain requirements and prohibitions subject to Class I Administrative Civil Penalties under the Federal Water Pollution Control Act (FWPCA) as amended. A Notice of Violation can be issued for two types of violations: (1) Oil discharges in violation of the FWPCA, if they are 100 gallons or less, and (2) pollution prevention violations (33 CFR parts 154, 155, 156).

Coast Guard issuing officers will issue a Notice of Violation with a proposed penalty only in clear-cut cases as determined by applying specific written guidance. Proposed penalty amounts would be taken from a penalty schedule based on objective criteria. Any case in which aggravating or extenuating circumstances are evidenced, or which concern violations not included in specific guidance documents, may be referred to the Hearing Officer for processing under current procedures.

Delegation by the District Commander

This rule will also allow more flexibility on the part of the District Commander to delegate authority for review of alleged violations to any person under the District Commander's command. For example, the District Commander could delegate review authority to the Captain of the Port for certain pollution prevention violations, thus eliminating the need for review by the District Commander's staff, prior to the case being forwarded to a Hearing Officer. Such a delegation would streamline the processing of a violation case and would be in the best interest of the public and the party involved.

Regulatory Implementation

Based on the results of the pilot test and internal and external comments received on the IFR, the Coast Guard will determine whether the procedure should be implemented nationally and will make revisions to the final rule and internal guidance, if appropriate. This approach will facilitate implementation without disrupting the existing civil penalty process for cases involving violations other than oil discharge or pollution prevention violations. However, the rule is designed to allow extension of the simplified process to other Coast Guard programs without additional amendments to 33 CFR 1.07.

Under the Administrative Procedure Act (APA), procedural rules are exempt from the notice and comment procedures and, under 5 U.S.C. 553(b)(3)(B), the promulgating agency may omit notice and comment. Further, under the alternative simplified procedure established by this IFR, a party will continue to have the option of requesting a hearing, as under current regulations. Therefore, the Coast Guard has determined that these regulations may be promulgated without prior notice and opportunity for comment.

Since the public interest would not be served by delaying the date of the interim rule, and a party will continue to have the option of requesting a hearing, as under current regulations, the Coast Guard has also determined that under 5 U.S.C. 533(d), these rules may be made effective upon publication.

Nonetheless, as previously discussed in this preamble, the Coast Guard is requesting comment on this interim rule and its pilot implementation program.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, does not require an assessment of potential costs and benefits under section 6(a)(3) of that order, and has not been reviewed under that order. It is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this procedural rule to be so minimal that a full Regulatory Evaluation is unnecessary. The total annual cost to the public from civil penalties should not be changed by this proposal. Savings to the government will be realized from the reduction in administrative costs to enforce civil

penalties by eliminating the need for review by the District Commander or action by the Hearing Officer in cases where the penalty specified in a Notice of Violation is paid by the party within the allowed time.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this rulemaking will have significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this rulemaking will economically affect your business.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under section 2.B.2 of Commandant Instruction M1645.1B, this rule is categorically excluded from further environmental documentation. Procedural rules do not require environmental impact studies. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Penalties.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 1 as follows:

Subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings

1. The authority citation of subpart 1.07 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.46.

2. Section 1.07–5 is revised to read as follows:

§ 1.07–5 Definitions.

(a) The term *District Commander,* when used in this subpart, means the District Commander, or any person under the District Commander's command, delegated to carry out the provisions of § 1.07–10(b).

(b) The term *Hearing Officer* means a Coast Guard officer or employee who has been delegated the authority to assess civil penalties.

(c) The term *issuing officer* means any qualified Coast Guard commissioned, warrant, or petty officer.

(d) The term *Notice of Violation* means a notification of violation and preliminary assessment of penalty, given to a party, in accordance with § 1.07–11.

(e) The term *party* means the person alleged to have violated a statute or regulation to which a civil penalty applies and includes an individual or public or private corporation, partnership or other association, or a governmental entity.

3. Section 1.07–10 is amended by revising paragraph (a) to read as follows:

§ 1.07–10 Reporting and investigation.

(a) Any person may report an apparent violation of any law, regulation, or order that is enforced by the Coast Guard to any Coast Guard facility. When a report of an apparent violation has been received, or when an apparent violation has been detected by any Coast Guard personnel, the matter is investigated or evaluated by Coast Guard personnel. Once an apparent violation has been investigated or evaluated, a report of the investigation may be sent to the District Commander in accordance with paragraph (b) of this section or a Notice of Violation under § 1.07–11 may be given to the party by an issuing officer.

* * * * *

4. A new § 1.07–11 is added to read as follows:

§ 1.07–11 Notice of Violation.

(a) After investigation and evaluation of an alleged violation has been completed, an issuing officer may issue a Notice of Violation to the party.

(b) The Notice of Violation will contain:

(1) The alleged violation and the applicable law or regulations;

(2) The amount of the maximum penalty that may be assessed for each violation;

(3) The amount of proposed penalty that appears to be appropriate;

(4) The statement that payment of the proposed penalty within 30 days will settle the case;

(5) The place and manner to which payment is to be made;

(6) The statement that the party may request a hearing prior to any final assessment of a penalty and the address where to request such a hearing.

(c) The Notice of Violation may be hand delivered to the party or an employee of the party, or may be mailed to the business address of the party.

(d) If a party requests a hearing, or takes no action on the Notice of Violation within 30 days, a copy of the Notice of Violation, along with the case file, will be sent to the District Commander for processing under the procedures described in § 1.07–10(b).

Dated: March 9, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–8370 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–94–033]

Special Local Regulations: Key West Super Boat Race

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Key West Super Boat Race sponsored by Super Boat Racing, Inc. This event will be held on April 9, 1994, between 1 p.m. and 4 p.m. EST (Eastern Standard Time). The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective at 1 p.m. and terminate at 4 p.m. on April 9, 1994. If inclement weather causes postponement of this event, these regulations become effective at 1 p.m. and terminate at 4 p.m. on April 11, 1994.

FOR FURTHER INFORMATION CONTACT: QMC Coyne, project officer, USCG Group Key West, (305) 292–8727.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Updated information regarding the date and time of the event was not received until February and March 1993, respectively, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are QMC K.T. Coyne, project officer, USCG Group Key West, and LT J.M. Losego, project attorney, Seventh Coast District Legal Office.

Discussion of Regulations

Approximately 30 to 40 power boats are expected to participate in the Key West Super Boat Race, with 100 spectator craft expected. The power boats will be competing at high speeds and operating in close proximity to each other and to spectator craft, creating an extra or unusual hazard in the navigable waters.

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species. As a condition to this permit the applicant is required to educate the operators of spectator craft and parade participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07033 is added to read as follows:

§ 100.35T07033 Key West Super Boat Race.

(a) *Regulated area:* All navigable waters within a line drawn through the following points:

(1) 24–30′27″ N, 081–50′36″ W; thence to,

(2) 24–30′21″ N, 081–46′48″ W; thence to,

(3) 24–32′24″ N, 081–47′06″ W; thence to,

(4) 24–32′18″ N, 081–48′24″ W; thence to,

(5) 24–32′30″ N, 081–48′47″ W; thence to,

(6) 24–33′00″ N, 081–48′47″ W; thence to,

(7) 24–34′04″ N, 081–48′08″ W; thence to,

(8) 24–34′13″ N, 081–48′26″ W.

(b) *Special Local Regulations:* (1) Entry into the regulated area, by other than event participants, is prohibited unless authorized by the patrol commander.

(2) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of a red distress flare from a patrol vessel will be a signal for any and all vessels to stop immediately.

(c) *Effective Dates.* This section will become effective at 1 p.m. and terminate at 4 p.m. on April 9, 1994. If inclement weather causes postponement of this event, these regulations become effective at 1 p.m. and terminate at 4 p.m. on April 11, 1994.

Dated: March 21, 1994.

W.P. Leahy,

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

[FR Doc. 94–8369 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–94–034]

Special Local Regulations: Second Annual Run for the Gold

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Second Annual Run For The Gold sponsored by the Key West Power Boat Race Association. This event will be held on May 13 and 16, 1994, between 1 p.m. EST (Eastern Standard Time) and 3 p.m. EST, each day. The regulations are needed to provide for the safety of life on navigable waters under the event.

EFFECTIVE DATES: These regulations become effective at 1 p.m. EST and terminate at 3 p.m. EST each day on May 13 and 16, 1994.

FOR FURTHER INFORMATION CONTACT: QMC Coyne, Project Officer, USCG Group Key West, (305) 292–8727.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are QMC K.T. Coyne, project officer, USCG Group Key West, and LT J.M. Losego, project attorney, Seventh Coast District Legal Office.

Discussion of Regulations

The Key West Power Boat Race Association is sponsoring the Second Annual Run for the Gold power boat race. Approximately 65 power boats, ranging in length from 24 feet to 50 feet, will participate in the event. The power boats will be competing at high speeds, and in close proximity to each other, on the 16 mile course, creating an extra or unusual hazard in the navigable waters.

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and

Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Naviagation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07034 is added to read as follows:

§ 100.35T07034.

(a) *Regulated area:* All navigable waters within a line drawn through the following points:

(1) 24–43′08″ N, 081–06′00″ W; thence to,
(2) 24–43′20″ N, 081–07′39″ W; thence to,
(3) 24–43′14″ N, 081–08′54″ W; thence to,
(4) 24–42′48″ N, 081–10′30″ W; thence to,
(5) 24–41′48″ N, 081–10′11″ W; thence to,
(6) 24–38′00″ N, 081–07′50″ W; thence to,
(7) 24–38′21″ N, 081–07′07″ W; thence to,
(8) 24–41′51″ N, 081–09′42″ W; thence to,
(9) 24–42′15″ N, 081–09′54″ W; thence to,
(10) 24–42′29″ N, 081–09′48″ W; thence to,
(11) 24–42′49″ N, 081–08′50″ W; thence to,
(12) 24–42′57″ N, 081–07′27″ W; thence to,
(13) 24–42′48″ N, 081–06′00″ W;

(b) *Special local regulations:* (1) Entry into the regulated area is prohibited to all nonparticipating vessels, unless authorized by the patrol commander.

(2) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of a red distress flare from a patrol vessel will be a signal for any and all vessels to stop immediately.

(c) *Effective dates:* This section will become effective at 1 p.m. e.s.t. and terminate at 3 p.m. e.s.t. each day on May 13 and 16, 1994.

Dated: March 21, 1994.

W.P. Leahy,

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

[FR Doc. 94–8368 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 91–059]

RIN 2115–AE14

Drawbridge Operation Regulations, Unnecessary Openings

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the regulations that govern the nation's drawbridges by clarifying the responsibilities of vessel operators requesting drawbridge openings and prohibiting vessel operators from signalling for unnecessary drawbridge openings. This action is intended to better accommodate the needs of vehicular traffic and reduce the wear and tear on draw machinery while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on May 9, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection and copying at the office of the Executive Secretary, Marine Safety Council (G–LRA–2/3046), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, room 3406, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477 for information.

FOR FURTHER INFORMATION CONTACT: Mr. Larry R. Tyssens, Alterations, Regulations and Systems Branch (G–NBR–1), at (202) 267–0376.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Larry R. Tyssens, Project Manager, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On July 8, 1993, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Drawbridge Operation Regulations, Unnecessary Openings" in the **Federal Register** (58 FR 36629). In addition, the Commander, Eighth Coast Guard District, published the proposal in a Public Notice dated July 28, 1993. Opportunity for comment on the proposal was provided until August 23, 1993. The Coast Guard received 4 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Currently, 33 CFR 117.11 specifies that no vessel owner or operator shall signal a drawbridge to open for any nonstructural vessel appurtenance which is not essential to navigation or which is easily lowered. This section does not address vessels that have no appurtenances and that can pass safely underneath the drawbridge in question in the closed position, or vessels which signal for a drawbridge opening with no intention of passing through the bridge. Under § 117.5, drawtenders are required to open a drawbridge when a proper signal is given. Unnecessary drawbridge openings can cause vehicular delays and inordinate wear and tear on draw machinery. Therefore, it has been determined that there is a need for a regulation requiring that vessel owners and operators refrain from requesting such unnecessary drawbridge openings. Also, it has been determined that defining the terms used in the regulation would provide mariners with additional guidance concerning their responsibilities under the regulations when requesting the opening of a drawbridge.

Discussion of Comments

Four letters were received in response to the NPRM. The first comment was from a private towing company which stated that their business had no problem with the proposed regulation and fully supported the change. The second response was from a private statewide transportation agency which endorsed the proposed regulation. The third response was from the New Jersey Department of Transportation which also supported the proposed amendment. The fourth response was from the Governor's Office of the State of Florida which has determined that the proposed regulation will not significantly affect the coastal water and adjacent shorelands of the State of Florida and is therefore consistent with the Florida Coastal Management Program. No changes were made to the final rule as a result of these comments.

Regulatory Assessment

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44

FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Assessment is unnecessary. This rule is operational in nature and, if adopted, will result in no cost to the public.

Small Entities

This rule requires no new equipment and imposes no additional expense on small businesses. Additionally, this rule will decrease vehicular delay. Therefore, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to regulate the nation's drawbridges across the navigable rivers and other waters of the U.S. has been committed to the Coast Guard by Federal statutes. Therefore, the Coast Guard does not expect this rule to raise any preemption issues with respect to State actions on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation because it is a Bridge Administration Program action involving the promulgation of operating requirements or procedures for drawbridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.4 is added to read as follows:

§ 117.4 Definitions.

Certain terms used in this part are defined in this section.

Appurtenance. The term "appurtenance" means an attachment or accessory extending beyond the hull or superstructure that is not an integral part of the vessel and is not needed for a vessel's piloting, propelling, controlling, or collision avoidance capabilities.

Lowerable. The term "lowerable" means the nonstructural vessel appurtenance can be mechanically or manually lowered and raised again. The term "lowerable" also applies to a nonstructural vessel appurtenance which can be modified to make the item flexible, hinged, collapsible, or telescopic such that it can be mechanically or manually lowered and raised again. Failure to make the modification is considered equivalent to refusing to lower a lowerable nonstructural appurtenance that is not essential to navigation. Examples of appurtenances which are considered to be lowerable include, but are not limited to, fishing outriggers, radio antennae, television antennae, false stacks, and masts purely for ornamental purposes. Examples of appurtenances which are not considered to be lowerable include, but are not limited to, radar antennae, flying bridges, sailboat masts, piledriver leads, spud frames on hydraulic dredges, drilling derricks' substructures and buildings, cranes on drilling or construction vessels, or other items of permanent and fixed equipment.

Nonstructural. The term "nonstructural" means that the item is not rigidly fixed to the vessel and is thus susceptible to relocation or alteration.

Not essential to navigation. The term "not essential to navigation" means the nonstructural vessel appurtenance does not adversely affect the vessel's piloting, propulsion, control, or collision avoidance capabilities when in the lowered position.

3. Section 117.11 is revised to read as follows:

§ 117.11 Unnecessary opening of the draw.

No vessel owner or operator shall—

(a) Signal a drawbridge to open if the vertical clearance is sufficient to allow the vessel, after all lowerable nonstructural vessel appurtenances that are not essential to navigation have been lowered, to safely pass under the drawbridge in the closed position; or

(b) Signal a drawbridge to open for any purpose other than to pass through the drawbridge opening.

Dated: April 1, 1994.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–8371 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 162

[CGD09–94–004]

Temporary Amendment to Inland Waterways Navigation Regulations Establishing Speed Limits on Connecting Waters From Lake Huron to Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Commander of the Ninth Coast Guard District, in cooperation with Canadian authorities, is renewing, with minor changes, a temporary, trial regulation previously in effect during the 1993 navigation season. This temporary regulation, as before, amends the speed limits on connecting waters from Lake Huron to Lake Erie. The normal speed limits in this area are determined in large part by concerns about wake damage. However, lesser wakes are created by nondisplacement power vessels and it appears that the speed limits may unnecessarily impede their passage. The temporary regulation allows nondisplacement power vessels, less than 100 gross tons, to exceed the normal speed limits subject to certain restrictions. Generally, the minor changes in this version of the temporary regulation (in comparison to the previous version of the temporary regulation) place more restrictions on the use of the higher speeds by the operators of the nondisplacement vessels in order to better ensure safe, effectively regulated operations. The purpose of this temporary regulation, as before, is to test the feasibility and safety of the operation of nondisplacement vessels in the connecting waters from Lake Huron to Lake Erie. During this period of

continued trial, the Commander of the Ninth Coast Guard District invites further public comment on this regulation or future versions thereof for the purpose of either amendments to this temporary regulation or for the purpose of considering a permanent change to the standing regulations.

DATES: This regulation is effective at 12:01 a.m. on April 1, 1994 and terminates at 12 midnight on November 30, 1994. Comments on this trial during the 1994 navigation season must be received on or before October 31, 1994 in order to be considered in the drafting of a proposal for permanent change to the standing regulations which the Commander of the Ninth Coast Guard District may submit to the Commandant of the Coast Guard in the fall of 1994.

ADDRESSES: Comments and supporting materials should be mailed or delivered to the Chief of the Case Management & Port Safety Section, Ninth Coast Guard District, room 2069, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3994. Please reference the name of the proposal and the docket number in the heading above. If you wish receipt of your mailed comment to be acknowledged, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Katherine E. Weathers, Chief of the Case Management & Port Safety Section, Ninth Coast Guard District, (216) 522–3994.

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments on this regulation, including comments on the prior version in effect during the 1993 navigation season, or future regulations of the same nature, on either a temporary or permanent basis, are all invited. All comments received will be considered in any proposal for a final rulemaking at the end of the 1994 navigation season. The Coast Guard does not currently plan to have a public hearing, but consideration will be given to holding such a hearing if it is requested. Such a request should indicate how a public hearing would contribute substantial information or views which cannot be received in written form. If it appears that a public hearing would substantially contribute to revisions or further refinements of this rulemaking, the Coast Guard will announce such a hearing by a later notice in the **Federal Register**.

Discussion of Comment Period

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this 1994 regulation, and good cause exists for making it effective less than 30 days after **Federal Register** publication. A notice of proposed rulemaking is unnecessary under 5 U.S.C. 553(b)(3)(B) because this regulation is simply a continuation, with minor amendments, of the 1993 regulation noticed on January 13, 1993 (58 FR 4130) and promulgated on April 5, 1993 (58 FR 17526). The minor amendments made in this version of the regulation reduce rather than expand the scope of the operating exemptions granted by the prior version. The Coast Guard published a Notice of Proposed Rulemaking for the 1993 temporary rule and invited comments from the public. No adverse comments were received. Repetition of the prior notice period would be contrary to the public interest as well as unnecessary under 5 U.S.C. 553(b)(3)(B) because it would impede the further testing of a commercial innovation which so far has proved to be safe without adding significantly to the opportunity to make public comments. Additional comments are invited during the continuation of the test period in the 1994 navigation season and the Commander of the Ninth Coast Guard District will consider all comments received before November 1, 1994.

Finally, the requirement for 30 days notice before the effective date of the regulation is not applicable under 5 U.S.C. 553(d)(1) because this temporary action is a substantive action to "relieve a restriction" on commerce otherwise imposed by the standing regulations. This temporary regulation will lessen the restrictiveness of the speed limits otherwise applicable to nondisplacement vessels in the connecting waters from Lake Huron to Lake Erie in the absence of any temporary regulation.

Background and Purpose

Current regulations in 33 CFR 162.138 which apply to connecting waters from Lake Huron to Lake Erie set maximum speed for vessels 20 meters or more in length at limits ranging from 4 to 12 statute miles per hour in various areas. One of the primary purposes of these speed regulations is to limit wake damage. The standing regulations were not written to account for the substantially lesser wake-generating characteristics of nondisplacement vessels. In fact, certain vessels designed for nondisplacement operation would generate larger wakes at the lower speeds now required because they would be forced to operate in a displacement mode. During the 1993 navigation season, the Commander of the Ninth Coast Guard District temporarily amended 33 CFR 162.138 in order to allow trial runs of nondisplacement vessels which requested permission to operate in the nondisplacement mode in the area (33 CFR 162.T139, 58 FR 17526, April 5, 1993). A corresponding exemption was granted by the Central Region of the Canadian Coast Guard, which has authority over the Canadian waters in the same area. That trial period allowed nondisplacement vessels less than 100 gross tons to operate in the nondisplacement mode at speeds not more than 40 statute miles per hour. During the 1993 trial period, one complaint was received alleging excessive wake. Upon investigation, it appeared that the vessel gave the impression of creating an excessive wake because of its relatively high rate of speed during a sharp turn. The Coast Guard was unable to determine if in fact an excessive wake was generated in that one case. There was no damage, and the operator agreed to modify similar maneuvers in the future in order to avoid any problem. Also, it should be noted that this amendment of the speed limit for nondisplacement vessels does not in any way excuse the general obligation to exercise good seamanship when maneuvering in close quarters or the responsibility for damage which might be caused by a wake which is excessive in a location close to other vessels or shore structures. No subsequent complaints of any kind were received by the Canadian Coast Guard or the U.S. Coast Guard.

With concurrence from the Director General of the Canadian Coast Guard Central Region, the Commander of the Ninth Coast Guard District considers it appropriate to institute another temporary test period during the 1994 navigation season. This new period will extend from April 1, 1994 through November 30, 1994. During this time, the Commander of the Ninth Coast Guard District will test the feasibility of some minor refinements to the prior version of the temporary regulation. Generally, these refinements place more conditions on the use of the higher speeds by the operators of the nondisplacement vessels in order to better ensure safe, effectively regulated operations.

As before, the Commander of the Ninth Coast Guard District is setting an upper limit of 40 statute miles per hour

for nondisplacement vessels 20 meters or more in length but less than 100 gross tons, and is allowing such nondisplacement vessels to overtake other vessels when otherwise safe. All other navigational regulations will remain in force. This regulation specifically provides that it does not preempt any state or local law or regulation setting a lower speed limit applicable to nondisplacement vessel in areas under the jurisdiction of such state or local authority. (The Canadian Coast Guard Central Region is also stipulating that the higher speed limit will not be applicable to certain harbors areas in Canada, particularly the harbor of Windsor, Ontario.) Each vessel operator shall submit a schedule to the Captain of the Port Detroit at least thirty days in advance for each anticipated excursion. The schedule shall contain an itinerary for each excursion including dates, arrival and departure times, all destination points, and the nature of the excursion, i.e., passengers, no passengers, etc. The vessel operator must then confirm each excursion with the Captain of the Port Detroit between three and seven working days prior to the intended date of the departure. This will give the Captain of the Port time to anticipate potential conflicts with scheduled marine events, and allow timely notice through a Broadcast Notice to Mariners. Any excursion schedule not submitted within the thirty day time frame may be subject to Captain of the Port disapproval. These special provisions for nondisplacement vessels will apply only during daylight hours, defined as sunrise to sunset. The Captain of the Port or Commander, Ninth Coast Guard District may revoke approval of operations at the increased speed for the remainder of the navigation season due to an operator's failure to comply with any of these requirements.

Drafting Information

The principal persons involved in drafting this document are Lieutenant (junior grade) Katherine E. Weathers and Commander M. Eric Reeves, Project Managers, and Commander Robert G. Blythe, Project Counsel.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c. of Coast Guard Commandment Instruction M16475.1B, it is categorically excluded from further environmental documentation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation does not impose any new regulatory requirements in an area not heretofore regulated by the Federal Government, and does not impose any requirements or restrictions on State or local authorities. This regulation specifically provided that it does not preempt any state or local law or regulation setting a lower speed limit applicable to nondisplacement vessel in areas under the jurisdiction of such state or local authority.

Regulatory Evaluation

This temporary final rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034 of February 26, 1979).

Small Entities

The economic impact of this regulation is expected to be so minimal that a full evaluation is unnecessary. In fact, the Coast Guard is making this amendment in part in order to avoid causing the existing regulations to have an unintended economic impact on a new mode of commercial operation. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

The regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 162 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR. 1.46.

2. A temporary § 162.T139 is added as follows:

§ 162.T139 Nondisplacement vessels under 100 gross tons.

(a) Notwithstanding §§ 162.134 and 162.138(a), nondisplacement vessels 20 meters or more in length but under 100 gross tons may operate in the nondisplacement mode at speeds not more than 40 miles per hour, and may overtake other vessels—

(1) during daylight hours (sunrise to sunset),

(2) when conditions otherwise safely allow, and

(3) when approval has been granted by the Coast Guard Captain of the Port or District Commander prior to each transit of the area.

(b) Except for provisions on overtaking other vessels, the provisions in § 162.134 continue to apply.

(c) Each vessel operator wishing to operate under the provisions of this section shall submit a schedule to the Captain of the Port Detroit at least thirty days in advance for each anticipated excursion.

(d) The schedule shall contain an itinerary for each excursion including dates, arrival and departure times, all destination points, and the nature of the excursion.

(e) The vessel operator must confirm each excursion with the Captain of the Port Detroit no less than three and no more than seven working days prior to the intended date of departure.

(f) The Captain of the Port Detroit or Commander, Ninth Coast Guard District may deny approval for all future operations during the navigation season due to an operator's failure to comply with any of these requirements.

(g) This temporary section does not preempt any state or local law or regulation setting a lower speed limit applicable to nondisplacement vessel in areas under the jurisdiction of such state or local authority.

(h) This section becomes effective on 12:01 a.m. on April 1, 1994 and terminates on 12 midnight on November 30, 1994.

Dated: March 25, 1994.

Rudy K. Peschel,

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

[FR Doc. 94-8373 Filed 4-6-94; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4860–2]

North Dakota; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

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

DATES: Final authorization for North Dakota shall be effective on June 6, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on North Dakota's program revision application must be received by the close of business by May 9, 1994.

ADDRESSES: Copies of North Dakota's program revision application are available during regular business hours at the following addresses for inspection and copying: Division of Waste Management, Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, Bismarck, North Dakota 58502–5520 and US EPA Region VIII Library, 999 18th Street, suite 144, Denver, Colorado 80204–2466. Written comments should be sent to: Marcella DeVargas (HWM-WM), U.S. Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202–2466, Phone 303/293-1670.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, Waste Management Branch, U.S. EPA, 999 18th Street, suite 500, Denver, Colorado 80202–2466, Phone: 303/293–1670.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929 (b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268 and 270. Modification to the Federal program, due to statutory and regulatory changes, requires subsequent modifications to the State authorized program. Until the State is authorized for such modifications, EPA is responsible for implementing and enforcing the modification in the State. Further, if the State law which forms the basis of the federally authorized State program is amended, the State must promptly seek revision authorization for those provisions. Until the amendments to State law are authorized by EPA, the regulated community must ensure compliance with both the federally authorized State program and the non-authorized Federal program. The regulated community may also need to comply with current State laws in the situation where State law has been amended after Federal authorization has been granted.

B. North Dakota

North Dakota initially received final authorization in October 1984. North Dakota received authorization for revisions to its program on August 24, 1990. On February 23, 1994, North Dakota submitted a final program revision application for additional program approvals. Today, North Dakota is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In the previous revision authorization published on August 24, 1990, EPA included authorization of the direct action against insurers, HSWA section 3004(t) provision to North Dakota. It was later determined this provision is not delegable. Therefore, EPA is clarifying with this notice that the direct action against insurers to North Dakota is withdrawn. The Federal cause of action provided by RCRA 3004(t) remains in effect in authorized states. The State law equivalent to 3004(t) operates separately from the Federal law and, in this situation, the North Dakota law which provides for a direct cause of action against insurers operates as an additional authority to the Federal authority.

EPA has reviewed North Dakota's application, and has made an immediate final decision that North Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Dakota. The public may submit written comments on EPA's immediate final decision up until May 9, 1994. Copies of North Dakota's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of North Dakota's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA's comments on the draft application were addressed in the final application. Thus, the North Dakota program is only granted final authorization for those provisions specifically listed in Table 1.

North Dakota has not requested authorization to operate its hazardous waste program, as revised, in "Indian Country" as defined in 18 U.S.C. 1151. Accordingly, EPA's decision to grant North Dakota final hazardous waste authorization, as revised, does not extend to "Indian Country". The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian Country in North Dakota.

Today, North Dakota is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the North Dakota program authorization revision sought today are listed in Table 1 below.

TABLE 1

HSWA or FR reference	State equivalent [1]
1. Availability of Information, 3006(f), 11/8/84	33-24-02-16, NDCC 28-32-21.1, MOA.
2. Burning of Waste Rule and Used Oil Fuel in Boilers and Industrial Furnaces, 50 FR 49164, 11/29/85, amended on 4/13/87, 52 FR 1/18/19.	33-24-02-03, 33-24-02-05, 33-24-02-06, 33-24-05-144, 33-24-05-210, 33-24-05-211, 33-24-05-212, 33-24-05-213, 33-24-05-214, 33-24-05-215, 33-24-05-220, 33-24-05-221, 33-24-05-222, 33-24-05-223, 33-24-05-224.
3. HSWA Codification Rule 2, 52 FR 45788, 12/1/87	33-24-06-17, 33-24-05-57, 33-24-05-58, 33-25-01-06, 33-25-01-11, 33-24-06-16, 33-24-06-18, 33-24-06-01.
4. Hazardous Waste Miscellaneous Units, 52 FR 46946, 12/10/87	33-24-01-04, 33-24-05-01, 33-24-05-06, 33-24-05-09, 33-24-05-40, 33-24-05-47, 33-24-05-60, 33-24-05-61, 33-24-05-63, 33-24-05-66, 33-24-05-67, 33-24-05-76, 33-24-05-79, 33-24-05-300, 33-24-05-301, 33-24-05-302, 33-24-05-303, 33-24-06-17.
5. Technical Corrections; Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88.	33-24302-18, 33-24-02.
6. Identification and Listing of Hazardous Waste; Technical Corrections, 53 FR 27162, 7/19/88.	33-24-02-05.
7. Farmer Exemptions; Technical Corrections, 53 FR 27164, 7/19/88	33-24-03-01, 33-24-05-01, 33-24-06-16, 33-24-05-250, 33-24-06-01.
8. Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, 53 FR 27290, 7/19/88.	3-24-01-04.
9. Land Disposal Restrictions for First Third Scheduled Wastes, 53 FR 31138, 8/17/89; Amended 2/27/89, 54 FR 8264.	33-24-05-04, 33-24-05-40, 33-24-06-16, 33-24-05-201, 33-24-05-250, 33-24-05-253, 33-24-05-254, 33-24-05-255, 33-24-05-256, 33-24-05-257, 33-24-05-270, 33-24-05-271, 33-24-05-272, 33-24-05-273, 33-24-05-280, 33-24-05-281, 33-24-05-282, 33-24-05-283, 33-24-05-284, 33-24-05-290.
10. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079, 9/2/88.	33-24-01-04, 33-24-05-63, 33-24-05-103, 33-24-05-106, 33-24-06-16, 33-24-01-04.
11. Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 FR 35412, 9/13/88.	33-24-02-04, 33-24-02-17, 33-24-02 Appendix IV.
12. Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, 53 FR 39720, 10/11/88.	33-24-05-48, 33-24-05-49, 33-24-05-54, 33-24-05-55, 33-24-05-56.
13. Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators, 54 FR 615, 1/9/89.	33-24-06-17
14. Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, 1/30/89.	33-24-06-19.
15. Land Disposal Restrictions for Second Third Scheduled Wastes, 54 FR 26594, 6/23/89.	33-24-05-274, 33-24-05-281, 33-24-05-282, 33-24-05-283.
16. Mining Waste Exclusion 1, 54 FR 36592, 9/1/89	33-24-02-03, 33-24-02-04.
17. Testing and Monitoring Activities, 54 FR 40260, 9/29/89	33-24-01-05, 33-24-02 Appendix III.
18. Reportable Quantity Adjustment Methyl Bromide Production Wastes, 54 FR 41402, 10/6/89.	33-24-02-17, 33-24-02 Appendices III and IV.
19. Reportable Quantity Adjustment, 54 FR 50968, 12/11/89	33-24-02-16, 33-24-02 Appendices IV and V.
20. Changes to Part 124, 48 FR 14146, 1/1/83; 48 FR 30113, 6/30/83; 53 FR 28118, 7/26/88; 53 FR 37396, 9/26/88; 54 FR 246, 1/4/89.	33-24-07-02, 33-24-07-03, 33-24-07-04, 33-24-07-06, 33-24-07-08.
21. Mining Waste Exclusion II, 55 FR 2322, 1/23/90	33-24-01-04, 33-24-03-07.
22. Testing and Monitoring Activities; Technical Corrections, 55 FR 8948, 3/9/90.	33-24-01-05, 33-24-02 Appendix III—Tables 2 and 3.
23. Toxicity Characteristic Revisions, 55 FR 11798, 3/29/90, Amended 6/29/90 at 55 FR 26986.	33-24-02-04, 33-24-02-14, 33-24-02-15, 33-24-02 Appendix II, 33-24-05-177, 33-24-06-16.
24. Criteria for Listing Toxic Wastes; Technical Amendment, 55 FR 18726, 5/4/90.	33-24-02-09.
25. HSWA Codification Rule, Double Liners; Correction, 55 FR 19262, 5/9/90.	33-24-05-116, 33-24-05-177.
26. Organic Air Emission Standards for Process Vents and Equipment Leaks, 55 FR 25454, 6/21/90.	33-24-01-05, 33-24-02-06, 33-24-05-04, 33-24-05-06, 33-24-05-40, 33-24-05-44, 33-24-05-400, 33-24-05-401, 33-24-05-402, 33-24-05-403, 33-24-05-404, 33-24-05-405, 33-24-05-406, 33-24-02-407 to 419, 33-24-05-420, 33-24-05-421, 33-24-05-422, 33-24-05-423, 33-24-05-424, 33-24-05-425, 33-24-05-426, 33-24-05-427, 33-24-05-428, 33-24-05-429, 33-24-05-430, 33-24-05-431, 33-24-05-432, 33-24-05-433, 33-24-05-434, 33-24-05-435, 33-24-05-436 to 474, 33-24-06-16, 33-24-05-17.

[1] References are to North Dakota Century Code, Hazardous Waste Management, Section 6 North Dakota Constitution, NDAC Practice and Procedure.

C. Decision

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

North Dakota now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA

program, subject to the limitation of its revised program application and previously approved authorities. North Dakota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA. The State of North Dakota will submit a draft application for Non-HSWA cluster 6 and HSWA cluster 2 by June 30, 1994.

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of North Dakota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

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

Dated: March 29, 1994.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 94–8357 Filed 4–6–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–4860–1]

Colorado; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

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

DATES: Final authorization for Colorado shall be effective on June 6, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Colorado's program revision application must be received by the close of business by May 9, 1994.

ADDRESSES: Copies of Colorado's program revision application are available during regular business hours at the following addresses for inspection and copying: Colorado Department of Health, Hazardous Materials and Waste Management Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530, phone number: 303/692–3300; and USEPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: 303/293–1444. Written comments should be sent to Ayn Schmit (8HWM–WM), USEPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Ayn Schmit, Waste Management Branch, USEPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: 303/293–1845.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows states to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g), of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to state hazardous waste programs are necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, state program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 124 and 270.

B. Colorado

Colorado initially received final authorization on November 2, 1984. Colorado received authorization for revisions to its program on November 7, 1986, on July 14, 1989, and on July 9, 1991. On February 28, 1991, Colorado submitted a draft program revision application for additional revisions, and on October 1, 1993, Colorado submitted a final program revision application. Today, Colorado is seeking approval of these program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Colorado's draft and final applications, and has made an immediate final decision that Colorado's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Colorado. The public may submit written comments on EPA's immediate final decision up until May 9, 1994. Copies of Colorado's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Colorado's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In February 1991 Colorado submitted a draft application for EPA review. EPA provided comments on the draft application to the State in May 1992 and additional comments in May 1993. EPA's comments on the draft application were fully addressed in the final application submitted in October 1993. However, EPA has identified minor differences in the following provisions of the State regulation as reflected in the final application: Colorado Code of Regulations

261.4(b)(7); 261.8; 262.11(c); 268.1(c)(2); 268.6; 268.7(b)(7); 268.35(d); 268.40(b); 268.41(a); 268.42(b); 268.44; 268.50(d); and 100.22(c)(4). Colorado has committed to revising each of these regulatory provisions, and anticipates that these revisions will be adopted by April 1994. Accordingly, EPA intends to proceed with authorization rather than continue the dual regulatory scheme that presently exists. Thus, the Colorado program is granted immediate final authorization for the provisions set forth in the following table.

HSWA or FR reference	State equivalent [1]
1. Land Disposal Restrictions for First Third Scheduled Wastes, 53 FR 31138, 8/17/88 as amended by 54 FR 8264, 2/27/89.	264.13, 264.73, 265.13, 265.73, 265.74, 267.20, 268.1, 268.4, 268.5, 268.6, 268.7, 268.8, 268.30, 268.31, 268.32, 268.33, 268.40, 268.41, 268.42, 268.43, 268.44, 268.50.
2. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079, 9/2/88.	260.10, 264.114, 264.190, 264.193, 264.196, 265.110, 265.114, 265.190, 265.193, 265.196, 265.201.
3. Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities and Notification, 53 FR 35412, 9/13/88.	261.4, 261.32, Appendix VII to Part 261.
4. Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, 53 FR 39720, 10/11/88.	264.91, 264.92, 264.97, 264.98, 264.99.
5. Standards for Generations of Hazardous Waste: Manifest Renewal, 53 FR 45089, 11/8/88.	262.20, Appendix to Part 262.
6. Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators, 54 FR 615, 1/9/89.	100.41.
7. Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, 1/30/89.	100.22.
8. Land Disposal Restrictions Amendments to First Third Scheduled Wastes, 54 FR 18836, 5/2/89.	268.43.
9. Land Disposal Restrictions for Second Third Scheduled Wastes, 54 FR 26594, 6/23/89.	268.34, 268.41, 268.42, 2678.43.
10. Mining Waste Exclusion I, 54 FR 36592, 9/1/89	261.3, 261.4.
11. Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, 54 FR 36967, 9/6/89 as amended by 55 FR 23935, 6/13/90.	267.20, 268.1, 268.5, 268.6, 268.7, 268.8, 268.32, 268.33, 268.44, 268.50.
12. Mining Waste Exclusion II, 55 FR 2322, 1/23/90	260.10, 261.4, 262.23.
13. Toxicity Characteristic Revisions, 55 FR 11798, 3/29/90 as amended by 55 FR 26986, 6/29/90.	261.4, 261.8, 261.24, 261.30, Appendix II to Part 261, 264.301, 265.221, 265.273, Appendix I to Part 268.
14. Land Disposal Restrictions for Third Third Scheduled Wastes, 55 FR 22520, 6/1/90.	261.20, 261.21, 261.22, 261.23, 261.24, 261.31, 261.33, Appendix VII to Part 261, 262.11, 262.34, 264.13, 264.229, 264.256, 264.281, 264.312, 264.316, 265.1, 265.13, 265.229, 265.256, 265.281, 265.312, 265.316, 268.2, 268.3, 268.7, 268.8, 268.9, 268.35, 268.40, 268.41, 268.42, 268.43, Appendices IV through VIII to Part 268, 100.63.
15. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments, 56 FR 3864, 1/31/1991.	261.3, 261.20, 261.31, 262.11, 262.34, 268.2, 268.7, 268.9, 268.33, 268.35, 268.40, 268.41, 268.42, 268.43, Appendices IV, V, VII, VIII, and IX to Part 268, Appendix I to Part 100.
16. Mining Waste Exclusion III, 56 FR 27300, 6/13/91	261.4.
17. Land Disposal Restrictions Electric Arc Furnace Dust (K061), 56 FR 41164, 8/19/91.	261.3, 261.4, 268.41, 268.42.
18. Second Correction to the Third Third Land Disposal Restrictions, 57 FR 8086, 3/6/92.	264.13, 265.13, 268.3, 268.41, 268.42.

[1] Unless indicated as otherwise, all references are to Sections of 6 CCR 1007–3.

The program revisions addressed by Colorado's final application include the first, second, and third third land disposal restrictions, mining waste exclusions, revisions to the Toxicity Characteristic, standards for incinerators, tanks and miscellaneous units, and ground water monitoring. Certain of the land disposal restriction provisions are not delegable to states. EPA is not authorizing Colorado for these non-delegable provisions, which include 40 CFR 268.5; 268.6; 268.42(b); and 268.44. Federal regulations allow exemptions to certain of the land disposal restrictions for certain wastes that are disposed of in injection wells. Since Colorado does not allow the disposal of hazardous waste in injection wells, their program is more stringent that the federal program for these provisions.

Some of the federal land disposal restrictions imposed time-limited prohibitions against land disposal of certain wastes. Since Colorado's date of adoption of these regulatory provisions in many cases was after the time-limited prohibition expired, the Colorado regulations do not include these prohibitions or impose a later effective date for the prohibition than the date set forth in the corresponding federal regulation. These differing dates do not affect the equivalency of Colorado's program, since prior violations of these prohibitions remains enforceable by EPA under federal regulation.

Colorado has not requested hazardous waste program authority on Indian Country. EPA retains all hazardous waste authority under RCRA which applies to Indian Country in Colorado.

C. Decision

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

Colorado now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Colorado also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

In addition, Colorado has agreed to submit a draft application for remaining provisions from Non-HSWA Clusters III–VI, HSWA Clusters I and II, and RCRA Cluster I and partial Cluster II in April 1994. The final application will be submitted within 60 working days of receipt of EPA's comments on the draft application.

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain federal regulations in favor of Colorado's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

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

Dated: March 29, 1994.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 94–8353 Filed 4–6–94; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 040494A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the AI.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), April 4, 1994, through 12 midnight, A.l.t., December 31, 1994.

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

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

In accordance with § 675.20(a)(7)(ii) the Pacific ocean perch TAC for the AI was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) as 9,265 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 8,265 mt, with consideration that 1,000 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the AI, effective from 12 noon, A.l.t. April 4, 1994, through 12 midnight, A.l.t., December 31, 1994.

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

Classification

This action is taken under § 675.20

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 4, 1994.

David S. Crestin,

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

[FR Doc. 94–8333 Filed 4–4–94; 12:10 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 67
Thursday, April 7, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1212

[FV-93-707PR]

RIN 0581-AB19

Lime Research, Promotion, and Consumer Information Order; Proposed Amendments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule gives notice of proposed amendments to the Lime Research, Promotion, and Consumer Information Order. These amendments would revise the definition of the term "lime" in order to cover seedless rather than seeded limes; increase the exemption level from less than 35,000 pounds annually to less than 200,000; alter the size, composition, and term of office of the Lime Board; and make necessary conforming changes. This action is necessary to implement amendments to the Lime Research, Promotion, and Consumer Information Act of 1990.

DATES: Comments must be received by May 9, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535-S, Washington, DC 20090-6456. Three copies of all written materials should be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular working hours. All comments should reference the docket number of this issue of the **Federal Register**.

All comments concerning the new information collection requirement contained in this action (importer reimbursement application) should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for the Agricultural Marketing Service.

FOR FURTHER INFORMATION CONTACT: Richard Schultz at the above address or telephone (202) 720-5976.

SUPPLEMENTARY INFORMATION: This proposed rule would amend the Lime Research, Promotion, and Consumer Information Order (7 CFR part 1212), herein referred to as the Order. The Order is effective under the Lime Research, Promotion, and Consumer Information Act of 1990 (1990 Act) (Pub. L. 101-624, 7 U.S.C. 6201-6212), as amended by the Lime Research, Promotion, and Consumer Information Improvement Act (1993 Act) (Pub. L. 103-194, Dec. 14, 1993).

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1957 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Impact Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The 1990 Act exempted lime producers who produce less than 35,000 pounds annually for the fresh market from being subject to the Order. When the 1990 Act was enacted, there were an estimated 325 producers who produced at least 35,000 pounds annually and were subject to the Order. When the 1993 Act was enacted, the exemption level was increased to less than 200,000 pounds annually. At this exemption level, there are an estimated 50 producers who produce at least 200,000 pounds and would be subject to the Order. Despite this increase in exemption level, the majority of producers subject to the Order would still be classified as small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000.

The increase in exemption level is not expected to significantly affect the number of first handlers who are responsible for collecting and remitting producer assessments to the Lime Board (Board). The number of first handlers remains at approximately 25. The increase in exemption level, which also applies to imports, is not expected to significantly affect the number of importers of fresh market limes. The number of importers subject to the Order would increase from 5 to 35. However, this increase in importers is not primarily due to the increase in the exemption level but rather to the changing character of the lime industry. As in the case of producers, the majority of first handlers and importers subject to the Order would still be classified as small entities. Small agricultural service firms, which include handlers and importers, have been defined by the SBA as those having annual receipts of less than $3,500,000.

Since the enactment of the 1990 Act, the character of the lime industry has significantly changed. As a result of the extensive damage to lime orchards in Florida by Hurricane Andrew in August 1992, domestic production has plummeted and the volume of imports

has increased dramatically. Domestic production is not expected to reach pre-Hurricane Andrew levels for possibly two to three years because Florida accounted for a majority of domestic production.

Shipment reports of domestic limes, from January 1, 1993, through December 31, 1993, indicate truck shipments of 8.71 million pounds from Florida and 8.24 million pounds from California, for a total of 16.95 million pounds. In contrast, shipment reports of imported limes for this period indicate truck shipments of 248.22 million pounds from Mexico plus an additional 8.78 million pounds from 12 other countries. Imports currently represent roughly 93 percent of lime shipments in the United States.

The Order currently requires lime producers, producer-handlers, and importers who produce or import 35,000 pounds or more annually for fresh market to pay an assessment not to exceed one cent per pound of limes. This proposal would limit assessment obligations to producers, producer-handlers, and importers of 200,000 pounds or more annually. The expected results of this amendment would significantly decrease the number of persons subject to the Order and decrease the amount of assessments collected.

This proposal would also alter the size and composition of the Board, the administrative body appointed by the Secretary to operate the Order, from 11 members to seven. Further, this proposal would reduce the number of producer members serving on the Board from seven to three. The number of importer members would remain at three. The seventh member would be the public member. These changes to the Board's size and membership are reflective of the current structure of the lime industry.

Accordingly, the Administrator of the AMS has determined that the changes reflected in this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) the information collection requirements contained in the Order have been approved by the OMB and were assigned OMB number 0581–0093, except for the Board nominee background statement form which was assigned OMB number 0505–0001. This action would generally reduce the number of information collections, and hence the reporting burden. The information collection requirements of the Order are as follows:

(1) *A periodic report by each first handler who handles limes for fresh market.* When the amended Order is implemented, the estimated number of respondents required to complete this report would be 25, each submitting a maximum of 12 responses per year, with an estimated average reporting burden of 30 minutes per response. The change in exemption level, from less than 35,000 pounds to less than 200,000 pounds, should not affect the number of first handlers. However, this change could reduce their reporting burden because less information may be required from persons who previously would not be exempt from the Order. First handlers may alternatively prepay assessments annually, requiring only an initial report of anticipated assessments and a final annual report of actual handling;

(2) *A periodic report by each importer who imports 200,000 or more pounds annually for fresh market.* The estimated number of respondents completing this report would be 35, each submitting a maximum of 12 responses per year, with an estimated average reporting burden of 15 minutes per response. The change in character of the lime industry due to increased imports since 1992 would raise the number of respondents filing this report from 5 to 35;

(3) *A refund application form for persons who desire a refund of their assessments.* The estimated number of respondents completing this application would be five, each submitting two responses per year, with an estimated average reporting burden of 15 minutes per response. The change in exemption level would reduce the number of respondents filing this application from 200 to 5;

(4) *An importer reimbursement application for persons who import less than 200,000 pounds annually and desire to be reimbursed for assessments collected by the U.S. Customs Service.* The estimated number of respondents completing this application would be 20, each submitting one response per year, with an estimated average reporting burden of 15 minutes per response. Because this is a new form, no comparative data regarding an increase or decrease in reporting burden is available;

(5) *An exemption application for persons who produce or import less than 200,000 pounds annually for fresh market to be exempt from assessments and recordkeeping requirements.* The estimated number of respondents completing this application would be 600, each submitting one response per year, with an estimated average burden of 15 minutes per response. The changes in exemption level and character of the lime industry would reduce the number of respondents filing this application from 680 to 600;

(6) *A referendum ballot to be used not later than 30 months after assessments begin under the amended Order and periodically thereafter to indicate whether producers and importers favor continuance of the Order.* The estimated number of respondents completing this ballot would be 85, each submitting one response approximately every five years, or an annual average of 10 respondents, with an estimated average reporting burden of 15 minutes per response. The change in exemption level would reduce the number of respondents completing this ballot from 325 to 85;

(7) *A nominee background statement form for Board member and alternate positions.* Two nominees would be nominated for each open position on the Board. The estimated number of respondents completing this form would be 28 during the first year of Order operations, and approximately eight per year thereafter, with an estimated average reporting burden of 30 minutes per response. The change in the composition of the Board would reduce the number of respondents completing this form from 44 to 28; and

(8) *A requirement to maintain records sufficient to verify reports submitted under the Order.* The estimated number of persons required to comply with this requirement would be 70, each of whom will have an estimated annual burden of seven minutes. The change in exemption level would reduce the number of recordkeepers from 350 to 70.

Background

The 1990 Act was enacted on November 28, 1990, for the purpose of establishing an orderly procedure for the development and financing of an effective and coordinated program of research, promotion, and consumer information to strengthen the domestic and foreign markets for limes. The Order required by the 1990 Act became effective on January 27, 1992 (57 FR 2985), after notice and comment rulemaking.

In March 1992 the Department of Agriculture (Department) conducted nomination meetings to nominate lime producers and importers for appointment to the Board. The Board members were appointed by the Secretary in September 1992, and the Board conducted its first meeting at the Department in Washington, DC in

October 1992. During the course of this meeting, the Board and the Department concluded that a technical amendment was needed to cover seedless rather than seeded limes. Consequently, full implementation of the Order was delayed until the enactment of such technical amendment.

The 1993 Act contained the necessary technical amendment to cover seedless limes (*citrus latifolia*) rather than seeded limes (*citrus aurantifolia*) under the Order. The 1993 Act also provided for (1) increasing the exemption level from less than 35,000 pounds annually to less than 200,000; (2) terminating the initial Board; (3) changing the size and composition of the Board; and (4) delaying the initial referendum date.

This proposed rule invites comments on amending the Order to reflect the provisions of the 1993 Act. The Act, as amended, will (1) revise the definition of the term "lime" from *citrus aurantifolia* to *citrus latifolia*; (2) increase the exemption level from less than 35,000 pounds annually to less than 200,000; (3) alter the size, composition, and term of office of the Board; and (4) make conforming changes.

This rule would change the definition of the "lime" from *citrus aurantifolia* (seeded lime) to *citrus latifolia* (seedless lime) in § 1212.5 of the Order. Although the intent of the Act was to cover seedless limes, the definition of "lime" in § 1953(6) of the 1990 applied only to seeded limes.

This rule would increase the producer and importer exemption level from less than 35,000 pounds annually to less than 200,000 pounds annually. This revised exemption level was reached through industry consensus. Therefore, this rule would change references to 35,000 pounds in §§ 1212.65, 1212.68, and 1212.69 of the Order to 200,000 pounds. In addition, a new paragraph (d) has been added to § 1212.68 of the Order whereby exempt importers may obtain a refund of assessments collected by the U.S. Customs Service.

Moreover, this rule would change the size of the Board from 11 members to seven. The Board is currently composed of seven producer members, three importer members, and their alternates. The public member position is currently vacant. This action would decrease the number of producer members from seven to three, which would more fairly reflect the current structure of the lime industry. Therefore, §§ 1212.30, 1212.32, and 1212.34 of the Order would be revised to make these changes in the Board's composition.

This rule would also change the Board's composition in § 1212.30(b) relative to representation of producer and importer members within the two districts established under the Order. District 1 includes the States east of the Mississippi River, Puerto Rico, and the District of Columbia. District 2 includes the States west of the Mississippi River. Currently, the Order provides for six producer members and one importer member and their alternates from District 1, and one producer member and two importer members and their alternates from District 2. This action would reduce the number of producer members from District 1 from six to two by revising section 1212.30 of the Order.

Further, as a result of this allocation of Board membership, the realignment of districts or reapportionment of membership between Districts 1 and 2 on the basis of changes in production and importation would no longer be necessary. Such realignment or reapportionment would be inconsistent with the 1993 Act. Therefore, any references to such realignment or reapportionment would be removed from §§ 1212.18, 1212.30, and 1212.40 of the Order.

Reducing the size of the Board affects the current requirements for a quorum and the number of trustees which would be designated if the program were to be terminated. Therefore, this action would revise § 1212.37 of the Order to decrease from six to four the number of members needed to constitute a quorum at Board meetings and change the number of trustees designated in § 1212.84 of the Order from five to four.

The 1993 Act requires the appointments of the current Board members to be terminated. New appointments would then be made by the Secretary. The 1993 Act also specifies that the initial Board members under the amended Order would serve initial terms of office of 30 months. This change is directly related to the provision of the 1993 Act which delays the deadline for the initial referendum until 30 months after the date on which the collection of assessments begin under the amended Order. We are also proposing a conforming change in § 1212.67 of the Order pursuant to the 1993 provision.

In order to provide administrative continuity during the 30 months prior to the initial continuance referendum, the 1993 Act provides that the initial Board members under the amended Order serve 30-month concurrent terms of office. The 1990 Act provided for the staggering of the terms of office of the initial Board members. Although staggered terms of office are generally desirable, this created a situation where 30 percent or more of the Board's membership could change prior to the initial referendum. In contrast, the 1993 Act provides that the initial Board members under the amended Order serve 30-month concurrent terms of office and that staggered terms be reinstituted after the referendum if the program continues. The purpose of this change is to minimize the organizational uncertainties associated with Board member turnover and to facilitate organizational continuity during the period prior to the initial referendum. Therefore, this action would also amend section 1212.34 of the Order.

All written comments received in response to this publication by the date specified herein will be considered prior to any finalization of the proposed amendments.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1212 is proposed to be amended as follows:

PART 1212—LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1212 revised to read as follows:

Authority: 7 U.S.C. 6201–6212.

Subpart A—Lime Research, Promotion, and Consumer Information Order

§ 1212.2 [Amended]

2. Section 1212.2 is amended by removing the phrase "and any amendments thereto" and adding in its place "as amended".

§ 1212.5 [Amended]

3. Section 1212.5 is amended by removing the word *"aurantifolia"* and adding in its place *"latifolia"*.

§ 1212.18 [Amended]

4. Section 1212.18 is amended by removing the phrase "or other subdivisions as may be prescribed pursuant to § 1212.40(o)".

5. In § 1212.30 paragraph (a) is amended by removing the word "Seven" and adding in its place "Three"; by revising paragraph (b); and by removing paragraph (c) to read as follows:

§ 1212.30 Establishment and membership.

* * * * *

(b) Two of the three producer members shall be producers of limes in District 1, and one producer member

shall be a producer of limes in District 2. One of the three importer members shall be an importer of limes in District 1, and two importer members shall be importers of limes in District 2. The public member shall be selected at large.

6. Section 1212.31 is amended by revising the section heading and paragraph (a), by designating the existing text of paragraph (k) as paragraph (k)(1) and revising it, and by designating the concluding text at the end of the section as paragraph (k)(2), to read as follows:

§ 1212.31 Nominations.

* * * * *

(a) Except for the member and alternate member who represent the general public, nominations of initial members to the Board shall be submitted to the Secretary for selection as soon as practicable after [the effective date of the amendment of this subpart]. In subsequent years, nominations of members to the Board shall be submitted to the Secretary by the Board by August 1. Nominations may be made by means of group meetings for producer and importer members or by mail ballot.

* * * * *

(k)(1) In the event of a mail ballot, all qualified persons interested in serving on the Board or who are interested in nominating another person to serve on the Board shall submit to the Board in writing such information as name, mailing address, number of pounds produced, marketed, handled, or imported, or other information as may be required, in order to place that person on the ballot: *Provided*, That in the case of nominating the initial Board under the amended Act, the Secretary shall mail out the ballots and cause press releases concerning the distribution of ballots and pertinent information on balloting to be distributed to the media in the lime producing and importing areas. These ballots shall be returned to the Secretary.

* * * * *

§ 1212.32 [Amended]

7. Section 1212.32 is amended by removing the word "seven" and adding in its place "three".

8. Section 1212.34 is revised to read as follows:

§ 1212.34 Term of office.

(a) The initial members of the Board and their respective alternates shall serve 30-month concurrent terms of office.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Subsequent appointments to the Board will be for a term of 3 years, except that during the initial 3-year appointments, members and their alternates shall serve terms as follows: One producer member from District 1 and one importer member from District 2 shall be appointed for a term of 1 year; the importer member from District 1 and the producer member from District 2 shall be appointed for a term of 2 years; and one producer member from District 1 and one importer member from District 2 shall be appointed for a term of 3 years.

(d) Board members and alternates shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(e) No member or alternate shall serve more than two successive terms. However, members and alternates serving a term of 1 year, after having served a 30-month concurrent term, may serve a third successive term.

§ 1212.37 [Amended]

9. In § 1212.37 paragraph (a) is amended by removing the word "Six" and adding in its place "Four".

§ 1212.40 [Amended]

10. Section 1212.40 is amended by removing paragraph (o) and redesignating paragraphs (p), (q), and (r) as paragraphs (o), (p), and (q) respectively.

§ 1212.65 [Amended]

11. In § 1212.65 paragraph (c)(2)(viii) is amended by removing the number "35,000" and adding in its place "200,000".

12. Section 1212.67 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1212.67 Refunds.

(a) Subject to the provisions of this section any producer, producer-handler, or importer shall have the right to personally demand and receive from the Board a refund of assessments paid by or on behalf of such producer, producer-handler, or importer for any calendar month during the period beginning on the date on which the collection of assessments begins under this Order and ending on the effective date of the referendum mandated by section 1960(a) of the Act; *Provided*, That:

* * * * *

13. In § 1212.68 paragraph (a) is amended by removing the number "35,000" and adding in its place "200,000"; and by adding a new paragraph (d) to read as follows:

§ 1212.68 Exemption from assessment.

* * * * *

(d) Importers who are exempt from assessment shall be entitled to reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Board for reimbursement of such assessments paid on a marketing year basis. The Board shall reimburse such assessments within 30 days of receiving an importer's application.

§ 1212.69 [Amended]

14. Section 1212.69 is amended by removing the number "35,000" and adding in its place "200,000".

§ 1212.84 [Amended]

15. In § 1212.84 paragraph (a) is amended by removing the word "five" and adding in its place "four".

Dated: March 31, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–8293 Filed 4–6–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–06–AD]

Airworthiness Directives; de Havilland Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 series airplanes. This proposal would require modification of the potentiometer lever stops on the nose wheel steering. This proposal is prompted by a report that the potentiometer stops installed currently on these airplanes are too short to limit excessive uncontrolled potentiometer movement in the event of a mechanical link failure. The actions specified by the proposed AD are intended to prevent the airplane from departing the runway during takeoff or landing in the event of the failure of the mechanical link between the rudder pedals and the potentiometer.

DATES: Comments must be received by June 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-06-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Bradford Chin, Electronics Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-06-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-06-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-8-100 series airplanes. Transport Canada Aviation advises that when a Model DHC-8 series airplane is in the high speed taxi mode during takeoff or landing, nose gear steering is limited to 7 degrees left or right of center and is controlled through rudder pedal movement. Rotary movement of the rudder input quadrant is transmitted to a dual potentiometer via a mechanical link and fork lever. The potentiometer converts this movement into electrical signals, which are sent to an electronic control unit (ECU) located in the nose of the airplane. Subsequently, the ECU signals the electro-hydraulic actuator on the nose gear, thereby rotating the nose gear in the required direction.

If the mechanical link connecting the potentiometer to the rudder input quadrant fails, excessive uncontrolled potentiometer lever movement is restricted by small metal stops located outside the normal angular travel of the fork lever. These "potentiometer stops" limit the size of the signal sent to the ECU only in the event of a mechanical link failure. On certain Model DHC-8-100 series airplanes, the currently installed potentiometer stops are too short to restrict excessive fork lever movement in the event of a mechanical link failure. In this case, a signal that is too large would be sent to the ECU, which could cause the nose gear to exceed its 7-degree limitation. This condition, if not corrected, could result in the airplane departing the runway during takeoff or landing.

Bombardier Inc. has issued de Havilland Service Bulletin S.B. 8-32-99, Revision 'A,' dated July 26, 1993, that describes procedures for modification of the potentiometer lever stops on the nose wheel steering (Modification 8/1809) on certain Model DHC-8-100 and -300 series airplanes. Accomplishment of this modification will restore overtravel protection by relocating the potentiometer lever stops. Relocation of the stops will ensure that excessive fork lever movement is restricted in the event of a mechanical link failure. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive (AD) No. CF-93-24, dated September 29, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

Although the effectivity of the service bulletin includes certain Model DHC-8-100 and -300 series airplanes, Canadian AD No. CF-93-24 is applicable only to certain Model DHC-8-100 series airplanes. The service bulletin states that the potentiometer stops on certain Model DHC-8-300 series airplanes are contacted by the lever prematurely, resulting in deformation of the stops. However, the FAA has been advised that, although deformation of the potentiometer stops on these airplanes can occur, excessive potentiometer lever movement would still be restricted in the event of failure of a mechanical link. In light of this information, the FAA finds that Model DHC-8-300 series airplanes are not subject to the addressed unsafe condition.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the potentiometer lever stops on the nose wheel steering. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost for required parts would be minimal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,920, or $165 per airplane.

The total cost impact figure discussed above is based on assumptions that no

operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland, Inc.: Docket 94–NM–06–AD.

Applicability: Model DHC–8–102, –103, and –106 airplanes, serial numbers 003 through 334 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from departing the runway during takeoff or landing, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the potentiometer lever stops on the nose wheel steering in accordance with de Havilland Service Bulletin S.B. 8–32–99, Revision "A," dated July 26, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(c) Special flight permits may be issued in accordance with 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.

Issued in Renton, Washington, on April 1, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8326 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230, 239, 270 and 274

[Release Nos. 33–7052; IC–20184; S7–34–93]

RIN 3235–AE17

Revisions to Rules Regulatory Money Market Funds—Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form amendments; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from April 6, 1994 to May 6, 1994 the comment period for Release Nos. 33–7038 and IC–19959, which proposed amendments to rule 2a–7 under the Investment Company Act of 1940 and related rules and forms regarding money market funds.

DATES: Comments must be submitted on or before May 6, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–34–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT:

Martha H. Platt, Senior Attorney, or Kenneth J. Berman, Deputy Office Chief, (202) 272–2107, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On December 17, 1993, the Commission issued Rel. Nos. 33–7038 and IC–19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] ("Release No. 19959"), which proposed amendments to rule 2a-7 under the Investment Company Act of 1940 and related rules and forms. The proposed amendments would tighten the risk-limiting conditions imposed on tax exempt money market funds by rule 2a-7 under the Investment Company Act of 1940; impose additional disclosure requirements on tax exempt funds; and make certain other changes to the Commission rules and forms applicable to all money market funds. The amendments are designed both to reduce the likelihood that a tax exempt fund will not be able to maintain a stable net asset value and to increase investor awareness of the risks of investment in a money market fund.

Since Release No. 19959 was published, the Commission has received two requests from interested persons for an extension of the comment period. In light of the importance of the amendments to money market funds and the short-term tax exempt securities markets and the benefits to the Commission of receiving carefully considered comments, the Commission believes a one month extension of the comment period is appropriate.

The comment period for responding to Release No. 19959 is extended to May 6, 1994.

By the Commission.

Dated: March 31, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8277 Filed 4–6–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 94N-058C and 94N-058F]

Dietary Fiber and Cancer and Coronary Heart Disease; Notice of Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is cosponsoring, with other health research organizations, a public conference to update and summarize the scientific information available on the association between dietary fiber and cancer and dietary fiber and coronary heart disease. The conference will also provide an opportunity to discuss the criteria that should be used in determining whether significant scientific agreement on the validity of a dietary fiber-cancer or a dietary fiber-coronary heart disease relationship exists. The conference will include invited summary presentations and panel discussions by expert scientists and public discussions of the scientific evidence.

DATES: The public conference will be held on May 12 and 13, 1994, 8 a.m. to 5:30 p.m. Interested persons may submit written comments by May 9, 1994. Data received by May 2, 1994, will be forwarded to the individuals preparing presentations or serving as panelists for the conference for possible inclusion in their reviews and discussions.

ADDRESSES: The public conference will be held at the Marriott Gateway, 1700 Jeff Davis Hwy., Arlington, VA. Submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, written comments, data, new data not previously submitted, or information regarding this notice. Comments relating to dietary fiber and cancer are to be identified with the docket number 94N-058F. Comments relating to dietary fiber and coronary heart disease are to be identified with document number 94N-058C. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James T. Tanner, Office of Special Nutritionals (HFS-451), Food and Drug Administration, Washington, DC 20204, 202-205-4168.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) required that FDA consider health claims on food labels for 10 nutrient-disease relationships and determine, based on the totality of the publicly available scientific evidence, whether there is significant scientific agreement among qualified experts regarding the validity of these relationships. In the **Federal Register** of January 6, 1993, FDA issued final rules announcing its decision not to authorize the use on the label or labeling of foods of health claims relating to an association between dietary fiber and cancer (58 FR 2537) or dietary fiber and coronary heart disease (58 FR 2552).

The agency concluded that there was not significant scientific agreement among qualified experts that a claim relating dietary fiber to reduced risk of cancer was adequately supported by the totality of publicly available scientific evidence. FDA concluded that the role for dietary fiber itself was not supported by the available data, but that consumption of diets low in fat and high in fiber-containing grain products, fruits, and vegetables may be associated with reduced risk of some cancers (58 FR 2537 at 2548).

The agency also concluded that there was not significant scientific agreement among qualified experts that a claim relating dietary fiber to reduced risk of coronary heart disease was adequately supported by the totality of publicly available scientific evidence. As was the case with respect to dietary fiber and cancer, FDA concluded that the role of fiber itself was not supported by the available data, but that consumption of diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, may be associated with reduced risk of coronary heart disease (58 FR 2552 at 2578).

In the **Federal Register** of October 14, 1993 (58 FR 53296), FDA published a proposed rule not to authorize health claims on five nutrient-disease relationships, including dietary fiber and cancer and dietary fiber and coronary heart disease, for dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances. In that proposal, FDA reviewed the available evidence on the relationship of dietary fiber and cancer and on the relationship of dietary fiber and coronary heart disease. Based on its tentative conclusion that there is not significant scientific agreement among qualified experts that the totality of publicly available scientific evidence supported these nutrient-disease relationships, FDA proposed not to authorize claims on these relationships. On January 4, 1994, in a new statutorily-mandated rulemaking, changes in the agency's regulations (21 CFR 101.71(a) and (b)) reflecting those that FDA had proposed in October 1993, became final by operation of law (see 59 FR 436, January 4, 1994). However, the rulemakings that FDA instituted in October 1993 continue (59 FR 436).

On May 12 and 13, 1994, FDA will cosponsor a public conference with other units of the Department of Health and Human Services, including the National Institutes of Health and the Centers for Disease Control and Prevention, the American Cancer Society, the American Heart Association, the Institute of Medicine, the American Medical Association, the Federal Trade Commission, and the Congressional Research Service to review the publicly available evidence on the relationship of dietary fiber and cancer and the relationship of dietary fiber and coronary heart disease with particular emphasis on refining the issues relative to dietary fiber definition and levels to disease risk. The purpose of this public conference is to update and summarize the scientific information available on these associations and to discuss criteria that should be used to determine whether a significant scientific agreement on the validity of these nutrient-disease relationships exists. FDA is taking this action because it is aware, based on its review of the evidence on these nutrients-disease relationships, that at least some promising evidence exists. The agency believes that the conference will help elucidate whether recent developments have provided the basis for significant scientific agreement. The agency notes that the review of the issues regarding dietary fiber/disease claims on dietary supplements is ongoing. FDA solicits the input of all segments of the food industry and of other interested persons on these issues, however, because the agency intends, if the evidence justifies, to authorize any claims that are warranted for foods in conventional food form as well as for dietary supplements.

FDA has invited experts in medicine, nutrition, epidemiology, pathology, and other disciplines related to dietary fiber and cancer and dietary fiber and coronary heart disease to serve as speakers and panelists. They will summarize and update the publicly available evidence, react to any evidence that is presented, and provide additional comment based on their individual expertise. Others may submit

data from new research and will be given the opportunity to participate during the open discussions. Cancer and coronary heart disease will be the focus of the conference because they are the diseases that were highlighted by the 1990 amendments.

The conference will be divided into four major parts as follows: (1) Opening and overview of dietary fiber; (2) dietary fiber and coronary heart disease; (3) dietary fiber and cancer; and (4) the criteria for determining whether significant scientific agreement on dietary fiber and cancer or dietary fiber and coronary heart disease exits.

Interested persons may, on or before May 9, 1994, submit to the Dockets Management Branch (address above) written comments regarding this notice. 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.

Dated: April 1, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–8268 Filed 4–6–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 123 and 1240

[Docket No. 93N–0195]

Proposal To Establish Procedures for the Safe Processing and Importing of Fish and Fishery Products; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 31, 1994, the comment period for a proposed rule that appeared in the **Federal Register** of January 28, 1994 (59 FR 4142). The document proposed to adopt regulations to ensure the safe processing and importing of fish and fishery products, including procedures for the monitoring of selected processes in accordance with Hazard Analysis Critical Control Point (HACCP) principles. HACCP is a preventive system of hazard control that can be used by food processors and importers. FDA is taking this action in response to several requests for an extension of the comment period.

DATES: Written comments by May 31, 1994.

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

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 28, 1994 (59 FR 4142), FDA issued a proposed rule to adopt regulations to ensure the safe processing and importing of fish and fishery products, including procedures for the monitoring of selected processes in accordance with HACCP principles. Interested persons were given until April 28, 1994, to comment on the proposal. However, because of an inadvertent error, the date for submission of comments was incorrectly given as March 29, 1994. In the **Federal Register** of March 3, 1994 (59 FR 10085), FDA published a proposed rule to correct the comment period to April 28, 1994.

FDA has received several requests from trade associations, State agencies, and university officials for an extension of the comment period in order to better review the proposal and prepare comments. Most requests ask for a 90-day extension, although one request is for an unspecified length and another is for about 120 days. FDA also received a request from a public advocacy organization that the comment period either not be extended at all or that it be extended no more than 30 days.

After careful review of these requests, FDA has concluded that it is in the public interest to allow an additional 30 days for comment. With the additional period, the agency is providing a total of 120 days for comment. FDA considers that this amount of time should be more than ample for interested persons to complete and submit their comments. Accordingly, the agency is extending the comment period to May 31, 1994. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice extending the comment period of the "Fish and Fish Products Hazards and Controls Guide" until May 31, 1994. That guide has been developed to serve, among other things, as an adjunct to the proposed regulations.

Interested persons may, on or before May 31, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 1, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–8266 Filed 4–6–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

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 Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to a memorandum of understanding (MOU) between the Division of Minerals and Geology (DMG) of the Colorado Department of Natural Resources and the Water Quality Control Division (WQCD) of the Colorado Department of Health that addresses water quality management at coal mines. The revised MOU provides for the collection of water quality samples by DMG for analysis when DMG suspects an unpermitted discharge, clarifies that WQCD is solely responsible for enforcement of the Colorado Discharge Permit System (CDPS) program, and provides for the issuance of a cessation order by DMG in those instances of imminent danger to health or safety or significant environmental harm. The amendment is intended to revise the Colorado program to be consistent with the Federal regulations and SMCRA.

DATES: Written comments must be received by 4 p.m., m.d.t. May 9, 1994. If requested, a public hearing on the proposed amendment will be held on May 2, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on April 22, 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 comment should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Colorado 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, NM 87102, Telephone: (505) 766–1486.

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Actions taken subsequent to approval of the Colorado program are codified at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated March 18, 1994, Colorado submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. CO–604). Colorado submitted the proposed amendment in response to a letter dated April 7, 1993 (administrative record No. CO–539), that OSM sent to Colorado in accordance with 30 CFR 732.17(c). The concerns raised by OSM in its 30 CFR part 732 letter pertained to a January 1985 MOU between the Colorado Department of Natural Resources (DNR) and the Colorado Department of Health (DOH) which Colorado intended to supersede a December 15, 1980, MOU between the two agencies. Whereas, OSM had approved the 1980 MOU, Colorado had not submitted the 1985 MOU to OSM, and OSM had not approved it in accordance with 30 CFR 732.15 and 732.17. The 1980 MOU provided that both DOH and DNR would inspect coal mines for compliance with effluent limitations and specified that should either agency determine that a water quality violation existed, either agency could take the appropriate enforcement action in accordance with its own regulations. The 1985 MOU stated that, "as a matter of general practice, DNR will be responsible for enforcing water quality protection pertaining to the requirements for design and maintenance of structures and the requirements to minimize disturbance to the hydrologic balance from sources other than the point of discharge," while DOH "will be responsible for enforcing water quality control standards at the point of discharge."

In its 30 CFR part 732 letter, OSM notified Colorado that the revised MOU was inconsistent with both SMCRA and the approved Colorado program because under the division of responsibilities in the revised MOU, only DOH has the authority to enforce effluent limitations, and that if and when DOH decides to exercise that authority, enforcement action is taken only under the provisions of the Colorado Discharge Elimination System (CDES). The CDES is the State's water pollution control program approved pursuant to the Federal Clean Water Act and is not the coal mining regulatory program approved pursuant to SMCRA. Since the enforcement provisions of the CDES program do not require the citation of all violations and do not include sanctions and procedures similar to those set forth in SMCRA, the Colorado program is not in compliance with section 512(d) of SMCRA, which requires that a State program incorporate sanctions no less stringent than SMCRA and contain the same or similar procedural requirements.

Colorado proposes to add new language to the section titled "Inspections, Monitoring and Sample Analysis" to provide that in those instances where DMG suspects an unpermitted discharge, DMG shall collect a water quality sample for analysis. Colorado proposes to add new language in the section titled "Enforcement" to provide that: (1) WQCD shall be solely responsible for enforcement of the CDPS permit program against point source discharges of pollutants into the State's surface waters that are conducted without an effective CDPS permit and for the enforcement of CDPS permit conditions and (2) DMG will issue a cessation order if during a coal mine inspection, DMG determines that there is imminent danger to the health or safety of the public or significant environmental harm to land, air or water resources.

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 Colorado program.

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 22, 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 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 that 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 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 1, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–8338 Filed 4–6–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CG07–93–038]

Special Anchorage Area; Garrison Bight, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: On July 15, 1993, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (58 FR 38100). After thorough review, the Coast Guard has decided not to establish a special anchorage area at Garrison Bight, Key West, Florida.

DATES: Withdrawal of the NPRM is effective April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ensign D. Marston, Seventh Coast Guard District, Aids to Navigation Branch, (305) 536–5621.

SUPPLEMENTARY INFORMATION: All comments received opposed the proposed special anchorage area. The Coast Guard has also determined that the proposed rule would not be effective in permitting anchoring without anchor lights because the proposed area lies in International COLREGS waters.

Accordingly, the Coast Guard is withdrawing this proposed rulemaking from the docket.

W.P. Leahy,

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

[FR Doc. 94–8374 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AA58

Electronic Mail Systems

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects typographical errors in the proposed rule published on March 24, 1994, concerning standards for management of Federal records created or received on electronic mail (E-mail) systems.

FOR FURTHER INFORMATION CONTACT: James Hastings, Director, Records Appraisal and Disposition Division, (301) 713–7096.

SUPPLEMENTARY INFORMATION: The following corrections are made to the proposed rule published on March 24, 1994, at 59 FR 13906:

1. On page 13907, in the first column, in appendix A to part 1234, in section 1, in the second paragraph, the reference to "44 U.S.C. 2094" should read "44 U.S.C. 2904".

2. In the same paragraph, "Managing Electronic Records (1992)" should read "Managing Electronic Records (1990)".

Dated: March 31, 1994.

Mary Ann Hadyka,

NARA Federal Register Liaison.

[FR Doc. 94–8289 Filed 4–6–94; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA13–8–6119;FRL–4859–8]

Approval and Promulgation of Implementation Plans: California State Implementation Plan Revision, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from barbecue charcoal ignition, municipal sewage plants, and municipal landfills.

The intended effect of proposing approval of these revisions is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these revisions into the federally approved SIP. EPA has evaluated each of these revisions and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1190.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 1174, "Control of Volatile Organic Compound Emissions from the Ignition of Barbecue Charcoal;" SCAQMD Rule 1179, "Publicly Owned Treatment Works Operations;" and Ventura County Air Pollution Control District (VCAPCD) Rule 74.17, "Waste Disposal Sites." These rules were submitted by the California Air Resources Board (CARB) to EPA on May 13, 1991, September 14, 1992, and January 28, 1992 respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles Area and the Ventura County Area. 43 FR 8964; 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles Area is classified as extreme, and the Ventura County Area is classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 13, 1991, September 14, 1992, and January 28, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 1174, "Control of Volatile Organic Compound Emissions from the Ignition of Barbecue Charcoal;" SCAQMD Rule 1179 "Publicly Owned Treatment Works Operations;" and VCAPCD Rule 74.17 "Waste Disposal Sites." These submitted rules were found to be complete on July 10, 1991, April 3, 1992, and November 20, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being proposed for approval into the SIP.

SCAQMD Rule 1174, "Control of Volatile Organic Compound Emissions from the Ignition of Barbecue Charcoal," is intended to reduce the emission of VOCs from the ignition of charcoal in residential barbecue grills. SCAQMD Rule 1179, "Publicly Owned Treatment Works Operations," is designed to inventory the sources of VOCs and odoriferous compounds from municipal wastewater treatment facilities. VCAPCD Rule 74.17, "Waste Disposal Sites," is designed to control emissions of non-methane organic compounds, including VOCs, from solid waste landfills through the use of flares and other control technology. VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles Area and the Ventura County Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTG's are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182 (a) (2) (A).

SCAQMD Rules 1174 and 1179, and VCAPCD Rule 74.17 control emissions from source categories for which EPA has not issued a CTG. Accordingly these rules were evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, EPA's "Blue Book" referred to in footnote 1, and against other EPA policy including the EPA Region 9—CARB document entitled "Guidance Document for Correcting VOC Rule Deficiencies" (published April, 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1174, "Control of Volatile Organic Compound Emissions from the Ignition of Barbecue Charcoal," is a new rule which was adopted to reduce the emission of VOCs from the use of flammable materials to ignite barbecue charcoal. SCAQMD Rule 1179, "Publicly Owned Treatment Works Operations," is a new rule which was adopted to inventory VOC and odoriferous compound emissions from municipal wastewater treatment facilities. VCAPCD Rule 74.17, "Solid Waste Disposal Sites," is a new rule which was adopted to control emissions of VOCs from solid waste landfills.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1174, "Control of Volatile Organic Compound Emissions from the Ignition of Barbecue Charcoal", Rule 1179 "Publicly Owned Treatment Works Operations", and Ventura County Air Pollution Control District Rule 74.17 "Solid Waste Disposal Sites" are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: March 24, 1994.

Jeff Zelikson,

Acting Deputy Regional Administrator.

[FR Doc. 94–8356 Filed 4–6–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[LA–13–1–5940; FRL–4860–6]

Approval and Promulgation of Implementation Plan: Louisiana Emission Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to approve a revision to the Louisiana State Implementation Plan (SIP) to include revisions to the Louisiana Department of Environmental Quality (LDEQ) Regulation Title 33, Part III, Chapter 9, General Regulations on Control of Emissions and Emission Standards, Section 919, Emission Inventory. These revisions are for the purpose of implementing an emission statement program for stationary sources within the ozone nonattainment areas. The implementation plan was submitted by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for Louisiana.

DATES: Comments on this proposed action must be received in writing by May 9, 1994. Comments should be addressed to the contact indicated below.

ADDRESSES: Written comments on this action should be addressed to Mr Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert R. Sherrow, Jr., Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone (214) 655-7237.

SUPPLEMENTARY INFORMATION: The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the Clean Air Act (CAA or "the Act"), as amended by the Clean Air Act Amendments (CAAA) of 1990. The EPA has published a "General Preamble" describing the EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those State submittals for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NO_X Supplement to the General Preamble")).

The EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this notice, entitled "Guidance on the Implementation of an Emission Statement Program" (July 1992). The Agency is also conducting a rulemaking process to modify 40 CFR part 40 to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable in subsections (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program in paragraph (3) of that subsection for stationary sources to prepare and submit to the State each year emission statements showing actual emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_X). This paragraph provides that the States are to submit a revision to their SIPs by November 15, 1992, establishing this emission statement program. Whatever minimum reporting level is established in a State emission statement program, if either VOC or NO_X is emitted at or above the designated level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

The CAA requires facilities to submit the first emission statement to the State within three years after November 15, 1990, and annually thereafter. The EPA requests that the States submit the emission data to the EPA through the Aerometric Information Retrieval System (AIRS). The minimum emission statement data should include: certification of data accuracy, source identification information, operating schedule, emissions information (to include annual and typical ozone season day emissions), control equipment information, and process data. The EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

In addition to the submission of the emission statement data to AIRS, States should provide the EPA with a status report that outlines the degree of compliance with the emissions statement program. Beginning July 1, 1993, States should report quarterly to the EPA the total number of sources affected by the emission statement provisions, the number that have complied with the provisions, and the number that have not. This status report should also include the total annual and typical ozone season day emissions from all reporting sources, both corrected and noncorrected for rule-effectiveness. States should include in their status report a list of sources that are delinquent in submitting their emission statement and that emit 500 tons per year (TPY) or more of VOC or 2500 TPY or more of NO_X. This report should be a quarterly submittal until all the regulated sources have complied for the reporting year. Suggested submittal dates for the quarterly status reports are July 1, October 1, January 1, and April 1.

Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing its SIP, of which the emission statement program will become a part. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) similarly provides that each revision to an implementation plan submitted by a State under the CAAA must be adopted by such State after reasonable notice and public hearing.

The EPA must at the outset determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, under section 110(k)(1)(B), a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State passed an emergency regulation after following all applicable State Administrative Procedures Act requirements for submittal to the EPA by November 15, 1992, to satisfy CAA requirements. The State subsequently entered into State rulemaking for a permanent regulation. It was submitted to public hearing on December 30, 1992. The State addressed public comments and made minor adjustments. Following the public hearing, the final rule was adopted by the State and submitted to the EPA as a proposed revision to the SIP on March 3, 1993. The permanent emission statement regulations were then codified at LAC 33:III.919.

The March 3, 1993, SIP revision was reviewed by the EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter dated August 3, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. The provisions of the regulation are outlined under the analysis of the State's submission below.

2. Components of Emission Statement Program

There are several key general and specific components of an acceptable emission statement program. Specifically, the State must submit a revision to its SIP, and the emission statement program must meet the minimum requirements for reporting by the sources and the State. In general, the program must include, at a minimum, provisions for applicability, definitions, compliance, and specific source requirements detailed below.

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

A. SIP Revision Submission. Required within two years of enactment of the CAAA of 1990 (November 15, 1990).

B. Program Elements. The State emission statement program must, at a minimum, include provisions covering applicability of the regulations, definitions for key terms used in the regulations, a compliance schedule for sources covered by the regulations, and the specific reporting requirements for sources. The emission statement submitted by the source should contain, at a minimum, a certification that the information is accurate to the best knowledge of the individual certifying the statement, source identification information, operating information, process rate data, control equipment information, and emissions information. These elements are described in greater detail in section D of this document. The EPA recommends that the State program require the submission of the data from the sources no later than April 15 of each year to insure that the State can meet the July 1 deadline for the submission of data into AIRS each year. The guidance document prepared by the EPA provides a draft model State rule which can be used as the basis for the States to develop their program. The guidance document also provides suggested language for the specific program elements.

C. Sources Covered. Section 182(a)(3)(B) requires that States with areas designated as nonattainment for ozone require emission statement data from sources of VOC or NO_X in the nonattainment areas. This requirement applies to all ozone nonattainment areas, regardless of the classification (marginal, moderate, etc.).

The States may waive, with EPA approval, the requirement for emission statements for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by the EPA (such as those found in EPA publication AP–42) or other methods acceptable to the EPA. States should get clearance from the appropriate EPA Regional Office to waive the emission statement requirement for these smaller sources.

D. Reporting Requirements for Sources. The State requires facilities to report on a form supplied by the State. Sources covered by the State emission statement program should submit, at a minimum, the following data elements:

1. Source identification information
2. Operating information
3. Process rate data
4. Control equipment information
5. Emissions information

3. Review of the State's Emission Statement Regulations

Applicability

The applicability of the regulation to ozone nonattainment areas is documented in subsection A.1. The rule applies to the owner or operator of facilities in the State in an ozone nonattainment area emitting a minimum of 10 TPY of VOC, 25 TPY of NO_X, or 100 TPY of carbon monoxide (CO), or any facility that has the potential to emit ("allowables" in a facility's permit) 50 TPY or more of VOC in an area designated as an ozone adjoining area. If either VOC or NO_X is emitted at or above the minimum required reporting level, the other pollutant must be included even if it is emitted at levels below the specified cutoff.

Types of Inventories

The Annual Emission Statement (AES) requirement for ozone nonattainment areas is documented in subsection B.1. This subsection requires stationary sources identified in subsection A. to submit an AES for all criteria pollutant including VOC. The AES shall consist of an inventory of actual emissions of VOC, NO_X, and CO, and the certifying statement.

Ozone Nonattainment Area Statement

The requirement for ozone nonattainment area's statements is documented in subsection B.3. This subsection requires stationary sources in ozone nonattainment areas emitting a minimum of 10 TPY of VOC, 25 TPY of NO_X, or 100 TPY of CO to submit an annual statement. The statement shall consist of actual annual emissions and typical weekday emissions that occur during the three-month period of greatest or most frequent ozone exceedences as published by the Department in the Enforcement and Regulatory Compliance notice that is mailed out monthly from the Division of Legal Affairs and Enforcement. "Typical weekday" emissions are defined as an "average" of two actual daily emissions rates (one at the lowest emission rate and one at the highest emission rate) during a seven-day period.

Minimum Data Requirements

The minimum data requirements are documented in subsection B.5. The data requirements include a certifying statement, facility identification information, operating information, process rate data, control equipment information, and emissions information.

A statement is required from the owner or operator to accompany the emission statement certifying that the information is true and accurate to the best knowledge of the certifying official. The certification will include the name, title, signature, date of signature, and telephone number of the certifying official (subsection B.5.a.).

Source data elements required by the Louisiana regulation are:

1. Facility identification information (subsection B.5.b.)
   a. Full name, physical location, and mailing address of facility.
   b. Universal Transverse Mercator horizontal and vertical coordinates.
   c. Standard Industrial Classification code(s).
2. Operating information (subsection B.5.c.)
   a. Percentage annual throughput by season.
   b. Days per week during the normal operating schedule.
   c. Hours per day during the normal operating schedule.
   d. Hours per year during the normal operating schedule.
3. Process rate data (subsection B.5.d.)
   a. Annual process rate (annual throughput).
   b. Peak ozone season daily process rate (in nonattainment areas.
4. Control equipment information (subsection B.5.e.)
   a. Current primary and secondary AIRS Facility Subsystem (AFS) control equipment identification codes.
   b. Current control equipment efficiency (percent).
5. Emissions information (subsection B.5.f.)
   a. Estimated actual VOC and/or NO_X emissions at the segment level, in TPY for an annual emission rate and pounds per day for a typical ozone season day (defined as the average or typical operating day during the peak ozone season). Actual emission estimates must include upsets, downtime, and fugitive emissions, and must follow an "emission estimation method". Emissions will be reported as one number.
   b. AFS estimated emissions method code.
   c. Emission factor (if emissions were calculated using an emissions factor).

Calculations

Calculations of emissions are documented in subsection C. The subsection specifies actual measurement with continuous monitoring systems (CEMS) is the desired method of calculating emissions from a point source. In lieu of CEMS data, emissions may be calculated using methods found in the most recent edition of the Compilation of Air Pollution Emission Factors (AP–42), or calculations published in Engineering Journals with prior administrative approval from the Assistant Secretary.

Reporting Requirements

The reporting requirements are documented in subsection E. The reporting deadline for the 1992 ozone nonattainment area is March 31, 1993, unless otherwise directed by the Secretary of the LDEQ. Subsequent emission statements are due on March 31 of each year, unless otherwise directed by the Secretary of the LDEQ, and will contain data for the previous year.

Enforcement

The enforcement requirements are documented in subsection F. The State of Louisiana has included language in its regulation that permits the State to enforce the provisions of the regulation under all pertinent State enforcement authorities.

All measures and other elements in the SIP must be enforceable by the State and EPA. The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). SIP provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

Technical Correction

In reviewing the State's submitted permanent regulation, a technical error was discovered in subsection B.2.a. This subsection contains a reference to subsection B.2.d., when it should refer to subsection B.2.c. This appears to be a typographical error and is not substantive since it is unlikely that it would lead to a misinterpretation of the regulation. This error has been discussed with the State, and the State has agreed to amend the regulation to correct the error through the State's rulemaking process. Final EPA rulemaking will not occur until the State has made the correction and submitted documentation of evidence that the error has been corrected. The EPA expects the correction will be made by June 30, 1994.

Proposed Action

In today's action, the EPA is proposing final approval of the Louisiana emission statement program SIP submittal and invites public comment on the action.

The analysis of the Louisiana regulation shows that it adequately addresses all components of an emission statement program.

In addition, the State has agreed to provide the EPA with emission statement data for the EPA AIRS through the State's grants commitments and to provide quarterly status reports.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 CAAA of November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976; 42 U.S.C. 7410(a)(2)).

Executive Order 12866

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Table Three SIP revisions (54 FR 2222) from the requirements of section three of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table Two and Table Three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Emission statements, Hydrocarbons, Intergovernmental relations, Nitrogen oxide, Oxides of nitrogen, SIP requirements, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 22, 1994.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 94–8355 Filed 4–6–94; 8:45 am]

BILLING CODE 6560–50–P

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Chapter XXIV

Fellowship Program Requirements

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Proposed rule.

SUMMARY: The following are proposed revised regulations governing the annual competition for James Madison Fellowships and the obligations of James Madison Fellows. They propose alterations and additions to the existing regulations implementing the James Madison Memorial Fellowship Act of 1986. These regulations govern the qualifications and applications of candidates for fellowships; the selection of Fellows by the Foundation; the graduate programs Fellows must pursue; the conditions attached to awards; the Foundation's annual Summer Institute on the Constitution; and related requirements and expectations regarding fellowships.

DATES: Comments must be submitted in writing on or before May 9, 1994.

ADDRESSES: Send written comments to: James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: James M. Banner, Jr., (202) 653–8700.

SUPPLEMENTARY INFORMATION: This proposed revised rule indicates changes in various activities of the James

Madison Memorial Fellowship Foundation warranted by experience gained during the Foundation's first two annual fellowship competitions. While representing no alteration in the Foundation's mission, nor any major changes in the original rule governing the Foundation's operations, the proposed revisions embody some changes in eligibility requirements and application procedures whose intended consequences are to enlarge the pool of potential fellowship applicants, reduce complications attendant upon applying for fellowships, and make clearer certain matters under the previous rule. The principal ones of these revisions are: (1) The elimination of procedures for the nomination of candidates for fellowships; (2) the enlargement of the pool of eligible applicants to include experienced teachers in grades 7 and 8 as well as in grades 9–12; (3) a reduction in the teaching experience required of applicants for senior fellowships; (4) the elimination of the limit on the number of years following receipt of the baccalaureate degree in which candidates for junior fellowships may apply; and (5) a change in the closing date for applications to March 1 annually. In addition, this proposed revised rule sets forth for the first time information regarding the Foundation's annual Summer Institute on the Constitution.

The James Madison Memorial Fellowship Act authorizes fellowship support for graduate study by teachers of American history and social studies and by college seniors or college graduates who wish to become teachers of the same subjects. However, in order not to exclude from consideration for James Madison Fellowships those teachers or would-be teachers whose current or future secondary school instruction, while concerning the usual subjects covered by courses in American history and social studies, may be carried on in courses entitled "government" or similar names, this rule, like the former rule, goes beyond the Act to apply to those teachers and would-be teachers who do or will offer secondary school instruction in American government.

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., does not apply to this rule because it will not have a significant economic impact on a substantial number of small businesses. Consequently, an Initial Regulatory Flexibility Analysis need not be performed. Section 610 of the Act provides for periodic review of rules which have or will have a significant economic impact upon a substantial number of small businesses. In accordance with this provision, comments from small entities concerning these rules will be considered. Such comments must be submitted separately and cite 5 U.S.C. 601 et seq. in correspondence.

Sections 2400.11, 2400.21, 2400.53–54, and 2400.61–63 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the James Madison Memorial Fellowship Foundation has submitted a copy of forms required under these sections to the Office of Management and Budget for its review (40 U.S.C. 3540(h)). Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; *Attention:* Daniel J. Chenok. The annual public reporting burden for this collection of information is estimated to average 5 hours per response for an anticipated 750 applicants.

List of Subjects in 45 CFR Part 2400

Education, Fellowships.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 et seq., Chapter XXIV, title 45 of the Code of Federal Regulations is proposed to be revised to read as follows:

CHAPTER XXIV—JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

PART 2400—FELLOWSHIP PROGRAM REQUIREMENTS

Subpart A—General

2400.1 Purposes.
2400.2 Annual competition.
2400.3 Eligibility.
2400.4 Definitions.

Subpart B—Applications

2400.10 Applications.
2400.11 Faculty representatives.

Subpart C—Application Process

2400.20 Preparation of applications.
2400.21 Contents of applications.
2400.22 Application deadline.

Subpart D—Selection of Fellows

2400.30 Selection criteria.
2400.31 Selection process.

Subpart E—Graduate Study

2400.40 Institutions of graduate study.
2400.41 Degree programs.
2400.42 Approval of programs.
2400.43 Required courses of graduate study.
2400.44 Commencement of graduate study.
2400.45 Special consideration: Junior Fellows' courses of study.
2400.46 Special consideration: second master's degrees.

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Authority: 20 U.S.C. 4501 et seq.

Subpart A—General

§ 2400.1 Purposes.

(a) The purposes of the James Madison Memorial Fellowship Program are to: (1) Provide incentives for master's degree level graduate study of the history, principles, and development of the United States Constitution by outstanding in-service teachers of American history, American government, and social studies in grades 7–12 and by outstanding college graduates who plan to become teachers of the same subjects; and thereby to (2) Strengthen teaching in the nation's secondary schools about the principles, framing, ratification, and subsequent history of the United States Constitution.

(b) The Foundation may from time to time operate its own programs and undertake other closely related activities to fulfill these goals.

§ 2400.2 Annual competition.

To achieve its principal purposes, the Foundation holds an annual competition to select teachers in grades 7–12, college seniors, and college graduates to be James Madison Fellows.

§ 2400.3 Eligibility.

Individuals eligible to apply for and hold James Madison Fellowships are United States citizens, United States nationals, or permanent residents of the Northern Mariana Islands who are: (a) Teachers of American history, American government, or social studies in grades 7–12 who: (1) Are teaching full time during the year in which they apply for a fellowship;

(2) Are under contract, or can provide evidence of being under prospective contract, to teach full time as teachers of American history, American government, or social studies in grades 7–12;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities and to professional and collegial activities within their schools and school districts;

(4) Are highly recommended by their department heads, school heads, school district superintendents, or other supervisors;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs allowing at least 12 hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions of other forms of government;

(6) Are able to complete their proposed courses of graduate study within five calendar years from the commencement of study under their fellowships, normally through part-time study during summers or in evening or weekend programs;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign agreements that, after completing the education for which the fellowship is awarded, they will teach American history, American government, or social studies full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is the number of credit hours determined by each university at which Fellows are studying as constituting a full year of study at that university. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

(b) Those who aspire to become full-time teachers of American history, American government, or social studies in grades 7–12 who: (1) Are matriculated college seniors pursuing their baccalaureate degrees full time and will receive those degrees no later than August 31st of the year of the fellowship competition in which they apply or prior recipients of baccalaureate degrees;

(2) Plan to begin graduate study on a full-time basis;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities;

(4) Are highly recommended by faculty members, deans, or other persons familiar with their potential for graduate study of American history and government and with their serious intention to enter the teaching profession as secondary school teachers of American history, American government, or social studies in grades 7–12;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs that allow at least 12 hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions and history of other forms of government;

(6) Are able to complete their proposed courses of graduate study in no more than two calendar years from the commencement of study under their fellowships, normally through full-time study;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign an agreement that, after completing the education for which the fellowship is awarded, they will teach American history, American government, or social studies full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a fully academic year of study is the number of credit hours determined by each university at which Fellows are studying as constituting a full year of study at that university. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

§ 2400.4 Definitions.

As used in this part:

Academic year means the period of time in which a full-time student would normally complete two semesters, two trimesters, three quarters, or their equivalent of study.

Act means the James Madison Memorial Fellowship Act.

College means an institution of higher education offering only a baccalaureate degree or the undergraduate division of a university in which a student is pursuing a baccalaureate degree.

Fee means a typical and usual non-refundable charge levied by an institution of higher education for a service, privilege, or use of property which is required for a Fellow's enrollment and registration.

Fellow means a recipient of a fellowship from the Foundation.

Fellowship means an award, called a James Madison Fellowship, made to a person by the Foundation for graduate study.

Foundation means the James Madison Memorial Fellowship Foundation.

Full-time study means study for an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in a particular educational program.

Graduate study means the courses of study beyond the baccalaureate level, which are offered as part of a university's master's degree program and which lead to a master's degree.

Institution of higher education has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior fellowship means a James Madison Fellowship granted either to a college senior or to a college graduate who has received a baccalaureate degree and who seeks to become a secondary school teacher of American history, American government, or social studies for full-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

Master's degree means the first pre-doctoral graduate degree offered by a university beyond the baccalaureate degree, for which the baccalaureate degree is a prerequisite.

Matriculated means formally enrolled in a master's degree program in a university.

Resident means a person who has legal residence in the state, recognized under state law. If a question arises concerning a Fellow's state of residence, the Foundation determines, for the purposes of this program, of which state the person is a resident, taking into account the Fellow's place of registration to vote, his or her parent's place of residence, and the Fellow's eligibility for in-state tuition rates at public institutions of higher education.

Satisfactory progress means a Junior Fellow's completion of the number of required courses normally expected of full-time master's degree candidates at the university that the Fellow attends, with grades acceptable to that university, and a Senior Fellow's completion each year of the number of required courses toward a master's degree agreed upon each year by the Foundation as constituting adequate progress toward the completion of fellowship study, with grades acceptable to the Fellow's university, in not more than five calendar years from the commencement of that study.

Secondary school means grades 7 through 12.

Senior means a student at the academic level recognized by an institution of higher education as being the last year of study before receiving the baccalaureate degree.

Senior fellowship means a James Madison Fellowship granted to a secondary school teacher of American history, American government, or social studies for part-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and, until adoption of its Compact of Free Association, the Republic of Palau.

Stipend means the amount paid to a Fellow or to the university that the Fellow attends to cover the costs of graduate study at that university under a fellowship.

Term means the period—semester, trimester, or quarter—used by an institution of higher education to divide its academic year.

University means an institution of higher education that offers post-baccalaureate degrees.

Subpart B—Applications

§ 2400.10 Applications.

Eligible applicants for fellowships must apply directly to the Foundation.

§ 2400.11 Faculty Representatives.

Each college and university that chooses to do so may annually appoint or reappoint a faculty representative who will be asked to identify and recruit fellowship applicants on campus, publicize the annual competition on campus, and otherwise assist eligible candidates in preparation for applying. In order to elicit the appointment of faculty representatives, the Foundation will each year request the head of each college and university campus to appoint or reappoint a faculty representative and to provide the Foundation with the name, business address, and business telephone number of a member of its faculty representative on forms provided for that purpose.

Subpart C—Application Process

§ 2400.20 Preparation of applications.

Applications, on forms mailed directly by the Foundation to those who request applications, must be completed by all fellowship candidates in order that they be considered for an award.

§ 2400.21 Contents of applications.

Applications must include for: (a) Senior fellowships: (1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about his or her background, interests, goals, and the school in which he or she teaches; and includes a statement about the applicant's educational plans and specifies how those plans will enhance his or her career as a secondary school teacher of American history, American government, or social studies;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students,

(ii) The applicant's career aspirations and his or her contributions to public service, and

(iii) Citizenship generally in a constitutional republic;

(3) The applicant's proposed course of graduate study, including the name of the degree to be sought, the required courses to be taken, and the election of an option, if available, to prepare a master's thesis, as well as information about the specific degree sought;

(4) Three evaluations, one from an immediate supervisor, that attest to the applicant's strengths and abilities as a teacher in grades 7–12; and

(5) A copy of his or her academic transcript.

(b) Junior fellowships: (1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about the applicant's background, interests, goals, and the college which he or she attends or attended; and includes a statement about the applicant's educational plans and specifies how those plans will lead to a career as a teacher of American history, American government, or social studies in grades 7–12;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students,

(ii) The applicant's career aspirations and his or her contribution to public service, and

(iii) Citizenship generally in a constitutional republic;

(3) Applicant's proposed course of graduate study, including the name of the degree sought, the name of the required courses to be taken, and the election of an option, if available, to prepare a master's thesis, as well as information about the specific degree sought;

(4) Three evaluations that attest to the applicant's academic achievements and to his or her potential to become an outstanding secondary school teacher; and

(5) A copy of his or her academic transcript.

§ 2400.22 Application deadline.

Completed applications must be received by the Foundation no later than March 1st of each year preceding the start of the academic year for which candidates are applying. Applications not received by this date, with all required supporting documents, will not be considered.

Subpart D—Selection of Fellows

§ 2400.30 Selection criteria.

Applicants will be evaluated, on the basis of materials in their applications, as follows:

(a) Demonstrated commitment to teaching American history, American government, or social studies at the secondary school level;

(b) Demonstrated intention to pursue a program of graduate study that emphasizes the Constitution and to offer classroom instruction in that subject;

(c) Demonstrated record of willingness to devote themselves to civic responsibility;

(d) Outstanding performance or potential of performance as classroom teachers;

(e) Academic achievements and demonstrated capacity for graduate study; and

(f) Proposed courses of graduate study, especially the nature and extent of their subject matter components, and their relationship to the enhancement of applicants' teaching and professional activities.

§ 2400.31 Selection process.

(a) An independent Fellow Selection Committee will evaluate all valid applications and recommend to the

Foundation the most outstanding applicants from each state for James Madison Fellowships.

(b) From among candidates recommended for fellowships by the Fellow Selection Committee, the Foundation will name James Madison Fellows. The selection procedure will assure that at least one James Madison Fellow, junior or senior, is selected from each state in which there are at least two legally resident applicants who meet the eligibility requirements set forth in § 2400.3 and are judged favorably against the selection criteria in § 2400.30.

(c) The Foundation may name, from among those applicants recommended by the Fellow Selection Committee, an alternate or alternates for each fellowship. An alternate will receive a fellowship if the person named as a James Madison Fellow declines the award or is not able to pursue graduate study as contemplated at the time the fellowship was accepted. An alternate may be named to replace a Fellow who declines or relinquishes an award until, but no later than, March 1st following the competition in which the alternate has been selected.

(d) Funds permitting, the Foundation may also select, from among those recommended by the Fellow Selection Committee, Fellows at large.

Subpart E—Graduate Study

§ 2400.40 Institutions of graduate study.

Fellowship recipients may attend any accredited university in the United States with a master's degree program offering courses or training that emphasize the origins, principles, and development of the Constitution of the United States and its comparison with the constitutions and history of other forms of government.

§ 2400.41 Degree programs.

(a) Fellows may pursue a master's degree in history or political science (including government or politics), the degree of Master of Arts in Teaching in history or political science (including government or politics), or a related master's degree in education that permits a concentration in American history, American government, or social studies. Graduate degrees under which study is excluded from fellowship support are indicated in § 2400.64.

(b) A master's degree pursued under a James Madison Fellowship may entail either one or two years or their equivalent of study, according to the requirements of the university at which a Fellow is enrolled.

§ 2400.42 Approval of programs.

The Foundation must approve each Fellow's program of graduate study. To be approved, the program must

(a) On a part-time or full-time basis lead to a master's degree in history or political science, the degree of Master of Arts in Teaching in history or political science, or a related master's degree in education that permits a concentration in American history, American government, or social studies;

(b) Include courses, graduate seminars, or opportunities for independent study in topics directly related to the framing and history of the constitution of the United States;

(c) Be pursued at a university that assures a willingness to accept up to 6 semester hours of accredited transfer credits from another graduate institution for a Fellow's satisfactory completion of the Foundation's Summer Institute on the Constitution. For the Foundation's purposes, these 6 semester hours may be included in the required minimum of 12 semester hours or their equivalent of study of the United States Constitution; and

(d) Be pursued at a university that encourages the Fellow to enhance his or her capacities as a teacher of American history, American government, or social studies and to continue his or her career as a secondary school teacher. The Foundation reserves the right to refuse to approve a Fellow's degree program at a university that will not accept on transfer the 6 credits for the Institute.

§ 2400.43 Required courses of graduate study.

(a) To be acceptable to the Foundation, those courses related to the Constitution referred to in § 2400.43(b) must amount to at least 12 semester hours or their equivalent of study of topics directly related to the United States Constitution. More than 12 hours or their equivalent of such study is strongly encouraged.

(b) The courses that fulfill the required minimum of 12 semester hours or their equivalent of study of the United States Constitution must cover one or more of the following subject areas:

(1) The history of colonial America leading up to the framing of the Constitution;

(2) The Constitution itself, its framing, the history and principles upon which it is based, its ratification, the Federalist Papers, Anti-Federalist writings, and the Bill of Rights;

(3) The historical development of political theory, constitutional law, and civil liberties as related to the Constitution;

(4) Interpretations of the Constitution by the Supreme Court and other branches of the federal government;

(5) Debates about the Constitution in other forums and about the effects of constitutional norms and decisions upon American society and culture; and

(6) Any other subject clearly related to the framing, history, and principles of the Constitution.

(c) If a master's degree program in which a Fellow is enrolled offers the option of a master's thesis in place of a course or courses, the Fellow will be strongly urged to write a thesis. If the preparation of a master's thesis adds additional required credits to the minimum number of credits required for the master's degree, the Foundation will pay for these additional credits. In all programs in which a master's degree thesis is required or elected as an option, a Fellow must write the thesis in a subject concerning the framing, principles, or history of the United States Constitution.

§ 2400.44 Commencement of graduate study.

(a) Fellows may commence study under their fellowships as early as the summer following the announcement of their award. Fellows are normally expected to commence study under their fellowships in the fall term of the academic year following the date on which their award is announced. However, as indicated in § 2400.62 below, they may seek to postpone the commencement of fellowship study under extenuating circumstances.

(b) In determining the two- and five-year fellowship periods of Junior and Senior Fellows respectively, the Foundation will consider the commencement of the fellowship period to be the date on which each Fellow commences study under a fellowship.

§ 2400.45 Special consideration: Junior Fellows' courses of study.

Applicants for junior fellowships who seek or hold baccalaureate degrees in education are strongly encouraged to pursue master's degrees in history or political science. Those applicants who hold undergraduate degrees in history, political science, government, or any other subjects may take some teaching methods and related courses, although the Foundation will not pay for them unless they are required for the degree for which the Fellow is matriculated. The Foundation will review each proposed course of study for an appropriate balance of subject matter and other courses based on the Fellow's goals, background, and degree requirements.

§ 2400.46 Special consideration: second master's degree.

The Foundation may award senior fellowships to applicants who are seeking their second master's degrees providing that the applicants' first master's degrees were obtained at least five years prior to the year in which the applicants would normally commence study under a fellowship. In evaluating applications from those intending to pursue a second master's degree, the Fellow Selection Committee will favor those applicants who are planning to become American history and social studies teachers after having taught another subject and those whose initial master's degree was in a subject different from that sought under the second master's degree.

Subpart F—Fellowship Stipends

§ 2400.50 Amount of stipends.

Junior and senior fellowships carry a stipend of up to a maximum of $24,000 prorated over the period of Fellows' graduate study. In no case shall the stipend for a fellowship exceed $12,000 per academic year. Within this limit, stipends will be prorated over the period of Fellows' graduate study as follows: A maximum of $6,000 per academic semester or trimester of full-time study, and a maximum of $4,000 per academic quarter of full-time study. Stipends for part-time study will be pro rata shares of those allowable for full-time study.

§ 2400.51 Duration of stipends.

Stipends for junior fellowships may be payable over a period up to two calendar years of full-time graduate study, and those for senior fellowships may be payable over a period of not more than five calendar years of part-time graduate study, commencing with the dates under which Fellows commence their graduate study under their fellowships. However, the duration of stipend payments will be subject to limitations indicated in § 2400.61.

§ 2400.52 Use of stipends.

Stipends shall be used only to offset the costs of tuition, fees, books, room, and board associated with graduate study under a fellowship. The costs allowed for a Fellow's room and board will be the amount the Fellow's university reports to the Foundation as the cost of room and board for a graduate student if that student were to share a room at the student's university. If no graduate housing exists, then costs for regular shared student housing will be used. If no campus housing exists, the equivalent room and board costs at neighboring universities will be used. Stipends for room, board, and books will be prorated for Fellows enrolled in programs less than full time. The Foundation will not reimburse Fellows for any portion of their master's degree study, if any, that Fellows may have completed prior to the commencement of their fellowships. Nor will the Foundation reimburse Fellows for any credits acquired above the minimum number of credits required for the degree. If a Fellow already taken and paid for courses that can be credited toward the Fellow's graduate degree under a fellowship, those must be credited to the degree; the remaining required courses will be paid for by the Foundation.

§ 2400.53 Certification for stipends

In order to receive a fellowship stipend, a Fellow must submit in writing acceptance of the terms and conditions of the fellowship; evidence of admission to an approved graduate program; certified copies of undergraduate and, if any, graduate transcripts; a certified payment request form indicating estimated expenses for tuition, fees, books, room, and board; estimated income from any other grants or awards; information about the Fellow's degree program, including the number of required credits and the availability of a thesis option; a statement of the university's willingness to accept the transfer of 6 credits toward the Fellow's degree requirements for the Fellow's satisfactory completion of the Summer Institute (see § 2400.74); and a full plan of study over the duration of the fellowship, including information on the contents of required courses. Junior Fellows must provide evidence of receipt of their baccalaureate degrees, and Senior Fellows must provide evidence of their continued full-time employment as teachers in grades 7–12.

§ 2400.54 Payment of stipends.

Payment for tuition, fees, books, room, and board subject to the limitations in § 2400.50–53 and § 2400.60–61 will be paid to each Fellow at the beginning of each term of enrollment upon the Fellow's submission of a completed Payment Request Form provided by the Foundation.

§ 2400.55 Termination of stipends.

The Foundation may suspend or terminate the payment of a stipend if a Fellow fails to meet the criteria set forth in § 2400.40–2400.44 and § 2400.61, except as provided for in § 2400.62. Before it suspends or terminates a fellowship under these circumstances, the Foundation will give notice to the Fellow, as well as the opportunity to be heard with respect to the grounds for suspension or termination.

§ 2400.56 Repayment of stipends.

(a) If a Fellow fails to secure a master's degree, to teach American history, American government, or social studies on a full-time basis in a secondary school for at least one school year for each academic year for which assistance was provided under a fellowship, to secure no fewer than 12 credits for study of the Constitution as indicated in § 2400.43(b), or to attend the Foundation's Summer Institute on the Constitution, the Fellow shall repay all of the fellowship assistance received plus interest at the rate of 6% per annum or as otherwise authorized and, if applicable, reasonable collection fees, as prescribed in Section 807 of the Act (20 U.S.C. 4506 (b)).

(b) If a Fellow resigns a fellowship, the Foundation will seek to recover all fellowship funds which have been remitted to the Fellow under a fellowship.

Subpart G—Special Conditions

§ 2400.60 Other awards.

Fellows may accept grants from other foundations, institutions, corporations, or government agencies to support their graduate study or to replace any income foregone for study. However, the stipend paid by the Foundation for allowable costs indicated in § 2400.52 will be reduced to the extent these costs are paid from other sources, and in no case will fellowship funds be paid to Fellows to provide support in excess of their actual total costs of tuition, required fees, books, room, and board. The Foundation may also reduce a Fellow's stipend if the Fellow is remunerated for the costs of tuition under a research or teaching assistantship or a work-study program. In such a case, the Foundation will require information from a Fellow's university about the intended use of assistantship or work-study support before remitting fellowship payments.

§ 2400.61 Renewal of awards.

(a) Provided that Fellows have submitted all required documentation, it is the intent of the Foundation to renew junior fellowship awards annually for a period not to exceed two calendar years and senior fellowships for a period not to exceed five calendar years (except when those periods have been altered because of changes in Fellows' programs of studies as provided for in § 2400.65), or until a Fellow has completed all

requirements for a master's degree, whichever comes first. In no case, however, will the Foundation continue payments under a fellowship to a Fellow who has reached the maximum payments under a fellowship as indicated in § 2400.50, or completed the minimum number of credits required for the degree. Although Fellows are encouraged to take courses in addition to those required for the degree or required to maintain full-time status, the Foundation will not in such cases pay for those additional courses unless they are credited to the minimum number of credits required for the degree.

(b) Fellowship renewal will be subject to an annual review by the Foundation and certification by an authorized official of the university at which a Fellow is registered that:

The Fellow is making satisfactory progress toward the degree and is in good academic standing according to the standards of each university.

(c) As a condition of renewal of awards, each Fellow must submit an annual activity report to the Foundation by July 15th. That report must indicate, through submission of a copy of the Fellow's transcript, courses taken and grades achieved; courses planned for the coming year; changes in academic or professional plans or situations; any awards, recognitions, or special achievements in the Fellow's academic study or school employment; and such other information as may relate to the fellowship and its holder. Fellows must also submit a final report to the Foundation following completion of their fellowships.

§ 2400.62 Postponement of awards.

Upon application to the Foundation, a Fellow may seek postponement of his or her fellowship because of ill health or other mitigating circumstances, such as military duty, temporary disability, necessary care of an immediate family member, or unemployment as a teacher. Substantiation of the reasons for the requested postponement of study will be required.

§ 2400.63 Evidence of master's degree.

At the conclusion of the fellowship term, each Fellow must provide evidence that he or she has secured an approved master's degree as set forth in the Fellow's original plan of study/or approved modifications thereto.

§ 2400.64 Excluded graduate study.

(a) James Madison Fellowships do not provide support for study toward doctoral degrees, for the degree of master of arts in public affairs or public administration, or toward the award of teaching certificates. Nor do fellowships support practice teaching required for professional certification or other courses related to teaching unless those courses are required for the degree. In those cases, however, the Foundation will provide reimbursement only toward those courses related to teaching that fall within the minimum number of courses required for the degree, not in addition to that minimum.

(b) If a course or courses required toward a Fellow's master's degree are coincidentally credited toward a Fellow's future doctoral degree or teaching certificate, the Foundation will provide reimbursement toward that course or those courses. Such reimbursement will be governed by all other rules, requirements, and obligations set forth here.

§ 2400.65 Alteration of plans of study.

Although Junior Fellows are expected to pursue full-time study and Senior Fellows to pursue part-time study, the Foundation may permit Junior Fellows with an established need (such as the need to accept a teaching position) to study part time and Senior Fellows with established need (such as great distance between the Fellow's residence and the nearest university, thus necessitating a full-time leave of absence from employment in order to study) to study full time.

§ 2400.66 Completion of fellowships.

A Fellow will be deemed to have satisfied all terms of a fellowship and all obligations under it when the Fellow has completed no fewer than 12 credits of study of the Constitution, formally secured the masters degree, attended the Foundation's Summer Institute on the Constitution, completed teaching for the number of years and fractions thereof required as a condition of accepting Foundation support for study, and submitted all required reports.

Subpart H—Summer Institute on the Constitution

§ 2400.70 Institute's relationship to fellowship.

Each year, the Foundation offers, normally during July a four-week graduate-level Institute on the principles, framing, ratification, and implementation of the United States Constitution at an accredited university in the Washington, DC area. The Institute is an integral part of each fellowship.

§ 2400.71 Fellows' participation in institute.

Each Fellow is required as part of his or her fellowship to attend the Institute, normally during the summer following the Fellow's commencement of graduate study under a fellowship.

§ 2400.72 Contents of institute.

The principal element of the Institute is a graduate history course, "The Origins of Constitutional Government in the United States, 1763–1803." Other components of the Institute include study visits to sites associated with the lives and careers of members of the founding generation and exposure to advanced teaching methods.

§ 2400.73 Allowances and institute costs.

For their participation in the Institute, Fellows are paid an allowance from non-federal sources to help offset income foregone by their required attendance. The Foundation also funds the costs of the Institute and Fellows' round-trip transportation to and from the Institute site. The costs of tuition, required fees, books, room, and board entailed by the Institute will be paid for by the Foundation directly but may be offset against fellowship award limits if the credits earned for the Institute are included within the Fellows' degree requirements.

§ 2400.74 Institute accreditation.

The Institute is accredited for six graduate credits by the university at which it is held. It is expected that the universities at which Fellows are pursuing their graduate study will, upon Fellows' satisfactory completion of the Institute, accept these credits upon transfer from the university at which the Institute is held in fulfillment of the minimum number of credits required for Fellows' graduate degrees. Satisfactory completion of the Institute will fulfill six of the Foundation's 12 credits of required graduate study of the history and development of the Constitution. Fellows, with the Foundation's assistance, are strongly encouraged to make good faith efforts to have their universities incorporate the Institute into their course programs and accept the 6 Institute credits toward the minimum number of credits required for their master's degrees.

Paul A. Yost, Jr.,

President, James Madison Memorial Fellowship Foundation.

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FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 94–07]

Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing financial reporting requirements and rate of return methodology applicable to vessel-operating common carriers by water in the domestic offshore trades to discontinue use of the comparable earnings test in determining the reasonableness of a carrier's return on rate base. In its place, the Commission proposes to use the weighted average cost of capital methodology. In addition, the Commission proposes to amend its rules pertaining to the treatment of insurance expenses, accumulated deferred taxes and the Capital Construction Fund for purposes of calculating a carrier's rate base. The proposed rule addresses a number of shipper and carrier concerns regarding the Commission's current rate of return methodology and would align the Commission's ratemaking methodologies more closely with those used by numerous other regulatory agencies. The intent is to improve the Commission's methodology for evaluating the reasonableness of rates filed by carriers in the domestic offshore trades and for acquiring the data that are essential to that evaluation.

DATES: Comments due June 6, 1994.

ADDRESSES: Comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington DC 20573–0001, 202–523–5725.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On March 11, 1993, the Federal Maritime Commission ("FMC" or "Commission") published a final rule in Docket No. 91–51, Financial Reports of Common Carriers by Water in the Domestic Offshore Trades, which amended the provisions under which carriers could obtain waivers of certain financial reporting requirements. 58 FR 13414. (1993) ("Docket No. 91–51"). The Commission stated that it intended "* * * to turn its attention, separately, to the numerous other substantive changes to 46 CFR part 552 that have been suggested in this proceeding." Id. at 13417.[1] In this regard, the Commission conducted an extensive review of part 552 to assess the need for changes to its financial reporting requirements and rate of return methodology in the domestic offshore trades.

Based on its review, the Commission has determined that several issues regarding the adequacy and appropriateness of various aspects of its present regulations should be addressed. The issues on which the Commission is proposing changes to existing regulations include:

- The FMC's methodology for computing an allowable rate of return on rate base.
- The treatment of deferred taxes and the Capital Construction Fund for rate base purposes.
- The definition of working capital.

Each of these issues is discussed in turn below.[2] Also discussed are the rules governing the allocation of assets and expenses, but no changes are proposed.

Computing an Allowable Rate of Return on Rate Base

I. The Allowable Rate of Return Should Equal the Cost of Capital

The fundamental objective when using a rate of return on rate base method of regulation is to set a regulated firm's maximum allowable rate of return on rate base equal to the regulated firm's cost of capital. The cost of capital, sometimes referred to by economists as "the opportunity cost of capital" or "the required rate of return," is the minimum rate of return necessary to attract capital to an investment. It is the expected rate of return prevailing in capital markets on alternative investments of equivalent risk.[3] The bases for setting the allowable rate of return equal to the cost of capital are legal and economic.

A. Legal Rationale

Two landmark Supreme Court cases defined the legal principles underlying rate of return regulation and provided the notion of a fair rate of return. The two cases, *Bluefield Water Works & Improvement Co.* v. *Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U.S. 391 (1944), established that investors in companies subject to rate regulation must be allowed an opportunity to earn returns sufficient to attract capital and comparable to those they would expect from investments in other firms for incurring the same amount of risk, and that revenues must not only cover operating expenses, but capital costs as well.

B. Economic Rationale

The economic rationale for setting the allowable rate of return of a regulated enterprise equal to its cost of capital is that the regulated firm's customers will thereby pay the lowest cost for service in the long run.[4] For example, if a regulator sets the allowable rate of return above the cost of capital, the firm's stockholders will realize earnings in excess of those they could earn on alternative investments of comparable risk. Such excess earnings are paid for by the firm's customers in the form of prices higher than those that they would otherwise be required to pay. If, on the other hand, a regulator sets the allowable rate of return below the cost of capital, stockholders will realize earnings less than they could on alternative investments of comparable risk. In the short run, the firm's customers may benefit because they pay prices lower than those they would otherwise be required to pay. In the long

[1] In its Advance Notice of Proposed Rulemaking issued in Docket No. 91–51, 56 FR 57298, the Commission had solicited comments and information from the public on issues which could be addressed in a proposed rule concerning substantive guidelines for determining what constitutes a just and reasonable rate of return or profit for common carriers by water in the domestic offshore trades.

[2] Copies of the proposed new schedules for collecting the data required under the proposed regulations are available from the Secretary, Federal Maritime Commission.

[3] A. Lawrence Kolbe, James A. Reed, Jr., and George R. Hall, *The Cost of Capital*, 3rd Printing, The MIT Press, Cambridge, Massachusetts, 1986, p. 13.

[4] Setting the allowable rate of return equal to the cost of capital also ensures that society's supply of capital is used most productively. Because capital markets are considered to be highly competitive, the cost of new capital is an accurate gauge of that capital's value in alternative uses. When the allowable rate of return is greater than the cost of capital, investors will supply too much capital to a regulated firm, thereby diverting capital from alternative investments where it could be more productive. Conversely, when the allowable rate of return is less than the cost of capital, investors will supply too little capital to a regulated firm, thereby allocating funds to less productive investments. Such a misallocation of resources represents a welfare loss for society as a whole.

run, however, the firm's stockholders will be unwilling to continue to invest their funds, and the firm will, therefore, lack the requisite financial capital for maintaining and augmenting the firm's physical plant and equipment. Customers, in turn, will be supplied with a lesser quantity and/or quality of service.

C. Methodologies

The Commission uses a version of the Comparable Earnings Test ("CET") to determine the reasonableness of rates of return. The carrier's projected rate of return ((net income after taxes + interest expense)/rate base [5]) is compared with the rate of return on total capital earned by U.S. manufacturing firms over an extended period of time—the benchmark rate of return. Where appropriate, adjustments are made to the benchmark for current trends in rates of return, the cost of money and relative risk.

However, most regulatory agencies use the Weighted Average Cost of Capital ("WACC") methodology to set allowable rates of return, including, for example the Federal Energy Regulatory Commission, the Interstate Commerce Commission ("ICC"), the Federal Communications Commission, and the Maryland Public Service Commission. Indeed, the most recent yearbook published by the National Association of Regulatory Commissioners shows that virtually every state regulatory commission in the U.S. uses some variation of the WACC.[6] Further, current economic literature recognizes the WACC approach as the most generally accepted method of setting allowable rates of return.

The WACC approach recognizes that there are several methods by which a firm may raise capital and each has its attendant cost. Typically, the total capital of a firm has come from three different sources, long-term debt, preferred stock [7] and common-stock equity. Thus, the total capital of a firm may have a debt component, a preferred stock component and a common-stock equity component. Under the WACC methodology,[8] the cost of each of these components is calculated separately and weighted by the proportion the component is to the total capital of the firm.[9]

To illustrate the calculation of the WACC, consider a hypothetical regulated company that has total invested capital of $100 million, consisting of $25 million of long-term debt, $15 millon of preferred stock, and $60 million of common-stock equity. Assume that the firm's cost of long-term debt is 7 percent, cost of preferred stock is 9 percent, and cost of common-stock equity is 12 percent. Further, assume that the firm operates in a world where corporate taxes do not exist. The WACC for this firm is calculated as follows:

CALCULATION OF WACC [10]

Capital component	Amount (millions of dollars)	Proportion (percent)	Cost (percent)	WACC (percent)
Long-term debt	25	25	7	1.75
Preferred stock	15	15	9	1.35
Common-stock equity	60	60	12	7.20
Total	100	100		10.30

[10] The algebraic expression for the overall cost of capital or the WACC, is as follows (ignoring taxes):

$$WACC = \left(\frac{D}{D+P+E}\right)K_d + \left(\frac{P}{D+P+E}\right)K_p\left(\frac{E}{D+P+E}\right)K_e$$

where:

K_d is the regulated firm's cost of long-term debt capital;

K_p is the regulated firm's cost of preferred stock capital;

K_e is the regulated firm's cost of common-stock equity capital;

D is the value of the regulated firm's long-term debt outstanding;

P is the value of the regulated firm's preferred stock outstanding; and

E is the value of the regulated firm's common-stock equity outstanding.

Thus, given the assumptions of this example, the WACC is 10.30 percent. The allowable rate of return for this hypothetical company should, therefore, be set at 10.30 percent, which would provide the firm with the opportunity to earn revenues sufficient to service the company's overall cost of capital.[11]

The costs of long-term debt and preferred stock capital may be calculated with relative precision. For the debt component, this is done by computing the actual total annual fixed charges on long-term debt for all issues, including any amortized discount or premium and issuance expense. The total annual fixed charges are then divided by the actual total value of long-term debt outstanding for all issues in order to arrive at the cost of debt stated as a percentage. For example, if the annual fixed charges on long-term debt are $1,750,000 and the total long-term debt outstanding is $25 million, the cost of debt would be 7 percent ($1,750,000/$25 million=.07).

The cost of preferred stock is calculated in similar fashion. The actual total annual dividend requirements on the preferred stock for all issues is divided by the actual total value of preferred stock outstanding for all issues in order to arrive at the cost of preferred

[5] Rate base is a carrier's investment in Commission-regulated activities. It consists of investments in vessels less accumulated depreciation, other property and equipment less accumulated depreciation, and working capital.

[6] See "Table 47—Agency Authority Over Rate Of Return—All Utilities," in Utility Regulatory Policy in the United States and Canada Compilation 1992–1993, National Association of Utility Regulatory Commissioners ("NARUC"), Washington D.C., 1993, pp. 110–111.

[7] Preference stock, also known as prior-preferred stock, is preferred stock that has a higher claim than other issues of preferred stock on dividends and assets in liquidation.

[8] Charles E. Phillips, Jr., The Regulation of Public Utilities, 3rd ed., Public Utilities Reports, Inc., Arlington, Virginia, 1993, p. 388.

[9] Short term debt that has become a permanent portion of the regulated firm's financing is also included in the computation. Deferred taxes are included at zero cost (unless they have been deducted from rate base).

[11] In reality, a regulated firm typically does pay taxes, and the WACC must be adjusted to arrive at a final number for an allowable rate of return. Such adjustment is made by calculating the WACC on a before-tax basis ("BTWACC"). The BTWACC is described in detail later.

stock stated as a percentage. For example, if the actual total annual dividend requirements amounted to $1,350,000 and the total value of outstanding preferred stock is $15 million, the cost of preferred stock would be 9 percent ($1,350,000/$15 million=.09).

The calculation of the cost of common stock equity capital, the third component of the WACC, is more difficult. Commonly used methods are the Discounted Cash Flow ("DCF"), the Capital Asset Pricing Model ("CAPM") and the Risk Premium ("RP"). Each of these models is based on market variables (e.g., stock market prices and bond yields) which reflect the expectations of investors in capital markets. More specifically, the DCF, CAPM and RP models are constructed under the generally accepted assumption that a company's stock market price at any moment in time reflects completely investors' current expectations. Because these market-based models are designed to reflect the expectations of investors, and because a company's cost of capital is defined as the rate of return expected by investors on alternative investments of equivalent risk, the WACC framework implemented through the use of such models will, in general, equate the allowable rate of return with the cost of capital.

II. The Commission's Comparable Earnings Test Compared to the WACC

A. Theoretical Issues

The Commission has used its variation of the CET in a number of rate investigations. Commission orders adjudicating the reasonableness of rate increases under the CET have been repeatedly upheld by the courts. *E.g., Matson Navigation Company, Inc.* v. *FMC*, 959 F.2d 1039 (D.C. Cir. 1992); and *Puerto Rico Maritime Shipping Authority* v. *FMC*, 678 F.2d 327 (D.C. Cir.), cert. denied, 459 U.S. 906 (1982). However, the Commission's CET does present a theoretical shortcoming compared to the WACC method, in that it is unlikely to equate the allowable rate of return with the cost of capital, because it uses historical accounting data to calculate an average book value [12] rate of return that the regulated carrier should be allowed.

The accounting rate of return for a company is not equivalent to the firm's true economic rate of return because accounting and economic concepts of income and value are substantially different. Accounting numbers are derived on the basis of generally accepted accounting principles while economics specifies the use of opportunity costs. This difference is particularly acute when the economy is characterized by high and variable rates of inflation. For example, accountants define asset values in terms of acquisition or historical costs while economists define asset values on the basis of market values or replacement costs. This distinction effects both the income statement as well as the balance sheet. Consequently, an accounting-based rate of return methodology such as the Commission's CET does not adequately measure a regulated carrier's true cost of capital. In Docket No. 91–51, the State of Hawaii noted the problems associated with using accounting data and criticized the Commission's CET for being accounting-based and not market-based.

Several empirical tests have demonstrated that there is a large discrepancy between accounting rate of return and true economic return.[13] These studies also demonstrate that biases inherent in book returns are systematic, and that these biases do not cancel out by averaging across companies. Furthermore, the type and magnitude of bias for regulated firms are different than those of unregulated firms contained in the comparable risk group of firms selected in applying the Commission's CET method.[14]

B. Practical Issues

The WACC approach also presents some important technical advantages. First, the WACC uses the actual long-term interest expense currently provided by a regulated carrier to compute the company's cost of long-term debt capital, while the Commission's CET uses an estimate of a carrier's long-term interest expense based on moving averages of Baa-rated corporate bond yields in computing an allowable rate of return on rate base. By definition, a firm's actual long-term interest expense is more accurate than an estimate of that expense. In its comments in Docket No. 91–51, the State of Hawaii stated that the Commission's CET introduces imprecision into the calculation by requiring that parties substitute a proxy for carrier interest expense as a component of the carrier's rate of return, although this component is known and subject to verification.

Second, the WACC, when implemented properly, ensures that the regulated carrier will be allowed a return on rate base that is large enough to ensure that the carrier will have the opportunity to earn, at a minimum, revenues that are sufficient to cover its embedded (actual historical) cost of debt. Assuming that debt capital financing is less expensive than preferred stock and common-stock equity capital financing, when the known cost of long-term debt is weighted by the regulated company's proportion of long-term debt capital outstanding, and then added to the firm's cost of preferred stock weighted by the firm's proportion of preferred stock capital outstanding and the firm's cost of common-stock equity capital weighted by the firm's proportion of common-stock equity capital outstanding, the resulting sum (*i.e.*, the WACC) can be no less than the cost of the firm's embedded cost of debt. Such a guarantee is not available under the Commission's CET, as Matson Navigation Company, Inc. ("Matson"), has pointed out. For example, if the long-term interest expense estimate, derived on the basis of a moving average of historical Baa corporate bond yields, is not representative of the actual long-term interest expense of the regulated carrier, or if the historical financial data reflecting the financial picture of the benchmark group of firms are not representative of the regulated carrier's financial position, then the regulated carrier's calculated allowable rate of return on rate base could fall short of its embedded cost of debt.

Third, the Commission's CET has proved difficult to apply in the case of the Puerto Rico Maritime Shipping Authority ("PRMSA"), which has a capital structure composed entirely of long-term debt and by law is not required to pay taxes. On the other hand, the WACC can be used effectively to establish an appropriate allowable rate of return for such a carrier. The WACC is computed for such a carrier by weighting the cost of long-term debt near or equal to one, the cost of preferred stock near or equal to zero, and the cost of common-stock equity near or equal to zero, and setting the corporate tax rate equal to zero. The WACC can be used effectively to compute an accurate estimate of the

[12] Book value means the value at which an asset is carried on a balance sheet.

[13] See, for example, Franklin M. Fisher and John J. McGowan, "On the Misuse of Accounting Rates of Return to Infer Monopoly Profits," 73 Am. Econ. Rev. 82–97, March 1983; and Richard Brealy and Stewart C. Myers, Principles of Corporate Finance, New York: McGraw-Hill, Chapter 12, 1981.

[14] Regulators (including the FMC) commonly set rates on the basis of a book value rate base. In such instances, the economic (i.e., market) value of a regulated firm will tend to be closer to its book value in comparison to the economic values and book values of the unregulated firms contained in the proxy group. The book returns of the unregulated firms are, therefore, likely to be substantially more biased than those of the regulated firm under consideration.

overall cost of capital and, in turn, to establish an appropriate allowable rate of return for a regulated carrier that is financed exclusively or almost completely by long-term debt [15] and is tax-exempt, because it distinguishes between such a carrier and one that is financed with substantial amounts of common-stock equity and is not tax-exempt. In its comments in Docket No. 91–51, PRMSA observed that the Commission's CET makes no such distinction because it uses as a benchmark for every regulated carrier, regardless of actual capital structure or tax status, a typical firm financed with a relatively balanced mixture of long-term debt and common-stock equity capital, and is not tax-exempt.

Lastly, the WACC method typically uses a number of different methods to calculate the regulated firm's cost of common-stock equity capital. This yields several different estimates of the firm's WACC providing a regulatory commission with a range of numbers from which a single number representing an allowable rate of return on rate base can be chosen. This minimizes the possibility that the allowable rate of return will be distorted by inappropriate subjective judgements or by extraordinary economic conditions existing during the time period used to measure that return. By comparison, the Commission's CET produces a single measure of an allowable rate of return.

On the basis of its review, the Commission has determined to propose the use of the WACC methodology to evaluate the reasonableness of a carrier's rates in the domestic offshore trades. The Commission believes that the WACC approach set forth in the proposed rule represents a substantial improvement over the existing methodology and addresses the criticisms voiced in comments in Docket No. 91–51. We now turn to the proposed rule.

III. Estimating the Weighted Average Cost of Capital

A. Capital Structure

The first step in calculating the WACC is to determine an appropriate capital structure (*i.e.*, the proportions of long-term debt, preferred stock, and common-stock equity capital issued by a firm to finance its operations) for the regulated firm. There are two important issues that may have to be resolved. The first is whether to calculate the WACC using a "typical" or "ideal" capital structure as some regulatory commissions do, or the actual capital structure or that expected in the near future, as others do. The second issue concerns the situation where the regulated company is a subsidiary of a parent company. The issue is whether to use the capital structure of the subsidiary or that of the consolidated system (*i.e.*, the parent company and all of its subsidiaries) in computing the WACC.

1. *Hypothetical Versus Actual Capital Structure.* The WACC may be much lower when the proportion of debt contained in a company's capital structure is relatively high compared to common-stock equity. This is because the interest rate on debt is usually much lower than the cost of common-stock equity.[16] In addition, debt costs the firm and the ratepayer less than equity because equity earnings are subject to income taxes and debt is not. The revenue that a company is allowed to earn on its common-stock equity is increased by amounts added to that revenue for the purpose of paying income taxes. By contrast, since interest is deductible for income tax purposes, earnings to cover debt costs are computed before any income tax calculations, and are not subject to income tax. Consequently, within limits determined by such factors as the risk of a business, the WACC may be lower and ratepayers may pay less when the firm employs a relatively large proportion of debt than when it uses a relatively large proportion of equity. Given this differential, some regulatory commissions compute the WACC using what they believe to be the "typical," or "ideal," capital structure without regard to the actual capitalization of the regulated company in question. Other regulatory commissions base their WACC estimates on either the actual capital structure, or that expected in the near future when rates to be decided will be in effect.

There are strong reasons for using a regulated carrier's actual or expected capital structure rather than the alternative of a hypothetical or ideal capital structure in calculating the carrier's WACC. First, a regulated company's current capital structure could be the product of decisions that were logical and efficient at the time they were made, although a different capitalization might be consistent with a lower WACC at the time of a rate investigation and hearing. Although hindsight is always more accurate than foresight, a company must make financial decisions based on an evaluation of the present and projections of future conditions.[17] Second, using a hypothetical or typical capital structure substitutes an estimate of what the WACC *would be* under conditions that do not exist for what it *actually is* or *will soon* be under existing conditions.[18]

Accordingly, the Commission's proposed rule specifies the use of a regulated domestic offshore carrier's expected capital structure in computing the carrier's WACC. The proposed rule stipulates the use of the expected rather than the actual capital structure because the Commission uses a future instead of a historic test year.

2. *Subsidiary Versus Consolidated Capital Structure.* Where a regulated company is a wholly owned subsidiary which obtains its common-stock equity capital through a parent company, regulators often use the capital structure of the consolidated system (i.e., the parent company and all of its subsidiaries) in computing the WACC. The consolidated capital structure is an appropriate capitalization to use in calculating a regulated subsidiary's WACC when: (1) No substantial minority interest in the subsidiary exists (i.e., the regulated subsidiary is wholly-owned by a parent company or nearly so), and (2) the risks are similar between the parent and subsidiary.[19] In such a

[15] A profitable firm will generally have at least some amount of common-stock equity capital in its capital structure because such a firm will usually have an internal source of such capital in the form of retained earnings.

[16] There are two reasons for this: (1) debtholders have priority over equityholders as to the remaining assets of the firm in the event that the firm is liquidated; and (2) debtholders must be paid their contractual level of interest (*i.e.*, their coupon payment) before equityholders receive any compensation (*i.e.*, dividend payments). A company may reduce or eliminate dividend payments to equityholders in the event that it is under financial strain. However, it is far less likely that coupon payments will be eliminated because this could result in bankruptcy if the firm does not take corrective action. Equityholders, therefore, require a higher return than do debtholders. Consequently, it costs a firm more to issue common-stock equity than it does to issue debt. The more expensive common-stock equity financing could be borne by ratepayers in the form of higher rates.

[17] Charles E. Phillips, *supra* note 4, at 390.

[18] James C. Bonbright, Albert L. Danielsen, and David R. Kamerschen, *Principles of Public Utility Rates*, 2nd ed., Public Utilities Reports, Inc., Arlington, Virginia, 1988, p. 309.

[19] The use of the consolidated capital structure differs from the "double leverage" concept used by some expert witnesses. The latter approach uses the parent company's WACC as a measure of the subsidiary's cost of common-stock equity capital along with the subsidiary's capital structure, the subsidiary's cost of preferred stock, and the subsidiary's cost of debt. Those that favor the use of such a method cite the advantage of using the actual data of the subsidiary for which an allowable rate of return is being computed. The merits of the approach are highly debatable, however, since it

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situation, investors' appraisals of the parent company's common stock are thought to represent the best measure of the current cost of common-stock equity to the subsidiary.[20] When the consolidated capital structure is used, the consolidated system's cost of common-stock equity capital (issued by the parent company), the consolidated system's cost of preferred stock, and the consolidated system's cost of long-term debt, rather than the respective capital component costs of the regulated subsidiary, are also used because the consolidated capital structure directly affects the capital component costs of the consolidated system and not those of the subsidiary.[21] The use of the regulated subsidiary's capital component costs is inconsistent with the use of the consolidated system's capital structure and could, therefore, distort the WACC estimate obtained for the regulated subsidiary.

The use of the consolidated capital structure is not correct, however, when a substantial minority interest in the regulated subsidiary exists, or when the regulated subsidiary's risk differs substantially from that of the parent company. The appropriate approach in this situation is to ignore the parent-subsidiary relationship and to estimate the subsidiary's WACC using the subsidiary's own capital structure and capital component costs. This method, referred to as the "stand alone" or "subsidiary approach," recognizes the subsidiary as an independent operating company, and its cost of common-stock equity capital is inferred as the cost of common-stock equity of firms having risk comparable to that of the subsidiary.[22] The basis for this method is that the required return on an investment depends on its risk (i.e., the subsidiary's risk) rather than on the parent's financing costs. In short, this method emphasizes the use, rather than the source, of the subsidiary's capital funds.

The Commission's proposed rule specifies that a subsidiary carrier's capital structure is to be used in computing the WACC unless, after notice and opportunity for comment, the Commission determines that: (1) The subsidiary carrier's parent company issues publicly traded common-stock equity; (2) no substantial minority interest in the subsidiary carrier exists; and (3) risks are similar between the subsidiary carrier and the parent company. Under the proposed rule, no substantial minority interest in a subsidiary carrier exists when a parent company owns 90 percent or more of the subsidiary's voting shares of stock. It also must be demonstrated that both the business and the financial risks facing the parent and subsidiary are similar.[23]

Such an evaluation may involve a comparison of such financial risk measures as total capitalization and debt-to-equity ratios, investment quality ratings on short-and long-term debt instruments, and coverage ratios such as the times interest earned and fixed charges coverage ratios.[24] There must also be an assessment of the degree to which the regulated subsidiary comprises the parent's holdings. To the extent that a subsidiary accounts for a substantial majority of the consolidated system's revenues, expenses, and profits, the business risks of the parent and subsidiary would, in general, be the same. However, where a parent's holdings are diversified into areas of business unrelated to the regulated subsidiary, the business risks of the parent and of the subsidiary are more likely to differ.

Accordingly, the Commission's proposed rule states that the Commission shall consider some or all of the aforementioned business and financial risk criteria in determining whether to approve the use of a consolidated system's capital structure and component costs in computing the subsidiary's WACC.

Other measures of business and financial risks may also be used in comparing the risk of a parent with the risk of a subsidiary. These could include those discussed later for selecting an appropriate proxy group of firms.

3. *Book Value Versus Market Value Capitalization Ratios.* Another capital structure issue is whether to use market or book values in computing the capitalization ratios (*i.e.*, the weights) in the WACC formula. Technically, capitalization ratios should be computed on the basis of market value. A capital structure computed on the basis of historical (*i.e.*, book values) as opposed to current market values misrepresents the true capital structure over time, since price levels fluctuate. The common practice is, nevertheless, to compute capitalization ratios on the basis of book values. This is defended on grounds that a regulated firm supposedly raises capital in such a fashion that a target capitalization ratio expressed on the basis of book values is maintained by the company. Consequently, regulators must compute the firm's overall cost of capital on the same basis in order to ensure that the company's capital costs are adequately covered. In addition, book value capitalization ratios are stable and the regulator is, therefore, not required to deal with the uncertainties associated with volatile market weights. Further, effective regulation is said to force book and market values toward equality. Accordingly, the Commission's proposed rule requires the use of book value capitalization ratios in computing the WACC.

4. *Average Versus Year-End Capital Structure.* Finally, there is the issue of whether a year-end or average capital structure should be used in computing the WACC. The fact that financial variables and ratios are commonly stated on an average basis argues in favor of using an expected average capital structure projected over a future test year, rather than a year-end capital structure. Earnings per share, for example, are typically expressed on the basis of average number of shares

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could produce an estimate of the cost of common-stock equity capital for the regulated subsidiary that is lower than the opportunity cost of such capital when the subsidiary is more risky than the parent, and an estimate that is higher when the subsidiary is less risky. The Commission's proposed rule does not, therefore, rely on the double leverage method of calculating the WACC for a regulated subsidiary company.

[20] J. Rhoads Foster, "Fair Return Criteria and Estimation," 28 Baylor L. Rev. 889 (1976), in Charles E. Phillips, *supra* note 4, at 392.

[21] To see how a company's capital structure could affect its component capital costs, consider, for example, the case of a heavily-leveraged company (i.e., one that has a relatively large proportion of debt in its capital structure). Such a company could be perceived by current and potential debtholders and equityholders as having a relatively high probability of bankruptcy (in which case coupon and dividend payments would be discontinued and the possibility that principal could also be lost would be heightened) and, therefore, as being a relatively high risk investment. Debtholders and equityholders would require a return on their investment funds that is commensurate with the relatively high risk of such a company in order for them to be willing to purchase and hold the company's debt and common stock. A heavily leveraged firm could, therefore, have relatively high costs of debt and common-stock equity capital.

[22] The issue of selecting an appropriate sample of firms having risk similar to that of the regulated company under consideration is explored in detail below.

[23] Business risk is the variability that a company's internal (e.g., the skill levels and salaries of employees) and external (e.g., the number of competitors) operating variables impart to the earnings available to investors because of the fundamental nature of the company's business.

Financial risk is the additional variability that debt and preferred stock financing impart to the earnings available to common-stock equityholders.

[24] Times interest earned ratios ("TIER") measure the extent to which operating income can decline before a firm is unable to meet its annual interest costs. TIER is computed by dividing a firm's earnings before interest and taxes by the firms' annual interest expense.

The fixed charges coverage ratio ("FCCR") measures the ability of a firm to satisfy all of its fixed obligations. FCCR is computed by dividing the total of net income, interest expense, depreciation and amortization expense, and the provision for income taxes, by fixed charges. Fixed charges are the total of interest expense, principal payments, and capital lease obligations.

outstanding. Equity returns are also frequently expressed on the basis of average common-stock equity. In addition, an average capital structure computed over a future test year is likely to represent the company's capital structure during the time interval in which a proposed general rate increase will be in effect better than a year-end capital structure, because the company could acquire new capital from, or return existing capital to, investors during that period of time. The use of an average capital structure rather than a year-end capital structure is, therefore, more likely to enable a regulated firm to actually earn its allowable rate of return. Accordingly, the Commission's proposed rule specifies the use of test-year average [25] book value capitalization ratios in computing the WACC.

B. Annual Cost of the Capital Components

Determining the cost of the regulated firm's senior capital (*i.e.*, debt and preferred stock) and common-stock equity is the second step in estimating the WACC. The costs of each of these components are then applied to the capital structure (*i.e.*, each is weighted on the basis of the proportion of the value of the total capital outstanding that each represents) in order to determine the WACC.

1. *Cost of Senior Capital.* There are usually few problems encountered in computing the cost of senior capital with precision. Regulatory commissions traditionally compute cost of senior capital on the basis of embedded (actual historical) cost. This is done by first computing the actual total annual fixed charges on long-term debt, including any amortized discount or premium and issuance expense, and the actual total annual dividend requirements on the preferred (and preference) stock for all issues on a dollar basis. These dollar figures are then converted to a percentage by dividing the actual total annual fixed charges on long-term debt by the actual total value of long-term debt outstanding, and the actual total annual preferred stock dividend requirements by the actual total value of preferred stock outstanding for all issues. If a future (rather than a historical) test year is used (as the FMC does), the cost of senior capital is calculated on the basis of: (1) The embedded cost for the existing long-term debt and preferred stock, and (2) the current cost for any new long-term debt and preferred stock that the regulated firm anticipates issuing on or before the final day of the projected test year.

The embedded cost is used to calculate the cost of existing senior capital in order to determine what the senior capital will cost the firm today, in view of the fact that the majority of it was issued at prior points in time, and under bond and stock market conditions that could have differed substantially compared to those prevailing today. The objective is not to determine what the existing senior capital would cost if issued today. Rather, the embedded debt cost measures precisely what the regulated firm needs to satisfy its contractually required interest payments to those holding existing long-term debt, and preferred-dividend payments to those holding existing preferred stock. The current cost of bonds and preferred stock is, therefore, estimated only to measure the cost to the regulated firm when such senior securities are to be issued in the near future.

2. *Cost of Common-Stock Equity Capital.* The most critical problem in determining the WACC is that of estimating the cost of common-stock equity capital. The objective is to determine how much the regulated firm is required to earn in order to be able to entice investors into purchasing and holding its common-stock equity. A precise answer to this question is difficult to arrive at due to the absence of any expressed or fixed agreement as to the level of dividends that are to be paid by the regulated firm to its common-stock equityholders. Dividend payments, on the one hand, depend upon the profits of the regulated company. The allowable amount of profits, on the other hand, is the object of a rate investigation and hearing. A regulator, in allowing a fair rate of return, does not, therefore, have any predetermined gauge as to the level of profit and common-stock equity dividends required by investors.

There are five major methods used to estimate the cost of common-stock equity capital: DCF, RP, CAPM,[26] Market-to-Book Ratio ("MBR"), and Comparable Earnings ("CE").[27] The DCF, CAPM, RP, and MBR methods are market-based approaches that emphasize the standard of capital attraction articulated in *Hope* and *Bluefield* by examining investors' expectations of the regulated firm's profits, dividends, and *market* prices. The CE method emphasizes the comparable earnings standard specified by those cases by estimating the return on *book* common-stock equity of firms having risk similar to that of the regulated firm under consideration. The five methods are reviewed in turn.

a. Discounted Cash Flow Method. The DCF method of estimating the cost of common-stock equity is the technique that is used with the greatest frequency by state and federal regulatory commissions and agencies. Its popularity reflects the intuitive appeal of the DCF model with its basis in valuation theory. That theory holds that the current market price of a common stock is equal to the present value of its expected future dividend payments plus the proceeds that an investor would expect to receive when the common stock is finally sold. Because the value of an amount of money to be received in the future is less than the value of the same amount of money received today,[28] the expected value of the future dividends and ultimate proceeds must be discounted back to the present at the investor's required rate of return in computing the present value of a common stock. The most basic mathematical representation of this concept assumes that: (1) Dividends grow at a constant annual rate, and (2) that an investor will hold the common stock forever. The latter assumption implies that the value of the stock depends solely on the dividends that are expected to be paid. The basic DCF model is expressed algebraically as follows:

$$P_0 = \frac{D_1}{K_e - g}$$

where:

P_o is the current market price per share of the regulated company's common stock;

D_1 is the dividend to be received at the end of year 1 (mathematically $D_1=D_o(1+g)$, where D_0 is the current dividend);

[25] Such average ratios are computed using the average amount of each capital component (expected to be) outstanding during the test year. The average test year amount outstanding for any class of capital is computed by adding the amount of a particular type of capital (expected to be) outstanding at the beginning of the test year to the amount of that same type of capital (expected to be) outstanding at the end of the test year, and dividing the sum of the two amounts outstanding by two.

[26] The CAPM is actually a specific type of RP model.

[27] The CE method is used by regulatory commissions traditionally to calculate the regulated firm's cost of common-stock equity capital. This approach differs significantly from the comparable earnings test currently used by the FMC, which estimates the rate of return on total invested capital (*i.e.*, on long-term debt and common-stock equity) of the regulated carrier under consideration.

[28] The value of a dollar received today is greater than that of a dollar received a year from today, for example, because today's dollar can be invested and begin to earn a rate of return immediately.

K_e is the required or expected return on the regulated firm's common-stock equity capital (*i.e.*, the cost of common-stock equity capital); and

g is the constant expected annual rate of growth in dividends per share.

The equation is solved for K_e in rate of return testimony in order to determine the cost of the common-stock equity of the regulated firm under consideration. Solving the equation for K_e yields the following expression:

$$K_e = \frac{D_1}{P_0} + g$$

Hence, the basic or standard DCF model states that the cost of common-stock equity is equal to the expected (first-year) dividend yield plus the rate at which investors expect dividends to grow in the future.

To illustrate the basic DCF model, assume that the current market price of a hypothetical regulated company's common stock is $30.00 per share, and that a single common stock share currently pays a $2.00 dividend, which is expected to grow at a rate of 5 percent per year. The cost of common-stock equity capital for such a company is:

$$K_e = \frac{\$2.00\,(1.05)}{\$30.00} + .05$$

$$= .07 + .05$$

$$= .12 \text{ or } 12 \text{ percent}$$

i. Practical Issues

(a) Expected Growth Rate of Dividends. The major practical issue involves determining "g," the constant expected annual rate of growth in dividends per share. There are three techniques that are commonly used to estimate "g": (1) Historical growth rates; (2) professional investment services' projections; and (3) sustainable growth or retention growth. An average of the growth rates arrived at separately using each of the three methods is often used to produce a final growth estimate. This averaging procedure is the one reflected in the proposed rule.

(i) Historical Growth Rate. The historical growth rate in dividends over some period, frequently five or ten years, is one method used to estimate "g." Historical data are used because investors' expectations of future growth are based in part on growth rates experienced in the past. The historical growth in earnings per share, or book value per share, is sometimes used as a proxy for the growth in dividends, because dividends are often increased at discrete intervals, so that their estimated growth rate can differ considerably depending upon the precise beginning and ending points of the selected data series. The proposed rule, therefore, requires averaging the historical growth rate of dividends per share, earnings per share, and book value per share in arriving at an estimate of "g."

The period over which "g" is to be measured must be sufficiently long to avoid distortions in the data resulting from short-term conditions and aberrational years, but sufficiently short to capture foreseeable influences relevant for investors' evaluation of the future. The most recent five- and ten-year periods are commonly used to calculate the growth rate. The proposed rule uses an average of the five- and ten-year growth rates on the basis that the average represents a reasonable trade-off between the incongruous requirements of representativity and statistical adequacy.

(ii) Professional Investment Services' Projections. The expected growth rate of dividends is also commonly based upon the growth rates published by professional investment services, since investor expectations are the desired quantities in the DCF model, and investors' growth anticipations are based in part upon the projections of such services. Growth forecasts of dividends per share, earnings per share, and book value per share are published by several services, including Value Line Publishing, Inc. ("Value Line"), and the Institutional Brokers Estimation Service ("IBES"). Such growth rates are published on a regular basis, usually for five-year periods, and are readily available to investors. Expert witnesses usually develop a consensus forecast by averaging the forecasts of the professional analysts, and use this average in calculating "g." The Commission's proposed rule similarly specifies that "g" will be measured by using the average of: (1) The five-year dividend, earnings, and book value forecasts published by Value Line, and of (2) the five-year earnings forecast published by IBES.[29]

(iii) The Sustainable Growth Rate. The third technique used to estimate "g," known alternately as the "sustainable growth," "retention ratio," or "plowback" method, is to multiply the proportion of earnings expected to be retained by the company, "b," by the expected return on book equity, ROE. The relationship is expressed algebraically as g=(b)(ROE). The theoretical underpinning for the method is that future growth in dividends for existing equity can only occur if a portion of the overall return to investors is plowed back into the firm rather than being paid out as dividends.

To illustrate the sustainable growth rate method, assume that a hypothetical regulated company is expected to retain 75 percent of its earnings, and is expected to earn a 10 percent return on book equity. The company's sustainable growth rate estimate of "g" is:

g=.75(.10)
=.075 or 7.5 percent.

Both historical and projected values of "b" and ROE are used to estimate "g." Projected values are regarded as superior, however, since forecasted values incorporate current and predicted changes into the values. In addition, the use of historical realized book returns on equity in estimating ROE has been criticized because the realized returns are the product of the regulatory process itself, and are also subject to tests of reasonableness. Therefore, the Commission's proposed rule requires that the forecasted values of "b" and ROE published by Value Line be used in implementing the sustainable growth method.

(iv) Final Estimate of "g". The final estimate of "g" for the DCF model is commonly based on an average of the separate estimates arrived at using the historical data, the professional investment services' projections, and the sustainable growth model. Thus, the Commission's proposed rule reflects such an averaging procedure.

(b) Dividend Yield. Two methods are commonly used to calculate dividend yields in DCF analyses. The standard DCF model uses the annual dividend expected to be paid 12 months following the purchase of the security. This method assumes that dividends are paid annually. The other method uses the current dividend to compute the yield portion of the annual return. This method assumes that dividends are paid continuously. However, the assumption of annual payments results in an overstatement of the required return (*i.e.*, the regulated firm's cost of common-stock equity capital), and the assumption of continuous payments results in an understatement of the required return. Since most firms pay dividends on a quarterly basis, however, it is proper to use a method that recognizes such quarterly installments. Such a method applies an adjustment factor to the current dividend yield to account for quarterly payment of dividends. The dividend yield,

[29] IBES produces a consensus forecast of earnings based on the individual predictions of virtually every major brokerage house.

assuming quarterly payment of dividends, is calculated on the basis of the following formula:

$$\text{Dividend Yield} = \frac{D_0}{P_0}(1+.5g)$$

where:

D_0 is the current annualized dividend (defined as four times the current quarterly installment) per share;

P_0 is the current market price per share of the common stock; and

g is the constant expected annual rate of growth in dividends per share.

To illustrate the quarterly dividend formula, assume that the current market price of a hypothetical regulated company's common stock is $30.00 per share, and that a single common stock share currently pays quarterly a 50 cent dividend ($2.00 annually), which is expected to grow at a rate of 5 percent per year. The dividend yield for such a company is:

$$\text{Dividend Yield} = \frac{\$2.00}{\$30.00}(1+.5(.05))$$

$$= .0667\,(1.025)$$

$$= .0684 \text{ or } 6.84 \text{ percent.}$$

The Commission proposes to use this formula in calculating the dividend yield in DCF analyses.

In calculating the current price per share found in the denominator of the expression for the dividend yield, an average price over a period of time, rather than a price on a particular day, is often used in order to remove aberrations from the calculation. Such aberrations could be the result of events internal to the company (*e.g.*, the stock may go ex-dividend [30]) or external factors (*e.g.*, political events that affect the price of a firm's stock). The period over which to average the price of the common stock should be sufficiently long to remove the aberration, but sufficiently short so as not to obscure any real trends in the stock market. The Commission believes that the use of an average of the monthly high and low prices for a six-month period in computing the dividend yield meets these criteria, and such an average is, therefore, reflected in the proposed rule.

(c) Company-Specific Versus Comparable Group DCF Approach. The DCF model can be applied directly to a regulated company which issues publicly-traded common-stock equity (so that the requisite stock market price data for doing so exist), to a group of companies comparable in risk to the subject carrier which issue publicly-traded common-stock equity, or, where possible, both. The company-specific DCF approach provides the stock market's most direct and meaningful measure of a company's cost of common-stock equity capital. Accordingly, the Commission's proposed rule requires that the DCF model be applied directly to the subject carrier where the carrier issues common-stock equity which trades publicly.[31] Only where a carrier issues no publicly-traded common-stock equity is the DCF model to be applied to a comparable group of firms under the proposed rule. Some expert witnesses do, however, apply the DCF model to a comparable group of firms, even where direct stock market data are available, either in place of, or in addition to, the company-specific DCF approach. The Commission's proposed rule does not prescribe the comparable group DCF approach where direct stock market price data are available because it is not certain that this approach would improve upon the accuracy of the cost of common-stock equity capital estimate obtained using the carrier-specific DCF approach.

b. Capital Asset Pricing Model. The conceptual basis of the CAPM is that investors hold diversified portfolios consisting of individual common stocks to minimize risk. Diversification reduces the risk of the portfolio because individual common stock rates of return [32] are not perfectly correlated. The rate of return on some common stocks tends to be high while on others it tends to be low so that the average risk or variability of the return of the portfolio is less than the average risk of the returns of the common stocks contained in that portfolio. Diversification does not completely eliminate risk, however, since individual common stock returns are correlated to a certain degree due to the influence of pervasive forces not specific to a particular security that affect the overall market.

The total risk of a common stock is partitioned into two components: (1) The "specific" or "unsystematic" risk unique to a company that can be diversified away in a well-constructed portfolio, and (2) the "market" or "systematic" risk that cannot be diversified away. The core idea of the CAPM is that because investors can diversify away company-specific risk, they should not be rewarded for bearing this superfluous risk. Diversified risk-averse investors are exposed solely to market risk and are, therefore, rewarded with higher expected returns for bearing higher market risk.

The CAPM provides a measure of market risk, known as "beta," which gauges the degree to which an individual common stock's return moves with the overall market's return. Specifically, the common stock's historical returns are compared with the overall market's historical returns (commonly measured as the returns on a broad market index such as the Standard and Poor's 500). A common stock is considered to be of above average risk if the stock's return is more volatile than that of the market,[33] and of below average risk if the stock's return is less volatile than that of the market.[34] "Beta" is used in the CAPM model to adjust the market premium expected by investors in comparison to debt for the riskiness of an individual common stock.

The CAPM holds that the return on a common stock expected by an investor is equivalent to that which could be earned on a riskless investment, plus a premium for assuming risk that is proportional to the common stock's market risk (i.e., "beta"), and the market price of risk (i.e., the difference between the overall expected stock market return and the expected return on a risk-free investment). The CAPM is represented algebraically as follows:

$$K_e = R_f + B(R_m - R_f)$$

where:

K_e is the expected return on the regulated firm's common stock (i.e., its cost of common-stock equity capital;

R_f is the expected risk-free return;

B is the relevant expected market risk "beta" of the regulated firm's common stock; and

[30] Ex-dividend is the interval between the announcement and the payment of the next dividend. An investor who buys shares during that interval is not entitled to that dividend. Typically, a stock's price moves up by the dollar amount of the dividend as the ex-dividend date approaches, then falls by the amount of the dividend after that date.

[31] Alternatively, under the proposed rule, the DCF model is to be applied directly to the parent company of a subsidiary carrier where a consolidated capital structure and consolidated system capital component costs are to be used to calculate the WACC, assuming that the parent company issues common-stock equity which trades publicly.

[32] The annual rate of return on a common stock is the sum of two components: (1) The annual dividend yield, which is annual dividend income divided by the price of the common stock at the beginning of a given year; and (2) the annual capital appreciation or depreciation, which is the annual increase or decrease in the price of the common stock, divided by the price at the beginning of the given year.

[33] The "beta" for such an above-average risk common stock is greater than one.

[34] The "beta" for such a below-average risk common stock is less than one.

R_m is the expected overall stock market return.

To illustrate the CAPM, assume that a hypothetical regulated company's expected "beta" is .95, the expected risk-free rate is 7 percent, and the expected overall stock market return is 12 percent. The company's cost of common-stock equity capital is:

K_e=.07+.95(.12 − .07)
=.07+.0475
=.1175 or 11.75 percent.

i. Practical Issues. The practical application of the CAPM requires estimates of the expected "beta" of the regulated firm, the expected risk-free rate, and the expected return on the stock market. Each of these inputs is discussed in turn.

(a) Risk-Free Rate. The yield on a 90-day Treasury Bill is theoretically risk-free. It is devoid of default risk and is subject to little interest rate risk. Treasury Bill rates vary widely, however, resulting in volatile and unreliable common-stock equity return estimates. In addition, 90-day Treasury Bill rates generally do not match investors' planning horizons, which typically are far in excess of 90 days. Short-term government obligations may also reflect the impact of factors (e.g., inflation) differently than long-term securities such as common stocks, or may reflect different factors than those influencing the long term securities. Long-term Treasury bonds (e.g., 30-year bonds) may more closely approximate investors' planning horizons, and their yields usually match more closely with common stock returns. The yields on long-term bonds are subject to substantial interest rate risk, however, and so are not truly risk-free. A compromise is to use the yields on Treasury securities of intermediate maturities as proxies for the risk-free rate. Accordingly, the Commission's proposed rule implements the CAPM using a six-month average of five-year Treasury Note yields.

(b) "Beta." The value of "beta" used in applying the CAPM should, in principle, be that which is expected in the future. The "beta" actually used in the practical application of the model is, however, more commonly calculated on the basis of historical data. "Beta" could be calculated by applying regression analysis, using historical price and dividend data for the regulated firm under consideration, in order to measure the variability of the return on the regulated firm's common stock relative to that of the market. The usual practice, however, is to use the "betas" published by an investment firm such as Value Line. Value Line "betas" are derived from a regression analysis between weekly percent changes in the price of a company's common stock and the weekly percent changes in the New York Stock Exchange Composite Indices over a period of five years.[35] Provided that the regulated firm's market risk is not expected to change appreciably in the future, "betas" based on historical data are appropriate for estimating the cost of common-stock equity. Therefore, the Commission's proposed rule specifies the use of Value Line's most current "betas" in implementing the CAPM.

(c) Market Return. The third input required by the CAPM is an estimate of the expected return on the stock market. One broad approach is to estimate the expected return on the market directly. One such technique is to apply a DCF analysis to a broad market index such as the Standard & Poor's 500. A second broad approach is the historically derived risk premium method, which involves two steps: (1) The arithmetic average difference between the actual annual returns realized in the past on the overall stock market and the risk-free rate is calculated,[36] and (2) this historical differential is added to the currently prevailing yield on the risk-free security. The resulting sum is a measure of the return on the market. The rationale for this method is that investors anticipate that common stocks will yield a higher return than the return on lower risk, fixed income securities, and the additional return on the common stocks is expected to be approximately equal to what it was in the past. The Commission's proposed rule stipulates the use of the historically derived risk premium method because it is relatively easy to apply, and its data requirements are relatively light compared to methods designed to measure the expected market return directly.

The historical risk differential is commonly based on the historical return series published annually by Ibbotson Associates in the Stocks, Bonds, Bills, and Inflation Yearbook ("SBBI Yearbook"). The SBBI Yearbook provides averages of the historical risk differentials relative to various government securities for the period 1926 to the present, using Standard and Poor's 500 Index to compute the overall market rate of return. The Commission's proposed rule specifies the same source for measuring the arithmetic average risk premium relative to the required risk-free rate proxy (i.e., the five-year Treasury Note).

The choice of a time period for measuring the historical differential sometimes differs, but frequently it matches the entire period over which Ibbotson Associates provides the data. Returns calculated over a substantially shorter horizon (e.g., five or ten years) are sometimes used to calculate the risk premium. This is not appropriate, however, due to the extreme volatility of the return on the overall stock market.[37] Accordingly, the Commission's proposed rule stipulates that the entire length of the data series be used as the time horizon.

In summary, the proposed rule requires that the market return used in CAPM calculations be computed using a risk premium defined as the arithmetic average historical risk differential relative to the five-year Treasury Note using the data published in the most current SBBI Yearbook for the period 1926 through the most recent date for which the data are available.

c. Risk Premium Method. The RP method, alternately referred to as the "risk positioning method" or the "stock-bond yield spread method," is based upon the premise that common-stock equity capital is riskier than debt from an investors' perspective and that investors, therefore, require a larger rate of return on investments in common stocks than on bonds to compensate them for bearing the extra risk. Common stock equity is riskier than debt because the payment of interest and principal to debtholders has priority over the payment of dividends and return of capital to common-stock equityholders. The RP method, therefore, estimates the cost of capital by adding an explicit premium for risk to a current interest rate, frequently an interest rate on a particular government security. The general mathematical expression for the RP model is as follows:

$K_e = K_d + RP$

where:

[35] Value Line publishes adjusted "betas." The adjustment recognizes the tendency of "betas" to move toward one. (The market index by definition has a value identically equal to one.) There are two justifications for making such an adjustment: (1) Empirical studies demonstrate that "betas" tend to move toward one over time, and (2) the average "beta" is known to be one, and adjusting an estimated "beta" toward one is, therefore, an appropriate use of existing information.

[36] The arithmetic mean, not the geometric mean, should be used, since the quantity desired is the rate of return investors expect over the next year for the random annual rate of return on the market. The arithmetic mean is the unbiased measure of the expected value of repeated observations of a random variable.

[37] In statistical terms, this extreme variability implies an extremely large standard deviation over any short period of time. Estimates of the overall market return calculated over such a short period of time are, therefore, unreliable.

K_e is the regulated firm's cost of common-stock equity capital;
K_d is the incremental (i.e., current) cost of debt; and
RP is the risk premium.

To illustrate the RP model, assume that the incremental cost of debt is 7 percent, and the risk premium is 5 percent. The regulated company's cost of common-stock equity capital is:

K_e=07+.05
=.12 or 12 percent.

i. Practical Issues

(a) Risk Premium. There are several procedures for estimating the risk premium. One common approach is to use the historical arithmetic average return differential between rates of return actually earned on investments in common-stock equities and bonds. This approach is expressed mathematically as follows:

K_e=K_d+Historical bond-equity spread

The historical bond-equity spread, in turn, is often based on the data series published annually in the SBBI Yearbook. The portfolio of common stocks used as the benchmark for estimating the risk premium should be one that is composed of a broad array of firms and is well diversified, in order to minimize the potential for it to be contaminated by the peculiarities of a particular group of common stocks. The SBBI Yearbook database is based upon the Standard & Poor's 500 Index, which meets these criteria. The range of companies in such a broad group as the Standard & Poor's 500 Index covers the broad dimensions of investor perceptions of the trade-off between risk and return, and serves as a benchmark for investor-required returns. The Commission's proposed rule stipulates the use of the historical bond-equity spread based on the data published in the SBBI Yearbook.

Risk premiums based on the historical differential can be extremely volatile and may fluctuate as macroeconomic and microeconomic conditions change. The time period over which the risk premium is selected should, therefore, be sufficiently long that short-term aberrations are smoothed out. Such a time period must encompass at least several business and interest rate cycles. The Commission's proposed rule requires the use of the entire data series (1926–present) published annually in the SBBI Yearbook in estimating the risk premium.

(b) Debt Security. The particular debt security used to implement the RP model should be one which is, at least in theory, risk-free and embodies a premium for inflation similar in magnitude to that reflected in common stocks. Satisfying these criteria would isolate the spread component of the return and obviate the need to make any type of adjustment to the debt yield to account for default risk, which can vary over time, and obscure the long-term relationship between returns on common stocks and debt. These criteria are the same as those identified for selecting a debt security to measure the risk-free rate in implementing the CAPM.

Accordingly, the Commission's proposed rule stipulates the use of the six-month average five-year Treasury Note yield in implementing the RP model, for the reasons identified for selecting this same yield as the risk-free rate in implementing the CAPM.

(c) Risk Adjustment. The risk premium estimate derived from a composite market index is sometimes adjusted if there are differences in the risk of the firms represented in the common-stock equity index and that of the regulated firm under consideration. The CAPM (which is actually the company-specific form of the general RP model), for example, adjusts for such risk differences by multiplying the risk premium by "beta," which serves as the measure of relative risk in the CAPM model. The Commission's proposed rule specifies that the RP model be used in its general form without making any adjustment for risk, because the generic form provides a useful benchmark for the range of companies contained in the Standard & Poor's 500 Stock Index on which it is based and, therefore, measures the broad dimensions of investor perceptions of the trade-off between risk and return. The cost of capital estimate produced using the RP model is not to be used as the estimate, but instead is to be used as a check on, and in combination with, the cost of capital company-specific estimates produced using the DCF and CAPM models.

d. Market-to-Book Ratio Method. The MBR method is based on the notion that the market value of a regulated firm's common-stock equity should be equal to its book value (plus some allowance for underpricing), and will be so if the firm's allowable rate of return on common-stock equity capital is equal to the firm's cost of common-stock equity capital. The MBR approach is considered solid conceptually, but is criticized widely for being impractical or even impossible to implement. In order to apply the MBR, a regulator must be able to accurately predict the effect that its rate order will have on the common stock price of a regulated firm in attempting to maintain the equality between the market value and book value of the firm's common stock. Critics argue that regulators are unable to produce such accurate forecasts even when sophisticated econometric models are used. In addition, a regulator may influence, but cannot control completely, the market price of the regulated firm's stock. Even if it could, the exercise of such control would produce violent swings in rate levels which would be uneconomical to both the ratepayer and the regulated firm alike. Finally, diversification by the regulated firm into unregulated activities could result in a market price that differs from book value, although the earnings of the regulated segment are restrained.

The severe practical problems involved with implementing the MBR method of computing an allowable rate of return on common-stock equity capital sharply reduces the utility of the approach. Accordingly, the Commission does not propose the MBR method of computing an allowable rate of return on common-stock equity capital.

e. Comparable Earnings Method. The CE method is based upon the fundamental economic concept of opportunity cost. This concept states that the cost of using any resource (*i.e.*, land, labor, or capital) in a particular activity is what that resource could have earned in its next best alternative use. Thus, the opportunity cost of an investment in a regulated firm's common stock is what the invested funds could have earned in their next best alternative investment (*e.g.*, in another company's common stock, in a government or corporate bond, in real estate, in gold, etc.). In brief, the CE method infers a regulated company's cost of common-stock equity capital from the average (sometimes the adjusted average) book value rate of return on common-stock equity of a group of firms comparable in risk to the regulated company.

As already discussed above, the CE method is not thought to be well grounded in economic theory, primarily because the method is implemented using accounting data rather than market information, and does not accurately reflect the regulated carrier's cost of common-stock equity capital. Accordingly, the proposed rule does not specify the CE method for computing the regulated firm's cost of common-stock equity capital.

f. Final Cost of Common-Stock Equity Capital Estimate. Rather than choosing between the DCF, CAPM, and RP methods, the Commission believes that all three methods should be used to produce separate estimates in arriving at

a final estimate of a regulated carrier's cost of common-stock equity capital, in order to avoid any inappropriate judgments that could be embodied in any one of the individual estimates. Accordingly, the proposed rule states that the Commission shall consider the cost of common-stock equity capital estimates obtained using the DCF, CAPM, and RP methods in arriving at a final cost of common-stock equity capital estimate.

C. Other Cost of Capital Issues

1. *Comparable-Risk Companies.* a. Comparable-Risk Cost of Common-Stock Equity Capital Estimates. When a regulated firm finances assets with common-stock equity that does not trade publicly, it is necessary to use a surrogate to impute the firm's cost of common-stock equity capital. The cost must be imputed because the regulated firm's equity position is not explicitly recognized in the capital market and, consequently, the necessary data for directly estimating the regulated firm's cost of common-stock equity do not exist. This occurs when: (1) The regulated firm is an independent company (*i.e.*, one which has no corporate parent) which issues no publicly traded common-stock equity, or (2) the regulated firm is a subsidiary of a parent company, and the subsidiary issues no publicly traded common stock of its own.

In the case of the independent regulated company which issues no publicly-traded common stock, the cost of common-stock equity capital must be imputed from a sample of firms having risk similar to that of the regulated company. Once an appropriate sample is selected, the cost of common-stock equity capital is calculated using the methods described earlier (*i.e.*, DCF, CAPM, and RP) to produce a range of estimates for the independent regulated company. In the case of the regulated subsidiary, as discussed above, it may be appropriate to use the consolidated system's capital structure and component costs to estimate the subsidiary's WACC. If so, the consolidated system's cost of common-stock equity is obtained by applying the DCF, CAPM, and RP methods directly to the parent company, provided that the parent issues publicly-traded common-stock equity so that the stock market price data required for such an application exist. Otherwise, the regulated subsidiary's capital structure and component costs are used, and it is necessary to impute the subsidiary's cost of common-stock equity from a sample of firms having risk similar to that of the subsidiary.

b. Selecting a Proxy Group. The proxy group must be composed of companies whose business and financial risks are substantially comparable to the risk of the regulated firm. Since no two companies are identical in risk characteristics, and because a company's risk profile may not be perfectly stable over time, at least several companies must be chosen to maximize the reliability of the estimated cost of common-stock equity capital computed for the regulated company.

The criteria for selecting the proxy companies should evaluate the comparability of each company's business risk and financial risk with those of the regulated firm. Comparability with regard to business risk is most readily and directly accomplished by selecting companies in the same line of business as the regulated firm. The comparability of financial risk can be established by analyzing various financial statistics and investment quality ratings which are commonly used as measures of risk by investors. The Commission's proposed rule sets forth a set of risk criteria for selecting proxy companies.

The proposed rule further directs carriers that must rely on proxy companies to impute their cost of common-stock equity capital to use the prescribed risk criteria in selecting proxy companies, and to annually submit their selection of proxy companies along with their annually filed statement of financial and operating data, as required in § 552.2. After notice and opportunity for comment, the Commission shall annually designate the respective proxy group of companies for each applicable carrier in accordance with its prescribed risk criteria. The sequence of steps for selecting the proxy companies and the prescribed risk criteria are discussed in detail below.

i. Risk Criteria

(a) Step 1: U.S. Companies Listed in Value Line. The Commission's proposed rule stipulates that the proxy companies must be U.S.-based, and must be those for which *The Value Line Investment Survey ("Value Line")* provides financial data. The proxy companies are to be based in the U.S. so as to maintain consistent accounting and tax requirements. *Value Line* contains financial information on 1,700 companies that publicly issue common stock for over 95 industries, including the transportation sector. The use of *Value Line* as a resource for selecting proxy companies is particularly suitable since it contains the requisite historical and projected financial data for estimating the cost of common-stock equity.

(b) Step 2: Companies that Operate as Common Carriers. Consistent with the concept of selecting firms of comparable business risk, the proxy companies should be those which are in the same line of business as the regulated firm. The proxy companies should operate and derive a major portion of their gross revenues primarily as common carriers in the business of freight transportation. The proxy group, for example, could be comprised of common carriers that transport freight by air, truck, water, and/or rail. The companies should also own or operate transportation vehicles or vessels. Excluded from this group are companies with gross revenues equal to or less than the $25,000,000 waiver level for vessel operating common carriers in the domestic offshore trades, as described in 46 CFR § 552.2(e).

(c) Step 3: Financial Analysis of Comparable Risk. The proposed rule further states that the Commission may also consider a company's financial strength in evaluating the degree of financial risk faced by each of the selected companies. This may include an examination of some, but not necessarily all, of the factors listed below.

(i) Total Capitalization Ratios and/or Debt/Equity Ratios. Total capitalization ratios and debt/equity ratios measure the proportional mix of financing in a company's capital structure. They are useful measures of financial risk because they indicate the extent of leverage or fixed-cost financing in a company (*i.e.*, the degree to which the company's assets are financed by long-term debt and/or preferred stock). A low percentage of fixed-cost financing generally denotes a low level of financial risk.

(ii) Debt Ratings. Investment analysis services, such as Standard & Poor's and Moody's, provide investment quality ratings of companies' long-term debt instruments. These include ratings on corporate bonds and commercial paper. The ratings reflect a company's risk of default on debt obligations and the possible risk of bankruptcy. The primary basis of the debt ratings is interest coverage. This represents the number of times a company's earnings are greater than its fixed contractual charges or interest costs.

(iii) Stock Safety Rankings. Both Value Line and Standard & Poor's provide common-stock equity rankings for each company listed in their respective publications. While the basis of their ranking systems differ, they both measure the degree of risk associated with each company's common-stock

equity. Value Line bases its ranking system on the stability of the common stock's price adjusted for trends, as measured by the standard deviation of weekly percent changes in the stock's market prices over a five-year period, and partially on the subjective analysis of its financial experts. Value Line's safety scale ranges from 1, the highest, to 5.

(iv) Financial Strength Ratings. Value Line rates the financial strength of each of the 1,700 companies listed in its publication relative to all the others. The ratings are based on key variables that determine financial leverage, business risk, and company size. The ratings range from A++, the highest, to C.

(v) Standard Deviation. The standard deviation is a common statistical measure which can be used to determine the variability of a company's common-stock price changes, or returns on common-stock equity. A high standard deviation indicates a high variability in the range of price changes or returns relative to the average price change or return. Thus, a high standard deviation implies a greater degree of risk associated with a particular company's common stock. Value Line provides a price stability index which ranks the standard deviation of the weekly percentage changes in the market price of each company's common stock over a five-year period.

(vi) The Beta Coefficient. Beta is a regression coefficient that measures the volatility of a company's common-stock price changes, or returns on common-stock equity, relative to the stock market as a whole. Where beta for the stock market equals one, common stocks with beta values of less than one are said to be less risky than the market, while stocks with beta values greater than one are said to be riskier than the market. Value Line and Standard & Poor's provide the beta values associated with the common stock of each company listed in their respective publications.

The Commission may also consider other information commonly accepted by investors as measures of risk in a company. In this regard, commenters may wish to address whether an accurate measure of comparable risk should include some consideration of the regulated firm's status as a subsidiary of a larger organization and, if so, whether the criteria for inclusion in the proxy group should include position in a larger corporate structure.

2. The Before-Tax Weighted Average Cost of Capital. The WACC was defined above as the composite of the cost of the various classes of capital used by the regulated firm weighted on the basis of the proportions of the total which each class represents. Corporate taxes were excluded. In reality, a regulated firm typically does pay taxes, and the WACC must be adjusted accordingly in arriving at a final allowable rate of return. The use of the WACC to determine an allowable rate of return without making such an adjustment would result in an understatement of the total cost of servicing capital to ratepayers. Assuming a 40 percent corporate income tax rate, for example, a company requires only $1.00 of revenue to provide a $1.00 return to bondholders because interest payments are tax deductible for corporate income tax purposes. The same company requires $1.67 of revenue, however, to provide a $1.00 return to preferred stock and common-stock equity shareholders because the firm must pay corporate income taxes, and dividend payments to such shareholders are not tax deductible.

The following before-tax expression of the WACC ("BTWACC") recognizes explicitly the existence of income taxes and is, therefore, the appropriate formula to use in computing an allowable rate of return:

$$BTWACC = \left(\frac{D}{D+P+E}\right)K_d + \left(\frac{P}{D+P+E}\right)K_p\left(\frac{1}{1-T}\right) + \left(\frac{E}{D+P+E}\right)K_e\left(\frac{1}{1-T}\right)$$

where:

K_d is the regulated firm's cost of long-term debt capital;

K_p is the regulated firm's cost of preferred stock capital;

K_e is the regulated firm's cost of common-stock equity capital;

D is the value of the regulated firm's long-term debt outstanding;

P is the value of the regulated firm's preferred stock outstanding;

E is the value of the regulated firm's common-stock equity outstanding; and

T is the corporate income tax rate.

To illustrate the calculation of the BTWACC, consider a hypothetical regulated company that has total invested capital of $100 million, consisting of $25 million of long-term debt, $15 million of preferred stock, and $60 million of common-stock equity. Assume that the firm's cost of long-term debt is 7 percent, cost of preferred stock is 9 percent and cost of common-stock equity is 12 percent, and that the corporate income tax rate is 40 percent. The BTWACC for this firm is calculated as follows:

CALCULATION OF BTWACC

Capital component	Amount (millions of dollars)	Proportion (percent)	Cost (percent)	WACC (percent)	Tax factor (1/1–T)	BTWACC
Long-term debt	25	25	7	1.75	1.00	1.75
Preferred stock	15	15	9	1.35	1.67	2.25
Common-stock equity	60	60	12	7.20	1.67	12.02
Total	100	100		10.30		16.02

The allowable rate of return for this hypothetical company should, therefore, be set at 16.02 percent, which would provide the firm with the opportunity to earn revenues sufficient to service the total cost of capital and taxes.

The Commission's proposed rule specifies that the allowable rate of return on rate base for a regulated carrier in the domestic offshore trades shall be set equal to the carrier's WACC calculated on a before-tax basis. The proposed rule also stipulates the use of the regulated carrier's normalized

corporate income tax rate (*i.e.*, the statutory corporate income tax rate, not the actual or effective corporate income tax rate) in computing the BTWACC. This is consistent with the approach the Commission uses currently in calculating the rate of return on rate base. Furthermore, the large majority of regulatory commissions in the U.S. use the normalized income tax rate for ratemaking and accounting purposes.[38]

3. Flotation Costs. Three factors could theoretically result in a firm receiving as net proceeds from the issuance of common stock an amount less than the pre-announcement common stock price: (1) The cost of floating new issues (*e.g.*, the fee paid to the underwriter) and other administrative expenses (*e.g.*, printing, legal, and accounting expenses); (2) the downward market pressure resulting from the increased supply of the common stock (*i.e.*, the "market pressure" effect); and (3) the potential market price decline related to external market variables (*i.e.*, the "market break" effect).

The Commission's proposed rule specifies that an allowance for the cost of common-stock equity capital financing be made for those flotation costs that are actually incurred (*i.e.*, those that are identifiable and directly attributable to underwriting, printing, legal, and accounting expenses), but only in the event that the regulated carrier under consideration plans on issuing new common stock to the general public during the test year in question.

No allowance would be made for any hypothetical costs such as those associated with market pressure and market break effects. The proposed rule also specifies that the allowance is to be applied solely to the new common-stock equity and not to the existing common-stock equity balance.[39] The regulated carrier would be required to supply the requisite information for computing the allowance.

[38] See NARUC, "Table 40—Accounting Treatment Of Tax Reductions—All Utilities," supra note 4, at 95–96.

[39] The appropriate formula for computing such as allowance is as follows:

$k=Fs/(1+s)$

where:

k is the required increment to the cost of the regulated firm's common-stock equity capital that will allow the company to recover its flotation costs;

F is the flotation costs expressed as a decimal fraction of the dollar value of new common-stock equity sales; and

s is the new common-stock equity sales expressed as a decimal fraction of the dollar value of existing common equity.

Deferred Taxes and The Capital Construction Fund

Under its current rules, the Commission does not address the issue of deferred taxes for calculating rate base. The Commission proposes to amend its rules to provide for the treatment of deferred taxes, including the Capital Construction Fund ("Fund").

The Fund is comprised of three components: (1) The capital account, which results from contributions, (2) capital gains on investment transactions, and (3) ordinary income, representing the earnings of Fund assets. Section 607 of the Merchant Marine Act, 1936, 46 U.S.C. app. § 1177, which governs the Fund, provides for different tax treatment for withdrawals from the various components of the Fund. Section 607 requires that the basis of vessels, barges or containers purchased with monies from the Fund be reduced by the amount of funds withdrawn from the ordinary income and capital gains components of the Fund. The proposed rule takes a similar approach, and would require carriers to reduce the cost of an asset as shown in rate base by the amount of funds withdrawn from the ordinary income and capital gains components of the Fund which are used in acquiring the asset.

A certain portion of a carrier's physical capital (rate base) is financed by deferred taxes. Unlike the debt, preferred stock, and common-stock equity components of financial capital, deferred taxes cost the carrier nothing. Deferred taxes are in the nature of an interest-free loan from the government. Given that these funds are obtained at zero cost, we believe that the carrier should not be allowed a return on that portion of rate base which results from deferred taxes, except on that portion that results from deferred taxes that may arise from the Fund or the expired Investment Tax Credit, and that rate base be reduced accordingly.

This treatment comports with the treatment of deferred taxes by other federal agencies, as well as a majority of state regulatory agencies.[40] When it is necessary to allocate such accumulated deferred taxes between Commission and non-Commission regulated activities, such allocation shall be on the ratio of vessels and other property and equipment included in rate base, less accumulated depreciation, to total company vessels and other property and equipment, less accumulated depreciation.

[40] See NARUC, "Table 39—Treatment Of Accumulated Deferred Income Taxes In Rate Base—All Utilities," *supra* note 4, at 93–94.

Working Capital

The inclusion of working capital in rate base is intended to recognize the necessity for the carrier to maintain an adequate supply of cash for the purpose of meeting expenditure requirements during the period between the payment of expenses and the collection of revenue. Average voyage expense is used as the measure of working capital for a self-propelled vessel operator under the Commission's existing rule.

With regard to the treatment of insurance expense in the computation of average voyage expense, the Commission's current regulations provide for the inclusion of 90 days' hull and machinery insurance and protection and indemnity insurance. Hawaii suggests that insurance expense be treated in the same manner as other operating expenses, *i.e.*, include that amount applicable to the duration of an average voyage. The proposed rule adopts that approach.

Allocation of Assets and Expenses

In 1980, the Commission amended its rules governing the allocation of assets and expenses. As a result of these changes, cargo cube or space occupied replaced weight or revenue ton as the basis for allocations. The rationale for this decision was that in a containership operation, the cost of providing service is the cost of providing space. The Commission concluded that the carrier's cost per container remains the same regardless of the amount of cargo in the container or revenue generated by the container.

Accordingly, part 552 currently prescribes that vessels, accumulated depreciation and vessel expense shall be allocated on the cargo-cube-mile relationship as defined in 46 CFR 552.5(n), while those expenses related to cargo handling are allocated on the basis of cargo cube loaded and discharged. Other property and equipment, and administrative and general expenses are required to be allocated on the voyage expense relationship, as defined in 46 CFR 552.5(p).

Commenters in Docket No. 91–51 suggested several alternative allocation methods, including a method based on cargo carried on the outbound portion of the voyage or based on revenue generated by Commission and non-Commission regulated cargo. These proposals stemmed from the bifurcation of regulatory authority in the domestic offshore trades between the Commission and the Interstate Commerce

Commission. However, that split in jurisdiction has no direct connection with the costs a carrier incurs in providing service. The Commission shall not attempt to contrive an allocation methodology as a solution to an issue that can best be remedied by legislative action.

The Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The Commission grants a waiver of the detailed reporting requirements to carriers which earn gross revenues of $25 million or less in a particular trade in accordance with 46 CFR 552.2(e).

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended. The incremental public reporting burden for this collection of information is estimated to range from an average of 41 hours to 65 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Sandra L. Kusumoto, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts.

Therefore, pursuant to 5 U.S.C. 553, sections 18 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817 and 841a, and sections 2 and 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844 and 845, Part 552 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

1. The authority citation for part 552 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

2. In § 552.1, paragraph (b) is revised to read as follows and paragraph (d) is removed:

§ 552.1 Purpose.

* * * * *

(b) In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. A carrier's allowable rate of return on rate base will be set equal to its before-tax weighted average cost of capital. However, the Commission may also employ the other financial methodologies set forth in § 552.6(f) in order to achieve a fair and reasonable result.

* * * * *

3. In § 552.2, paragraph (a) is amended by revising the filing address contained therein, paragraph (b) is redesignated as paragraph (b)(1) and revised, a new paragraph (b)(2) is added, paragraph (f)(1)(iv) is amended by removing "and," from the end thereof, paragraph (f)(1)(v) is amended by changing the period at the end thereof to a semicolon and adding "and," to the end of the paragraph, and a new paragraph (f)(1)(vi) is added reading as follows:

§ 552.2 General requirements.

(a) * * *

Federal Maritime Commission, Bureau of Tariffs, Certification and Licensing, 800 North Capitol Street, NW., Washington, DC 20573–0001

(b)(1) Annual statements under this part shall consist of Exhibits A, B, and C, as described in § 552.6, and shall be filed within 150 days after the close of the carrier's fiscal year and be accompanied by a company-wide balance sheet and income statement having a time period coinciding with that of the annual statements. A specific format is not prescribed for the company-wide statements.

(2) Concurrently with the filing of the carrier's annual financial statements required under this section, a carrier that issues no publicly traded common-stock equity must submit for Commission approval annually:

(i) A proxy group of companies to impute the carrier's cost of common-stock equity capital in accordance with the requirements set forth in § 552.6(e)(3); or

(ii) An application to use a consolidated capital structure in accordance with the requirements set forth in § 552.6(e)(4).

* * * * *

(f) * * *

(1) * * *

(vi) *Projected* schedules for capitalization amounts and ratios (Schedule F–I); cost of long-term debt capital calculation (Schedules F–II and F–III); cost of preferred (and preference) stock capital calculation (Schedules F–IV and F–V); corporate income tax rate (Schedule F–VI); and flotation costs (Schedule F–VII) for the 12-month period used to compute projected midyear rate base in paragraph (f)(1)(ii) of this section.

* * * * *

4. In § 552.5, paragraphs (b) and (c) are revised, and paragraphs (v), (w), (x), (y), (z), (aa), and (bb) are added to read as follows:

§ 552.5 Definitions.

* * * * *

(b) *The service* means those voyages and/or terminal facilities in which cargo subject to the Commission's regulation under 46 CFR 514.1(c)(2) is either carried or handled.

(c) *The trade* means that part of the Service subject to the Commission's regulation under 46 CFR 514.1(c)(2), more extensively defined in this section under *Domestic Offshore Trade.*

* * * * *

(v) *Book value* means the value at which an asset is carried on a balance sheet.

(w) *Capital structure* means a company's financial framework, which is composed of long-term debt, preferred (and preference) stock, and common-stock equity capital (par value plus earned and capital surplus).

(x) *Capitalization ratio* means the percentage of a company's capital structure that is long-term debt, preferred (and preference) stock, and common stock-equity capital.

(y) *Consolidated system* means a parent company and all of its subsidiaries.

(z) *Subsidiary company* means a company of which more than 50 percent of the voting shares of stock are owned by another corporation, called the parent company.

(aa) *Long-term debt* means a liability due in a year or more.

(bb) *Times-interest-earned ratio* means the measure of the extent to which operating income can decline before a firm is unable to meet its annual interest costs. It is computed by *dividing* a firm's earnings before interest and taxes *by* the firm's annual interest expense.

5. In § 552.6, paragraph (a)(1), the first sentence of paragraph (a)(2), the introductory text of paragraph (b)(1),

paragraphs (b)(4)(i) and (b)(5), and the heading of paragraph (b)(9) are revised; paragraph (b)(10) is added; paragraphs (c)(5) and (c)(10) are revised; paragraphs (d)(1) and (d)(2) are revised; paragraphs (e) and (f) are redesignated (g) and (h); a new paragraph (e) is added and paragraphs (d)(3) and (d)(4) are redesignated (f)(1) and (f)(2) and the paragraph headings thereof revised reading as follows:

§ 552.6 Forms.

(a) *General.* (1) The submission required by this part shall be submitted in the prescribed format and shall include General Information regarding the carrier, as well as the following schedules as applicable:

Exhibit A—Rate Base and supporting schedules;
Exhibit B—Income Account and supporting schedules;
Exhibit C—Rate of Return and supporting schedules;
Exhibit D—Application for Waiver;
Exhibit E—Initial Tariff Filing Supporting Data; and
Exhibit F—Allowable Rate of Return schedules.

(2) Statements containing the required exhibits and schedules are described in paragraphs (b), (c), (d), (e), (g), and (h) of this section and are available upon request from the Commission. * * *

(b) *Rate base (Exhibits A and A(A))–(1) Investment in Vessels (Schedules A–I and A–I(A)).* Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service for which a statement is filed shall be listed by name, showing the original cost to the carrier or to any related company, reduced to reflect the use of funds from the Capital Construction Fund's capital gains account or ordinary income account, *plus* the cost of improvements, conversions, and alterations, reduced to reflect the use of funds from the Capital Construction Fund's capital gains account or ordinary income account, less the cost of any deductions. All additions and deductions made during the period shall be shown on a pro rata basis, reflecting the number of days they were applicable during the period. The result of these computations shall be called the Adjusted Cost.

* * * * *

(4) *Investment in other property and equipment; accumulated depreciation other property and equipment (Schedule A–IV and A–IV(A)).* (i) Actual investment, representing original cost to the carrier or to any related company, reduced to reflect the use of funds from the Capital Construction Fund's capital gains account or ordinary income account, in other fixed assets employed in the Service, shall be reported as of the beginning of the year. Accumulated depreciation for these assets shall be reported both as of the beginning and as of the end of the year. The arithmetic average of the two amounts shall also be shown and shall be the amount deducted from original cost in determining rate base. The cost of additions and deductions during the period, adjusted to reflect the use of the Capital Construction Fund, shall also be reported. The carrier shall report as though all such changes took place at midyear, except those involving substantial sums, which shall be prorated on a daily basis. Allocation to the Trade shall be based upon the actual use of the specific asset or group of assets within the Trade. For those assets employed in a general capacity, such as office furniture and fixtures, the voyage expense relationship shall be employed for allocation purposes. The basis of allocation to the Trade shall be set forth and fully explained.

(ii) * * *

(5) *Working Capital (Schedule A–V).* Working capital for vessel operators shall be determined as average voyage expense. Average voyage expense shall be calculated on the basis of the actual expenses of operating and maintaining the vessel(s) employed in the Service (excluding lay-up expenses) during the average length of time of all voyages (excluding lay-up periods) during the period in which any cargo was carried in the Trade. Expenses for operating and maintaining vessels employed in the Trade shall include: Vessel Operating Expense, Vessel Port Call Expense, Cargo Handling Expense, Administrative and General Expense and Interest Expense allocated to the Trade as provided in paragraphs (c) (2), (4) and (5) of this section.

* * * * *

(9) *Capitalization of leases (Schedules A–VII and A–VII(A)).* * * *

(10) *Accumulated Deferred Taxes (Schedules A–VIII and A–VIII(A)).* Accumulated deferred taxes, excluding deferred taxes that may arise from the Capital Construction Fund or the expired Investment Tax Credit, shall be reported both as of the beginning and the end of the year and the arithmetic average of the two amounts shall be shown. Allocation to the Trade shall be based upon the ratio of Trade Investment in Vessels (Schedules A–I and A–I(A)) less Accumulated Depreciation (Schedules A–II and A–II(A)) plus Other Property and Equipment less Accumulated Depreciation (Schedules A–IV and A–IV(A)) to total company investment in vessels and other property and equipment less accumulated depreciation.

(c) * * *

* * * * *

(5) *Interest expense and debt payments (Schedules B–IV and B–IV(A)).* This schedule shall set forth the total interest and debt payments, apportioned between principal and interest, short and long-term, on debt and lease obligations. Payments on long-term debt are to be calculated consistent with the method set forth in § 552.6(e)(7) for computing the cost of long-term debt capital. Principal and interest shall be allocated to the Trade in the ratio that Trade rate base less working capital bears to company-wide assets less current assets. Where related company assets are employed by the filing company, the balance sheet figures on the related company's books for such assets shall be added to the company-wide total in computing the ratio. In those instances where interest expenses are capitalized in accordance with paragraph (b)(9) of this section, a deduction shall be made for the amount so capitalized.

* * * * *

(10) *Provision for income tax.* Federal, State, and other income taxes shall be listed separately. If the company is organized outside the United States, it shall indicate the entity to which it pays income taxes and the rate of tax applicable to its taxable income for the subject year. Federal, State and other income taxes shall be calculated at the statutory rate. Such tax rates are to be identical to those set forth in Schedules F–VI or F–VI(A) used in determining the carrier's allowable rate of return unless the carrier is a subsidiary of a parent company and a consolidated capital structure is to be used in that determination.

* * * * *

(d) *Rate of Return (Exhibits C and C(A))*—(1) *General.* All carriers are required to calculate rate of return on rate base. However, the Commission or individual carriers, at the Commission's discretion, may also employ fixed charges coverage and/or operating ratios as provided for in paragraph (f) of this section.

(2) *Return on rate base.* The return on rate base will be computed by dividing Trade net income plus interest expense by Trade rate base.

(e) *Maximum allowable rate of return on rate base (Exhibits F and F(A))*—(1) *General.* A carrier's maximum allowable

rate of return on rate base shall be set equal to the carrier's weighted average cost of capital calculated on a before-tax basis ("BTWACC"). The BTWACC is defined mathematically by the following expression:

$$BTWACC = \left(\frac{D}{D+P+E}\right)K_d + \left(\frac{P}{D+P+E}\right)K_p\left(\frac{1}{1-T}\right) + \left(\frac{E}{D+P+E}\right)K_e\left(\frac{1}{1-T}\right)$$

where:

K_d is the carrier's cost of long-term debt capital;

K_p is the carrier's cost of preferred (and preference) stock capital;

K_e is the carrier's cost of common-stock equity capital;

D is the average book value of the carrier's long-term debt capital outstanding;

P is the average book value of the carrier's preferred (and preference) stock capital outstanding;

E is the average book value of the carrier's common-stock equity capital (par value plus earned and capital surplus) outstanding; and

T is the carrier's composite statutory corporate income tax rate.

A carrier's BTWACC shall be calculated in precise accordance with the rules set forth in this section.

(2) *Subsidiary carrier's capital structure.* Where a carrier is a subsidiary that obtains its common-stock equity capital through a parent company, the capital structure of the subsidiary shall be used in computing the BTWACC. The subsidiary carrier's cost of common-stock equity capital, the subsidiary carrier's cost of long-term debt capital, the subsidiary carrier's cost of preferred stock capital, and the subsidiary carrier's composite statutory corporate income tax rate shall also be used in computing the BTWACC. The subsidiary carrier's cost of common-stock equity capital shall be inferred as the cost of common-stock equity capital estimated for a sample of firms having business and financial risk comparable to the subsidiary carrier when the subsidiary carrier's capital structure is used in calculating the BTWACC.

(3) *Comparable risk companies.* (i) Concurrently with the filing of the annual financial statements required under § 552.2, a carrier must submit for Commission approval a proxy group of companies to impute the carrier's cost of common-stock equity capital where:

(A) The carrier is an independent company (i.e., it has no corporate parent) which issues no publicly-traded common-stock equity, or

(B) The carrier is a subsidiary that obtains its common-stock equity capital through a parent company.

(ii) After notice and opportunity for comment, the Commission will approve a proxy group of companies based on the following criteria:

(A) The proxy companies shall be based in the United States and shall be listed in The Value Line Investment Survey.

(B) The proxy companies shall operate and derive a major portion of their gross revenues primarily as common carriers in the business of freight transportation, and shall own or operate transportation vehicles or vessels. Companies with gross annual revenues equal to or less than the $25,000,000 shall be excluded from the proxy group.

(C) In addition, comparable risk companies shall be selected by examining some, but not necessarily all, of the following risk indicators:

(1) A company's total capitalization ratio and/or debt-to-equity ratio;

(2) The investment quality ratings of a company's long-term debt instruments;

(3) The investment safety ranking of a company's common-stock equity;

(4) The rating of a company's financial strength, as provided by Value Line;

(5) The variability of a company's common-stock price changes or returns on common-stock equity (*i.e.*, the standard deviation);

(6) The volatility of a company's common-stock price changes or returns on common-stock equity relative to the stock market as a whole (*i.e.*, the beta coefficient); or

(7) Other such valid indicators deemed appropriate by the Commission.

(iii) Any proxy group of companies that has received Commission approval will not be subject to challenge in a subsequent rate investigation brought under section (3) of the Intercoastal Act, 1933.

(4) *Consolidated capital structure.* (i) Upon application, after notice and opportunity for comment, the Commission may authorize use of the capital structure of the consolidated system (*i.e.*, the parent company and all of its subsidiaries) in computing the BTWACC. The application must show that:

(A) The subsidiary carrier's parent company issues publicly traded common-stock equity;

(B) The subsidiary carrier's parent company owns 90 percent or more of the subsidiary's voting shares of stock; and

(C) The business and the financial risks of the subsidiary carrier and the parent company are similar.

(ii) The similarity of the parent company's and subsidiary carrier's business risk shall be evaluated by examining the degree to which the consolidated system's profits, revenues, and expenses are composed of those of the subsidiary carrier, and the extent to which the parent's holdings are diversified into lines of business unrelated to those of the subsidiary carrier, and/or other indicators of business risk deemed appropriate by the Commission. The similarity of the parent company's and subsidiary carrier's financial risk shall be evaluated by examining the consolidated system's and the subsidiary's total capitalization ratios, debt-to-equity ratios, investment quality rankings on short- and long-term debt instruments, times-interest-earned ratios, fixed charges coverage ratios (calculated to include both FMC and non-FMC regulated operations), and/or other measures of financial risk deemed appropriate by the Commission.

(iii) When the consolidated capital structure is used, the consolidated system's cost of common-stock equity capital (issued by the parent company), the consolidated system's cost of long-term debt capital, the consolidated system's cost of preferred (and preference) stock capital, and the consolidated system's composite statutory corporate income tax rate shall also be used in estimating the subsidiary's BTWACC.

(iv) Where the Commission has approved the use of a consolidated capital structure, such use will not be subject to challenge in a subsequent rate investigation brought under section (3) of the Intercoastal Act, 1933.

(5) *Book-value, average capitalization ratios.* Capitalization ratios representing the capital structure used in deriving a carrier's BTWACC shall be computed on the basis of average projected book value outstanding over the 12-month

period used to calculate projected midyear rate base in § 552.2 (f)(1)(ii). The average amount of any class of capital outstanding used in determining the capitalization ratios is computed by adding the amount of a particular type of capital expected to be outstanding as of the beginning of the 12-month period to the amount of that same type of capital expected to be outstanding as of the end of the 12-month period, and dividing the sum of the two amounts outstanding by two.

(6) *Capitalization amounts and ratios (Schedules F–I and F–I(A)).* A carrier shall show its long-term debt, preferred stock, and common-stock equity capitalization amounts outstanding, stated in book value terms, as of the beginning and as of the end of the 12-month period used to calculate projected midyear rate base, and the average amounts and average ratios for that 12-month period. Where a carrier is a subsidiary of a parent company, the carrier shall show its own capitalization amounts and ratios unless the carrier applies for and receives permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission is granted, the carrier shall show instead the consolidated system's capitalization amounts and ratios.

(7) *Cost of long-term debt capital (Schedules F–II, F–II(A), F–III, and F–III(A)).* (i) The cost of long-term debt capital [1] shall be calculated by the carrier for the 12-month period used to compute projected mid-year rate base on the basis of:

(A) Embedded cost for existing long-term debt; and

(B) Current cost for any new long-term debt expected to be issued on or before the final day of the 12-month period.

(ii) The arithmetic average annual percentage rate cost of long-term debt capital calculated on the basis of all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be the cost of long-term debt capital used in computing the BTWACC.

(iii) The annual percentage rate cost of long-term debt capital for all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be calculated separately for the two dates by:

(A) Multiplying the cost of money for each issue under paragraph (e)(7)(v)(A)(*10*) of this section by the principal amount outstanding for each issue, which yields the annual dollar cost for each issue; and

(B) Adding the annual dollar cost of each issue to obtain the total dollar cost for all issues, which is divided by the total principal amount outstanding for all issues to obtain the annual percentage rate cost of long-term debt capital for all issues.

(iv) The arithmetic average annual percentage rate cost of long-term debt capital for all issues to be used as the cost of long-term debt capital in computing the BTWACC shall be calculated by:

(A) Adding the total annual dollar cost for all issues of long-term debt capital expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total annual dollar cost for all issues of long-term debt capital expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total annual dollar cost of long-term debt for all issues for the 12-month period;

(B) Adding the total principal amount outstanding for all long-term debt issues expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total principal amount outstanding for all long-term debt issues expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total principal amount expected to be outstanding for all issues for the 12-month period; and

(C) Dividing the average total annual dollar cost of long term debt for all issues for the 12-month period by the average total principal amount expected to be outstanding for all issues for the 12-month period, which yields the average annual percentage rate cost of long-term debt capital for all issues to be used in computing the BTWACC.

(v)(A) *Cost of long-term debt capital calculation (Schedules F–II, F–II(A), F–III and F–III(A)).* The carrier shall calculate the annual percentage rate cost of long-term debt capital for all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base separately for the two dates, and shall also calculate the average annual percentage rate cost of long-term debt for all issues for the 12-month period. The carrier shall support these calculations by showing in tabular form the following for each class and series of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period separately for the two dates:

(*1*) Title;

(*2*) Date of issuance;

(*3*) Date of maturity;

(*4*) Coupon rate (%);

(*5*) Principal amount issued ($);

(*6*) Discount or premium ($);

(*7*) Issuance expense ($);

(*8*) Net proceeds to the carrier ($);

(*9*) Net proceeds ratio (%), which is the net proceeds to the carrier divided by the principal amount issued;

(*10*) Cost of money (%), which, for existing long-term debt issues, shall be the yield-to-maturity at issuance based on the coupon rate, term of issue, and net proceeds ratio determined by reference to any generally accepted table of bond yields; and, for long-term debt issues to be newly issued on or before the final day of the 12-month period, shall be based on the average current yield (published in such a publication as Moody's Bond Survey) on long-term debt instruments similar in maturity and investment quality as the long-term debt security that is to be issued;

(*11*) Principal amount outstanding (%);

(*12*) Annual cost ($); and

(*13*) Name and relationship of issuer to carrier.

(B) Where a carrier is a subsidiary of a parent company, the carrier shall show the cost of long-term debt calculations and information required in this paragraph (e)(7)(v) for its own cost of long-term debt unless the carrier applies for and receives permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission is granted, the subsidiary carrier shall show the required cost of long-term debt calculations and information for the consolidated system's long-term debt.

(vi) In the event that new long-term debt is to be issued on or before the final day of the 12-month period used to compute projected mid-year rate base, the carrier shall submit a statement explaining the methods used to estimate information required under paragraphs (e)(7)(v)(A) (*1*) through (*13*).

(8) *Cost of preferred (and preference) stock capital Schedules F–IV, F–IV(A), F–V, and F–V(A)).* (i) The cost of preferred (and preference) stock capital shall be calculated by the carrier for the 12-month period used to compute projected mid-year rate base on the basis of:

(A) Embedded cost for existing preferred (and preference stock); and

[1] The cost of sinking fund preferred stock shall be computed in accordance with the regulations in this section for calculating the cost of long-term debt.

(B) Current cost for any new preferred (and preference) stock to be issued on or before the final day of the 12-month period.

(ii) The arithmetic average annual percentage rate cost of preferred (and preference) stock capital calculated on the basis of all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to calculate projected mid-year rate base shall be the cost of preferred (and preference) stock capital used in computing the BTWACC.

(iii) The annual percentage rate cost of preferred (and preference) stock capital for all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be calculated separately for the two dates by:

(A) Multiplying the cost of money for each issue under paragraph (e)(8)(v)(A)(*9*) of this section by the par or stated amount outstanding for each issue, which yields the annual dollar cost for each issue; and

(B) Adding the annual dollar cost of each issue to obtain the total for all issues, which is divided by the total par or stated amount outstanding for all issues to obtain the annual percentage rate cost of preferred (and preference) stock capital for all issues.

(iv) The arithmetic average annual percentage rate cost of preferred (and preference) stock capital for all issues to be used as the cost of preferred (and preference) stock capital in computing the BTWACC shall be calculated by:

(A) Adding the total annual dollar cost for all issues of preferred (and preference) stock capital expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total annual dollar cost for all issues of preferred (and preference) stock capital expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total annual dollar cost of preferred (and preference) stock for all issues for the 12-month period;

(B) Adding the total par or stated amount outstanding for all preferred (and preference) stock issues expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total par or stated amount outstanding for all issues expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total par or stated amount expected to be outstanding for all issues for the 12-month period;

(C) Dividing the average total annual dollar cost of preferred (and preference) stock for all issues for the 12-month period by the average total par or stated amount expected to be outstanding for all issues for the 12-month period, which yields the average annual percentage rate cost of preferred (and preference) stock capital for all issues to be used in computing the BTWACC.

(v)(A) *Cost of preferred (and preference) stock capital calculation (Schedules F–IV, F–IV(A), F–V, and F–V(A)).* The carrier shall calculate the annual percentage rate cost of preferred (and preference) stock capital for all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base separately for the two dates, and shall also calculate the average annual percentage rate cost of preferred (and preference) stock for all issues for the 12-month period. The carrier shall support these calculations by showing in tabular form the following for each issue of preferred (and preference) stock as of the beginning and as of the end of the 12-month period separately for the two dates:

(*1*) Title;

(*2*) Date of issuance;

(*3*) Dividend rate (%);

(*4*) Par or stated amount of issue ($);

(*5*) Discount or premium ($);

(*6*) Issuance expense ($);

(*7*) Net proceeds to the carrier ($);

(*8*) Net proceeds ratio (%), which is the net proceeds to the carrier divided by the par or stated amount issued;

(*9*) Cost of money (%), which, for existing preferred (and preference) stock issues, shall be the dividend rate divided by the net proceeds ratio; and, for preferred (and preference) stock issues to be newly issued on or before the final day of the 12-month period, shall be the estimated dividend rate divided by the estimated net proceeds ratio;

(*10*) Par or stated amount outstanding ($);

(*11*) Annual cost ($); and

(*12*) If issue is owned by an affiliate, name and relationship of owner.

(B) Where a carrier is a subsidiary of a parent company, the carrier shall show the cost of preferred (and preference) stock calculations and information required in this paragraph (e)(8)(v) for its own preferred (and preference) stock unless the carrier applies for and receives permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission is granted, the subsidiary carrier shall show the required cost of preferred (and preference) stock calculations and information for the consolidated system's preferred (and preference) stock.

(vi) In the event that new preferred (and preference) stock is to be issued on or before the final day of the 12-month period used to compute projected mid-year rate base, the carrier shall submit a statement explaining the methods used to estimate information required under paragraph (e)(8)(v)(A) (*1*) through (*12*).

(9) *Cost of common-stock equity capital.* A carrier's cost of common-stock equity capital shall be calculated using the Discounted Cash Flow ("DCF"), Capital Asset Pricing Model ("CAPM"), and Risk Premium ("RP") methods. A final estimate of that cost shall be derived from the separate estimates obtained using each of the three methods.

(10) *DCF method.* (i) The DCF model that shall be used in calculating a carrier's cost of common-stock equity is defined algebraically as follows:

$$K_e = \frac{D_0}{P_0}(1+.5g)+g$$

where:

K_e is the carrier's cost of common-stock equity capital;

D_0 is the carrier's current annualized dividend (defined as four times the current quarterly installment) per share;

P_0 is the current market price per share of the carrier's common stock; and

g is the constant expected annual rate of growth in the carrier's dividends per share.

(ii) *Current market price per share of common stock.* The current market price per share of the carrier's common stock used in the DCF model shall be an average of the monthly high and low market prices during a six-month period commencing not more than nine months prior to the date on which the proposed rates are filed.

(iii) *Estimated growth rate of dividends.* The estimate of g used in the DCF model shall be an average of three separate estimates obtained using historical growth rate data, professional investment services' projections, and the sustainable growth rate model.

(iv) *Historical growth rate estimate of g.* The historical growth rate estimate of g shall be an average of the carrier's most recent five- and ten-year historical growth rate averages of dividends per share, earnings per share, and book value per share.

(v) *Professional investment services' projections estimate of g.* The professional investment services' projections estimate of g shall be an average of Value Line's five-year forecasted growth rate of dividends per share, earnings per share, book value per share, and the Institutional Brokers Estimation Service's five-year forecasted growth rate in earnings per share for the carrier.

(vi) *Sustainable growth rate estimate of g.* The sustainable growth rate estimate of g shall be obtained by multiplying the proportion of earnings expected to be retained by the carrier by the expected return on book equity. Value Line's forecasted values for expected retained earnings and expected return on book equity shall be used in arriving at the sustainable growth rate estimate of g.

(11) *CAPM.* (i) The CAPM that shall be used in calculating a carrier's cost of common-stock equity is represented algebraically as follows:

$K_c = R_f + B(R_m - R_f)$

where:

K_c is the carrier's cost of common-stock equity capital;

R_f is the expected risk-free rate of return;

B is the relevant market risk beta of the carrier's common stock; and

R_m is the expected overall stock market return.

(ii) *Expected risk-free rate of return.* A six-month average of five-year Treasury Note yields computed over a period not more than nine months prior to the date on which the proposed rates are filed shall be used as the estimate of the expected risk-free rate of return in the CAPM.

(iii) *Expected beta.* Value Line's most current market risk beta of the carrier's common-stock shall be used as the estimate of the expected beta in the CAPM.

(iv) *Expected overall market return.* The expected overall return on the stock market shall be estimated by adding the six-month average of five-year Treasury Note yields used as the estimate of the expected risk-free rate to the arithmetic average difference between the actual annual returns realized historically by the Standard & Poor's 500 Stock Index and the five-year Treasury Note. The arithmetic average differential shall be based on the complete historical series published annually by Ibbotson Associates in the most recent Stocks, Bonds, Bills and Inflation Yearbook, for the period 1926 through the most recent date for which the specified data are available.

(12) *RP method.* (i) The RP model that shall be used in calculating a carrier's cost of common-stock equity is defined mathematically as follows:

$K_c = K_d + RP$

where:

K_c is the regulated carrier's cost of common-stock equity capital;

K_d is the incremental cost of debt; and

RP is the risk premium.

(ii) *Risk premium.* The risk premium used in the RP model shall be the historical arithmetic average return differential between rates of return actually earned on investments in the Standard & Poor's 500 Stock Index and the five-year Treasury Note. This risk premium shall be based on the complete historical data series published annually in the Stocks, Bonds, Bills and Inflation Yearbook, for the period 1926 through the most recent date for which the specified data are available.

(iii) *Incremental cost of debt.* A six-month average of five-year Treasury Note yields computed over a period not more than nine months prior to the date on which the proposed rates are filed shall be the estimate of the incremental cost of debt in the RP model.

(iv) *Risk adjustment.* The RP model shall be used in its generic form and the risk premium specified herein shall not be adjusted for any possible differences in the risk of the firms represented in the Standard & Poor's 500 Stock Index and that of the carrier under consideration. The generic RP model shall be used as a benchmark for the range of companies contained in the Standard & Poor's 500 Stock Index on which it is based, and, therefore, shall be used to measure the broad dimensions of investor perceptions of the trade-off between risk and return.

(13) *Corporate income tax rate (Schedules F–VI and F–VI(A)).* The corporate income tax rate used in computing the BTWACC shall be the carrier's composite statutory corporate income tax rate for the 12-month period used to compute projected midyear rate base. Such rate shall be a composite of the carrier's Federal and State income tax rates, and of any other income tax rate to be applied to the carrier's income by any other entity to which the carrier is to pay income taxes. The carrier shall calculate and show its composite statutory corporate income tax rate as well as its Federal, State, and any other applicable statutory income tax rates separately for the 12-month period used to compute projected midyear rate base. The carrier shall also state the name of any entity other than the Federal and State governments to which it is to pay taxes. Where a carrier is a subsidiary of a parent company, the carrier shall show its own statutory corporate income tax rates unless the carrier applies for and receives permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission is granted, the carrier shall show instead the consolidated system's statutory corporate income tax rates.

(14) *Flotation costs (Schedules F–VII and F–VII(A)).* (i) A carrier's cost of common-stock equity capital shall be adjusted to reflect those costs of floating new issues that are actually incurred, but only in the event that new common stock is to be issued to the general public during the 12-month period used to compute projected midyear rate base. Those flotation costs for which an allowance shall be made must be identifiable, and must be directly attributable to underwriting fees, and printing, legal, accounting, and/or other administrative expenses. No allowance shall be made for any hypothetical costs such as those associated with market pressure and market break effects. The allowance shall be applied solely to the new common-stock equity and shall not be applied to the existing common-stock equity balance. The formula that shall be used to compute such an allowance is as follows:

$k = Fs/(1+s)$

where:

k is the required increment to the cost of the carrier's common stock equity capital that will allow the company to recover its flotation costs;

F is the flotation costs expressed as a decimal fraction of the dollar value of new common-stock equity sales; and

s is the new common-stock equity sales expressed as a decimal fraction of the dollar value of existing common-stock equity capital.

(ii) *Flotation costs data (Schedules F–VII and F–VII(A)).* (A) In the event that new common-stock equity is to be issued during the 12-month period used to compute projected midyear rate base, the carrier shall show separately by category the estimated costs of floating the new issues to the extent that such costs are identifiable and are directly attributable to actual underwriting fees, and to printing, legal, accounting, and/or other administrative expenses that must be paid by the carrier. The carrier shall submit a statement explaining the method used in estimating the flotation costs. The carrier shall also show estimates of the date of issuance; number of shares to be issued; gross proceeds at issuance price; and net proceeds to the carrier.

(B) Where a carrier is a subsidiary that obtains its common-stock equity capital through a parent company, and the parent company intends to issue new common-stock equity during the 12-month period, the carrier shall show separately by category the estimated costs to the parent company of floating the new issues, and estimates of the above items relative to the parent company's issuance of new common-stock equity, provided that such carrier applies for and receives permission from the Commission to use a consolidated capital structure in computing the BTWACC.

(f) *Financial ratio methods*—(1) *Fixed charges coverage ratio.* * * *

(2) *Operating ratio.* * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–8226 Filed 4–6–94; 8:45 am]

BILLING CODE 6730–01–W

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[I.D. 033094D]

Reef Fish Fishery of the Gulf of Mexico; Public Hearings

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

ACTION: Amended notice of public hearings, an additional public hearing; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) is amending the notice of public hearings on draft Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, by adding an additional public hearing and expanding the scope of all the hearings to solicit comments on draft Amendment 10 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico.

DATES: Written comments on draft Amendment 10 will be accepted until May 6, 1994. An additional hearing is scheduled to be held in Steinhatchee, Florida, on Tuesday, April 26, 1994, from 7 p.m. to 10 p.m.

ADDRESSES: Comments should be addressed to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609; FAX: 813–225–7015. The hearing will be held at the Community Center, State Highway 51, Steinhatchee, Florida.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, 813–228–2815.

SUPPLEMENTARY INFORMATION: This notice amends a notice of public hearings that appeared in the **Federal Register** on March 31, 1994 (59 FR 15151), by adding an additional public hearing and soliciting public comments at all hearings on draft Amendment 10 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. Draft Amendment 10 will include the following management measures: (1) A change in the cutoff date from November 19, 1992, to February 7, 1994, to qualify for a fish trap endorsement during the current 3-year trap moratorium. This change would allow a fish trap endorsement on a reef fish permit, which is required to use fish traps, to be issued or renewed by NMFS for a current owner of a permitted vessel who has a record of reef fish landings from fish traps in the Gulf of Mexico exclusive economic zone between 1991 and 1994 as reported on vessel logbooks received by NMFS on or before February 7, 1994; and (2) establishment of a Council appeals board, the members of which would recommend to the Director, Southeast Region, NMFS, whether additional endorsements should be issued based on demonstrated financial hardship related to trap fishing or based on an incapacitating illness between November 19, 1992, and February 7, 1994. All other information, as contained in the notice of public hearings published March 31, 1994, remains the same.

Dated: April 4, 1994.

David S. Crestin,

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

[FR Doc. 94–8385 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 67
Thursday, April 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 1, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New Collection

• Food Safety and Inspection Service.
Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems.
On occasion.
State or local governments; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 60 responses; 60 hours.
Peggy Gonter, (202) 720–7163.

• Food Safety and Inspection Service.
Procedures for Appealing Product Retentions.
On occasion.
Businesses or other for-profit; 1,502 responses; 1,502 hours.
Debbie Ghrist, (202) 720–7163.

• Food Safety and Inspection Service.
Nutrition Labeling; Health Claims on Meat and Poultry Products.
On occasion.
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 8 responses; 640 hours.
Peggy Gonter, (202) 720–7163.

• Rural Electrification Administration.
Discounted Prepayments on REA Electric Loans.
On occasion.
Small businesses or organizations; 150 responses; 400 hours.
Patrick Shea, (202) 720–0736.

Donald E. Hulcher,
Deputy Department Clearance Officer.

[FR Doc. 94–8339 Filed 4–6–94; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 94–026–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94-067-01, renewal of permit 91-077-01, issued on 06-18-91.	Harris Moran Seed Company.	03-09-94	Cantaloupe and tomato plants genetically engineered to express resistance to cucumber mosaic virus.	California.
94-069-01 renewal of permit 93-105-04, issued on 06-17-93.	Michigan State University.	03-10-94	Cantaloupe plants genetically engineered to express resistance to zucchini yellow mosaic virus.	Michigan.
94-069-02 renewal of permit 91-346-01, issued on 04-16-92.	Calgene, Incorporated ..	03-10-94	Canola plants genetically engineered to express oil modification genes.	Michigan.
94-070-01 renewal of permit 93-165-03, issued on 09-28-93.	Betaseed, Incorporated	03-11-93	Sugar beet plants genetically engineered to express the coat protein from beet necrotic yellow vein virus.	California.

Done in Washington, DC, this 1st day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-8340 Filed 4-6-94; 8:45 am]

BILLING CODE 3410-34-P

Federal Grain Inspection Service

Opportunity for Designation in the Southern Illinois (IL) Area

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), will end September 30, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before May 4, 1994.

ADDRESSES: Applications must be submitted to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202-720-1015, attention: Neil E. Porter. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202-720-8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Southern Illinois, main office located in O'Fallon, Illinois, to provide official inspection services under the Act on October, 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Southern Illinois ends on September 30, 1994. The geographic area presently assigned to Southern Illinois, in the State of Illinois, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the East by the eastern Cumberland County line; the eastern Jasper County line south to State Route 33; State Route 33 east-southeast to the Indiana-Illinois State line; the Indiana-Illinois State line south to the southern Gallatin County line;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River;

Bounded on the West by the Mississippi River north to Interstate 270; Interstate 270 east to Interstate 70; Interstate 70 east to State Route 4; State Route 4 north to Macoupin County; the southern Macoupin County line; the eastern Macoupin County line north to a point on this line which intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); and

Bounded on the North from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

Interested persons, including Southern Illinois are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning October 1, 1994, and ending September 30, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 31, 1994.

Sidney U. Allen,

Acting Director, Compliance Division.

[FR Doc. 94-8217 Filed 4-6-94; 8:45 am]

BILLING CODE 3410-EN-F

Inadequate Demand for Official Services in Wyoming

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS has determined there is inadequate demand for official services to designate any organization to provide official services in the State of Wyoming.

EFFECTIVE DATE: April 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 30, 1993, **Federal Register** (58 FR 51047), FGIS announced that the designation of Wyoming ends on March 31, 1994, and asked persons interested in providing official services in the geographic area assigned to Wyoming to submit an application for designation. Applications were due by October 29, 1993. Wyoming applied for designation in the entire area currently assigned to it. FGIS requested comments on the applicant in the December 1, 1993, **Federal Register** (58 FR 63331). Comments were due by December 31, 1993. FGIS received no comments by the deadline.

FGIS then contacted the major applicants for grain inspection services in the Wyoming area and determined that, pursuant to the provisions of the Act, there is an insufficient need for official services to designate an official agency. Therefore, FGIS is not designating an official agency to provide services in the area currently assigned to Wyoming. Any firms which may require official inspection services after March 31, 1994, should contact FGIS' Wichita Office at 316–269–7171 (FAX: 316–269–6163).

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 31, 1994.

Sidney U. Allen,

Acting Director, Compliance Division.

[FR Doc. 94–8218 Filed 4–6–94; 8:45 am]

BILLING CODE 3410–EN–F

Food Safety and Inspection Service

[Docket No. 94–011N]

National Advisory Committee on Microbiological Criteria for Foods; Subcommittee Meetings

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods' Subcommittee on Meat and Poultry will be held Monday, April 18 and Tuesday, April 19, 1994, from 8:30 a.m. to 5 p.m. each day, at the Holiday Inn Governor's House, 17th Street at Rhode Island Avenue, NW., Washington, DC 20036, telephone (202) 296–2100.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria pertaining to microorganisms that indicate whether food has been processed using good manufacturing processes.

The Subcommittee meeting is open to the public on a space available basis. Interested persons may file comments prior to and following the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, room 2151, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250.

Background materials are available for inspection by contacting Mr. Fedchock on (202) 720–9150.

Done at Washington, DC, on April 4, 1994.

Terry L. Medley,

Acting Administrator.

[FR Doc. 94–8342 Filed 4–7–94; 8:45 am]

BILLING CODE 3410–D–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held April 19, 1994, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of post-COCOM exporting environment.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TAC Unit, ODAS/EA/BXA room 3886, U.S. Department of Commerce, Washington, DC. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: April 1, 1994.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–8378 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 689]

Extension of Subzone Status; FTZ Subzone 2G Equitable Shipyards Trinity Marine Group, Inc. (Shipbuilding), New Orleans, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order.

Whereas, in 1992, the Board of Harbor Commissioners of the Port of New

Orleans, grantee of Foreign-Trade Zone 2, was authorized temporary subzone status by the Foreign-Trade Zones Board for the Equitable Shipyards facility in New Orleans, Louisiana (Subzone 2G) (for a period ending April 1, 1994) (Board Order 573, 57 FR 13695, 4–17–92; Board Order 635, 58 FR 25606, 4–27–93);

Whereas, in 1993, further application was made by the Board of Commissioners for an indefinite extension of said subzone status (FTZ Docket 2–93, 1–21–93; **Federal Register** notice invited public comment, 58 FR 7528, 2–8–93); and,

Whereas, upon review, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application for the indefinite extension of subzone status would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products now in effect for the facility;

Now, therefore, the Board hereby approves the application for extension of subzone status, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions:

1. Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and,

2. In addition to the annual report, Trinity Marine Group shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 29th day of March 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 94–8379 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations (19 CFR 353.22/355.22 (1993)), that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than April 30, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

Antidumping duty proceedings	Period
Canada: Sugar and syrups (A–122–085)	04/01/93–03/31/94
France: Sorbital (A–427–001)	04/01/93–03/31/94
Greece: Eletrolytic mangaese dioxide (A–484–801)	04/01/93–03/31/94
India: Sulfanilic acid (A–533–806)	07/24/92–02/28/94
Italy: Spun acrylic yarn (A–475–084)	04/01/93–03/31/94
Japan: Calcium hypochlorite (A–588–401)	04/01/93–03/31/94
Japan: Cyanuric acid (A–588–019)	04/01/93–03/31/94
Japan: Electrolytic manganese dioxide (A–588–806)	04/01/93–03/31/94
Japan: Lenses (A–588–819)	04/01/93–03/31/04
Japan: 3.5" Microdisks and media thereof (A–588–802)	04/01/93–03/31/94
Japan: Roller chain, other than bicycle (A–588–028)	04/01/93–03/31/94
Japan: Spun acrylic yarn (A–588–086)	04/01/93–03/31/94
Kazakhstan: Ferrosilicon (A–834–804)	08/30/92–03/31/94
Kenya: Standard Carnations	04/01/93–03/31/94
Mexico: Certain fresh cut flowers (A–201–601)	04/01/93–03/31/94
Norway: Fresh and chilled Atlantic salmon (A–403–801)	04/01/93–03/31/94
Taiwan: Color television receivers (A–583–009)	04/01/93–03/31/94
The Republic of Korea: Color television receivers (A–580–008)	04/01/93–03/31/94
Ukraine: Ferrosilicon (A–823–804)	08/30/92–03/31/94
Countervailing Duty Proceedings	
Argentina: Wool (C–357–002)	01/01/93–12/31/93
Argentina: Cold-rolled carbon steel flat-rolled products (C–357–005)	01/01/93–12/31/93
Brazil: Pig iron (C–351–062)	01/01/93–12/31/93
Malaysia: Carbon steel wire rod (C–557–701)	01/01/93–12/31/93
Mexico: Leather wearing apparel (C–201–001)	01/01/93–12/31/93
Norway: Fresh and chilled atlantic salmon (C–403–802)	01/01/93–12/31/93
Peru: Pompon chrysanthemums (C–333–601)	01/01/93–12/31/93
Thailand: Rice (C–549–503)	01/01/93–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must

specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with § 353.31(g) or § 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by April 30, 1994.

If the Department does not receive, by April 30, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 31, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–8383 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–031]

Large Power Transformers From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce is conducting an administrative review of the antidumping finding on large power transformers from Italy. The review covers exports of one manufacturer of this merchandise to the United States during the period from June 1, 1992, through May 31, 1993. As a result of the review, the Department has preliminarily determined that no dumping margins exist for the respondent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael R. Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1993, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (58 FR 31941). The petitioner requested this administrative review on June 28, 1993. We initiated the review on July 21, 1993 (58 FR 39007), covering the period June 1, 1992, through May 31, 1993. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of large power transformers (LPTs); that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of transformers, Tamini Costruzioni Elettromeccaniche (Tamini), during the period June 1, 1992, through May 31, 1993.

United States Price

In calculating U.S. price (USP), the Department used purchase price as defined in section 772(b) of the Tariff Act. We calculated purchase price based on the packed price to the U.S. customer. We made adjustments to USP for transportation expenses to the Italian port and duty drawback.

Foreign Market Value

For the purposes of the preliminary results, we determined that, due to the highly customized nature of the products under review, the LPTs sold in the United States could not reasonably be compared to any other LPTs sold by Tamini. Therefore, in accordance with section 773(a)(2) of the Tariff Act, we calculated foreign market value based on constructed value of the model sold in the United States.

In accordance with section 773(e) of the Tariff Act, the constructed value includes the costs of materials and fabrication, general expenses, profit, and packing for shipment to the United States. Home market selling expenses were used pursuant to section 773(e)(1)(B) of the Tariff Act. Since the profit submitted by Tamini exceeded the statutory eight percent profit, we applied the submitted profit to the cost of production.

We made circumstance of sale adjustments for differences in credit expenses, warranty expenses and direct bank charges. Since commissions were granted only in the home market, we offset the commission adjustment by adding U.S. indirect selling expenses to the constructed value.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a weighted-average margin of zero percent exists for sales of LPTs made to the United States by Tamini during the

period June 1, 1992 through May 31, 1993.

Parties to this proceeding may request disclosure within 5 days of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. Service of all briefs and written comments shall be in accordance with 19 CFR 353.38(e). The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Tamini will be the rate established in the final results of this administrative review;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 92.47 percent. On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders as the "all others" rate for cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate of 92.47 percent established in the first final results published by the Department in the **Federal Register** on August 6, 1984, (49 FR 31313).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: March 31, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–8380 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–834–803]

Titanium Sponge From Kazakhstan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 11, 1994, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty finding on titanium sponge from Kazakhstan (59 FR 6618). The review covers exports of the subject merchandise to the United States from Kazakhstan during the period August 1, 1992, through July 31, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, the final results remain unchanged from the preliminary results.

EFFECTIVE DATE: April 7, 1994.

FOR FURTHER INFORMATION CONTACT: David Genovese, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, the Department of the Treasury published an antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (USSR) (33 FR 12138). In December 1991, the USSR divided into fifteen independent states. To conform to these changes, the Department changed the original antidumping finding into fifteen findings applicable to the Baltic states and the former USSR (57 FR 36070, August 12, 1992).

On August 30, 1993, the Department received a request to conduct an administrative review of the antidumping finding on titanium sponge from Kazakhstan. The Department initiated the review on September 30, 1993 (58 FR 51053), covering the period August 1, 1992, through July 31, 1993. On February 11, 1994, we published the preliminary results of review of the antidumping finding on titanium sponge from Kazakhstan (59 FR 6618). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The merchandise covered by this review is all imports of titanium sponge from Kazakhstan. Titanium sponge is chiefly used for aerospace vehicles, specifically, in the construction of compressor blades and wheels, stator

blades, rotors, and other parts in aircraft gas turbine engines.

Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS subheading is provided for convenience and customs purposes; our written description of the scope of this finding is dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Titanium Metals Corporation (TIMET), a domestic producer of titanium sponge, and rebuttal comments from RMI Titanium Co. (RMI), an importer of titanium sponge.

Comment 1: TIMET argues that there were imports of titanium sponge from Kazakhstan, under temporary importation bond (TIB), during the period of review. TIMET cites a December 3, 1993, letter from RMI to the Acting Assistant Secretary to support this statement. TIMET asserts that such imports are processed into titanium mill products and re-exported. TIMET states antidumping duties should be assessed on imports entered under TIB because such imports result in the circumvention of the antidumping finding. TIMET cites U.S. Customs Service Headquarter's rulings to argue that Customs has treated TIB entries of other products as consumption entries in order to prevent circumvention of quota laws.

Department's Position: We disagree with TIMET. Consistent with the Kazakh Government's questionnaire response, our analysis of Census data reveals that no shipments of titanium sponge have entered the United States from Kazakhstan during the period of review. While TIMET provided public information on imports of titanium sponge from Russia and Ukraine in those ongoing administrative reviews, it provided no information on shipments in this case. Absent evidence to the contrary, we conclude that there were no imports, including imports under TIB procedures, of titanium sponge from Kazakhstan during the review period.

Final Results of Review

Based on our analysis of the comments received we have not changed the final results from those presented in the preliminary results of review.

The following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Act: the cash deposit rate for entries of titanium sponge from Kazakhstan will be 83.96 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8381 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–100–002]

Price Determination; Uranium From Kazakhstan, Kyrgyzstan, and Uzbekistan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Pursuant to section IV.C.1. of the antidumping suspension agreements on uranium from Kazakhstan, Kyrgyzstan, and Uzbekistan, the Department calculated an observed market price for uranium of $11.37/lb. On the basis of this price, the export quota from uranium pursuant to Section IV.A. of each of the agreements is zero. Exports pursuant to other provisions of the agreements are not affected by this price.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner or Beth Chalecki, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–2312.

Price Calculation

Background

Section IV.C.1. of each agreement specifies that the Department will issue the DOC observed market price on April 1, 1994, and use it to determine the quota applicable to imports from the various republics during the period April 1, 1994 to September 30, 1994.

Calculation Summary

Section IV.C.1. of each agreement specifies how the components of the market price are reached. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized the weighted average long-term price as determined by the Department on the basis of information provided by market participants and a simple average of the UPIS Base Price for the months in which there were new contracts reported.

Our letters to market participants provided a contract summary sheet and directions requesting the submitter to report his/her best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound U_3O_8 equivalent). Using the information reported in the proprietary summary sheets, the Department calculated the present value of the prices reported for any future deliveries assuming an annual inflation rate of 4.2 percent, which was derived from a rolling average of the annual GNP Implicit Price Deflator index from the past four years. The Department used the base quantities reported on the summary sheet for the purpose of weight-averaging the prices of the long-term contracts submitted by market participants. We then calculated a simple average of the UPIS Base Price and the long-term price determined by the Department.

Weighting

As in previous price determinations, the Department used the average spot and long-term volumes of U.S. utility and domestic supplier purchases, as reported by the Energy Information Administration (EIA), to weight the spot and long-term components of the observed price. However, with the publication of EIA's 1992 Uranium Industry Annual, we have used purchase data from the period of 1989–1992, rather than 1988–1991. During this period, the spot market accounted for 31.39 percent of total purchases, and the long-term market for 68.61 percent.

Calculation Announcement

The Department determined, using the methodology and information described above, that the observed market price is $11.37. This reflects an average spot market price of $9.91, weighted at 31.39 percent, and an average long-term contract price of $12.04, weighted at 68.61 percent. Since this price is below the $13.00/lb. minimum expressed in Appendix A of the agreements, there will be no quota under Section IV.A. of the agreements available to any signatory republic for the period April 1, 1994 to September 30, 1994.

Comments

Consistent with the Department's letters of interpretation dated February 22, 1993, we provide interested parties our preliminary price determination on March 10, 1994. We received no comments.

Allowing for additional information received since March 10, we have determined that the observed market price for uranium is $11.37/lb. The Department invites parties to provide pricing information for use in the next price determination. Any such information should be provided for the record and should be submitted by September 5, 1994.

Dated: April 1, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–8382 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate of review, application No. 90–3A006.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Forging Industry Association ("FIA") July 9, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on July 13, 1990 (55 FR 28801).

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

DESCRIPTION OF AMENDED CERTIFICATE: Export Trade Certificate of Review No. 90–00006 was issued to the Forging Industry Association ("FIA") on July 9, 1990 (55 FR 28801, July 13, 1990), and previously amended on April 30, 1991 (56 FR 21128, May 7, 1991) and on May 29, 1992 (57 FR 24022, June 5, 1992).

FIA's Export Trade Certificate of Review has been amended to:

1. Add the following four companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(l)): Aluminum Precision Products, Inc., Santa Ana, California; BethForge, Inc., Bethlehem, Pennsylvania (controlling entity: Bethlehem Steel Corporation, Bethlehem, Pennsylvania); Ellwood Group, Inc., Ellwood City, Pennsylvania; and Meadville Forging Company, Meadville, Pennsylvania;

2. Delete the following sixteen companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2 (l)): AeroForge Corporation, Muncie, Indiana; Cleveland Hardware & Forging Co. (including Fox Valley Forge Division and Green Bay Drop Forge Division) Cleveland, Ohio; Cornell Forge Company, Chicago, Illinois; Earle M. Jorgensen Co. (including Forge Division (now known as the Jorgensen Forge Corporation)) Seattle, Washington; Edgewater Steel Company, Oakmont, Pennsylvania; Ellwood City Forge Corporation, Ellwood City, Pennsylvania; Ellwood Texas Forge Company, Houston, Texas; Endicott Forging & Manufacturing Co., Endicott, New York; Ladish Co., Inc., Cudahy, Wisconsin; Molloy Manufacturing Company, Fraser, Michigan; Monroe Forgings, Rochester, New York; OVAKO AJAX, Inc., Wayne, Michigan; Park Ohio Industries, Inc., Cleveland, Ohio; Pittsburgh Forgings Company, Coraopolis, Pennsylvania; Storms Forge, Inc., Springfield, Massachusetts; and Viking Metallurgical Corporation, Verdi, Nevada;

3. Reflect that the American Welding & Manufacturing Division of Freedom Forge Corporation, Burnham, Pennsylvania no longer exists (Freedom Forge Corporation is a current Member.);

4. Reflect a change in the address of Eaton Corporation's Forge Division from Cleveland, Ohio to Marion, Ohio (Eaton Corporation is a current Member.); and

5. Reflect a change in the name of the current Member: Interstate Drop Forge Company, Milwaukee, Wisconsin to Interstate Forging Industries Inc;

A Copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: April 1, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 94–8365 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 033194D]

South Atlantic Fishery Management Council; Meeting and Hearing

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

ACTION: Notice of public meeting and public hearing.

SUMMARY: The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on April 18–22, 1994, at the Glynn Mall Suites Hotel, 500 Mall Boulevard, Brunswick, GA; telephone: (1–800) 432–3229 or (912) 264–6100.

The Scientific and Statistical Committee will meet on April 18, from

1 p.m. until 5 p.m., and on April 19, from 8:30 a.m. until 12 noon, to review the following:

(1) Florida Keys National Marine Sanctuary Plan;

(2) King and Spanish mackerel stock assessment, wreckfish stock assessment and economic report;

(3) Amendment 2 to the Coral and Coral Reefs Fishery Management Plan (FMP) concerning "live rock";

(4) Scoping documents for rock shrimp, Spanish mackerel and spiny lobster; and

(5) Definition of overfishing for billfish developed by NMFS.

The Coastal Migratory Pelagics (Mackerel) Committee will meet jointly with the Mackerel Advisory Panel on April 19, from 1:30 p.m. until 5 p.m. to address the following:

(1) Review quota monitoring for the 1992–93 fishing year for king and Spanish mackerel;

(2) Recommend total allowable catch (TAC) and bag limits;

(3) Review Mackerel Stock Assessment Panel's recommendation on TAC and bag limits;

(4) Discuss trip limits for Atlantic and Gulf king mackerel and Atlantic Spanish mackerel;

(5) Discuss Gulf of Mexico and South Atlantic king mackerel stock boundary;

(6) Review Spanish mackerel controlled access scoping document;

(7) Recommend additional management items for Amendment 8 to the Mackerel FMP; and

(8) Discuss management needs for African Pompano.

The Mackerel Committee will reconvene on April 20, from 8:30 a.m. until 10:30 a.m., to address the above items. From 10:30 a.m. until 3:30 p.m., the Habitat Committee will review the Gulf of Mexico Council's position relative to the South Atlantic Council's recommended management regime for South Atlantic "live rock." The committee will develop final recommendations on Amendment 2 to the Coral and Coral Reefs FMP. The Highly Migratory Species Committee will meet from 3:30 p.m. until 5 p.m. to review blue marlin, white marlin and sailfish stock assessments and to review the status of billfish research.

Public scoping meetings will be held on April 20, beginning at 6:30 p.m., to solicit input on the rock shrimp, Spanish mackerel and spiny lobster fisheries. The Council is considering managing the rock shrimp fishery off Cape Canaveral, FL, and is including management alternatives such as the possible use of area restrictions, seasons, mesh sizes, count limits, and limited entry. The Council is discussing various options for controlling access in the Spanish mackerel fishery in South Atlantic Federal waters, such as individual transferable quotas, non-transferable individual quotas, license limitation, effort-limit controls, territorial use rights, and community of group-based quotas. The Council is soliciting recommendations from spiny lobster fishermen on any necessary changes or additions to current regulations. Immediately following the scoping meetings, a public hearing will be held on Amendment 2 to the Coral and Coral Reefs FMP ("live rock").

On April 21, the Highly Migratory Species Committee will review NMFS' Highly Migratory Species Program and the ICCAT Billfish Program, and will develop recommendations to NMFS on billfish management.

The full Council will meet from 10:30 a.m. until 6 p.m., and will continue on April 22, from 8:30 a.m. until 12:15 p.m., to discuss the above planned actions and other items. Public comments will be taken on April 21, at 10:45 a.m. on new TAC and bag limits for the 1994–95 king and Spanish mackerel season. The Council will set the TACs and bag limits after hearing public testimony. From 3:45 p.m. until 6 p.m., the Council will review proposed regulations for the Florida Keys National Marine Sanctuary.

The Council will hold a public hearing on April 21 at 7 p.m., to allow comments on new information that was presented at the February Council meeting on requiring a permit to sell snapper and grouper species. The new information addresses seafood sanitation concerns as they apply to the sale of recreationally-caught fish. The Council may readdress prohibiting recreational sale of bag-limit caught snapper and grouper contained in Amendment 7 during full Council session on April 22, from 8:30 a.m. to 10:30 a.m. The Personnel Committee will hold a closed meeting from 12 noon to 12:15 p.m.

A detailed agenda of the meeting is available.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407–4699; telephone: (803) 571–4366.

SUPPLEMENTARY INFORMATION: The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight (see "**FOR FURTHER INFORMATION CONTACT**") by April 11.

Dated: April 1, 1994.

Alfred J. Bilik,

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

[FR Doc. 94–8292 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 032194B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of Public Display Permit, Canada's Wonderland (P264).

SUMMARY: On April 7, 1981, notice was published in the **Federal Register** (46 FR 21404) that Permit Number 324 had been issued to Canada's Wonderland, 9580 Jane Street, P.O. Box 624, Maple, Ontario L0J 1EO.

Notice is hereby given that on March 23, 1994 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the NMFS modified Permit No. 324 to eliminate the number of Atlantic bottlenose dolphins (*Tursiops truncatus*) and to increase the number of California sea lions (*Zalophus californianus*) in Section A., "Number and Kind of Marine Mammals." This modification is necessary due to renovations being made to a former dolphin holding facility at Canada's Wonderland for use by six California sea lions from Marine Animal Productions (MAP), Inc. of Gulfport, MS, for public display. This modification also reflects that the use of six Atlantic bottlenose dolphins (*Tursiops truncatus*) from Marine Animal Productions, Inc. is no longer authorized.

ADDRESSES: The modified Permit is available for review, by appointment, in the following offices:

Office of Protected Resources, NMFS, NOAA, 1315 East West Highway, room 13130, Silver Spring, Maryland 20910, (301) 713–2289; and

Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813) 893–3141.

Dated: March 23, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–8269 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–22–P

National Technical Information Service

Prospective Grant of Co-Exclusive Patent Licenses

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the issuance of grant co-exclusive licenses in the United States to practice the invention embodied in U.S. Patent No. 4,616,316 (Serial No. 6-458,312), titled "Medication Compliance Monitoring Device Having Conductive Traces upon a Frangible Backing of a Medication Compartment," to Medical MicroSystems, Inc., having a place of business in Clarkson Valley, Missouri, and Medical Technology Systems, Inc., having a place of business in Clearwater, Florida. The patent rights in this invention have been assigned to the United States of America.

The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is a medication compliance monitoring system consisting of a blister pack having an array of plastic blisters defining compartments for medication, with a frangible nonconductive backing sheet having conductive traces behind the compartments which are respectively ruptured when the medication doses are removed. The blister pack is detachably connected to an electronic memory circuit via a multi-terminal male connector tab on the backing sheet, wired to the conductive traces, and a corresponding female connector with terminals wired to the electronic memory circuit. The electronic memory circuit addresses each individual trace periodically at a constant time interval over a predetermined extended period of time to determine if it is intact. The electronic memory circuit detects the ruptures and stores the time data thereof over said extended period of time. During the patient's follow-up visit a microcomputer is employed to retrieve the dose-removal-time data from the memory circuit; it processes the data and provides a display of the compliance information. A socket adapter is used to alternately configure the electronic memory circuit for data acquisition and extraction. The socket adapter is in the form of a multiple-pin jumper plug engageable in a multi-contact socket connected to the memory circuit. Insertion of the plug configures the memory circuit for data acquisition. Removal of the plug configures the memory circuit for data retrieval and processing by the microcomputer. In a typical embodiment there are 42 blisters whose associated conductive traces are addressed every 15 minutes over an extended time period which may be as much as 85 days.

The availability of S.N. 6–458,312 for licensing was published in the **Federal Register** Vol. 48, No. 54, p. 11483 (March 18, 1983).

A copy of the instant patent is available for $3.00 (payable by check or money order) from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Center for the Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 94–8346 Filed 4–7–94; 8:45 am]

BILLING CODE 3510–04–M

Travel and Tourism Administration

[Docket No. 940226–4026]

RIN 9644—2A00

Disaster Relief Tourism Promotion Financial Assistance; Financial Assistance for Projects To Promote International Tourism to Specified States Whose International Tourism Promotion Needs Have Increased Due to Specified Disasters

AGENCY: United States Travel and Tourism Administration (USTTA), Department of Commerce.

ACTION: Notice.

SUMMARY: This notice invites applications for an award of disaster relief tourism promotion financial assistance, and establishes and sets forth application and selection procedures, evaluation criteria, and other requirements.

DATES: Applications for an award of these funds will be accepted beginning April 7, 1994. Applications postmarked after May 9, 1994, will not be considered. Awards are anticipated by July 6, 1994.

ADDRESSES: Application kits including application forms (Standard Forms 424 (rev. 4–92), 424A, and 424B) are available from, and completed applications should be submitted to, the Office of Tourism Marketing, United States Travel and Tourism Administration, room 1860, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Applicants are requested to submit one original application and four copies.

FOR FURTHER INFORMATION CONTACT: Ms. Karen M. Cardran, Director, Marketing Programs (202) 482–1904.

SUPPLEMENTARY INFORMATION: Notice is hereby given to the States of Florida, Hawaii, and Louisiana and the Territory of Guam, their political subdivisions, and combinations thereof, and to private or public nonprofit organizations and associations that, pursuant to Pub. L. No. 102–368, a total of $1,400,000 is available from the USTTA under the Disaster Relief Tourism Promotion Financial Assistance Program, to assist projects to promote international tourism to Florida, Hawaii, Louisiana, and Guam. These States'[1] International tourism promotion needs have increased due to Hurricane Andrew, Hurricane Iniki or Typhoon Omar. As used in this notice, "private or public non-profit organization or association" means an institution, organization, or association, either private or public, which has tax exempt status as defined in section 501(a) of the Internal Revenue Code.

These funds are intended to help defray the costs of increased tourism promotion needs arising from the above specified disasters.

There is no limit to the amount an applicant may request, nor is there a limit to the aggregate financial assistance the specified States or Territory may be provided annually.

The funding instrument will be a grant unless it is anticipated that the USTTA will be substantially involved in the implementation of the project for which an award is to be made, in which case the funding instrument will be a cooperative agreement.

[1] As used in this notice, the terms "State," "States," and "United States" include the States of Florida, Hawaii, and Louisiana, and the Territory of Guam.

I. Selection Procedures

Only eligible applicants from the four eligible States whose applications receive a final evaluation score of 80 or greater will be considered for funding. No applicant will be awarded funds unless the application includes: (1) Documentation demonstrating that all programs set forth in the application are or will be effectively coordinated with other affected entities in the State; and (2) a marketing plan that contains clearly stated objectives for a time period of one year and procedures for credible evaluation and tracking, and that is integrated (in terms of multiple activities) with a generally cohesive approach. Further, no applicant will be awarded funds unless the projects for which funding is sought are aimed at market(s) which have potential for mitigating the tourism-related negative effects of the disaster. The application must include credible market research to support this potential.

All applications will be reviewed and judged individually, independent from all other applications, by each of four qualified evaluators acting without consultation among themselves. Each evaluator will score each application by awarding points for each of the three (3) evaluation criteria set forth in IV, below. Scores awarded for each evaluation criterion will be multiplied by the weight assigned to that criterion. A maximum score of 100 points may be awarded to an application. Once scores have been determined individually by each evaluator, a final score for each application will be determined by averaging the scores provided by each of the four evaluators.

Awards shall be made based on an equitable geographic distribution and to those applicants whose final evaluation scores are at least 80 or greater, in descending order starting with the applicant whose application has the highest final evaluation score, and subject to the availability of funds. Awards may not necessarily be made to the highest-scored proposals.

II. Matching Requirements

There is no matching requirement.

III. Award Period

The maximum period of time for which financial assistance shall be awarded is one year.

IV. Evaluation Criteria

The three evaluation criteria and the weight assigned each criterion are:

A. *Needs and effect criterion* (assigned weight—0.4)

Application demonstrates the need of affected area and the ability of the project to directly counteract the negative impact of the disaster on tourism.

(1) Application clearly reflects ability of project to offset negative impacts of the disaster which have not been largely mitigated by other aid. (40 points)

(2) Application includes documentation from Federal, State, or local sources demonstrating the current degree of need. This must include documentation showing the: (a) Current loss of visitation and tourism-related employment; (b) level of tourism prior to the disaster; (c) current level of tourism; (d) impact in terms of employment and income of tourism on the area economy versus other industries; and (e) extent to which the negative impact of the disaster on tourism has been mitigated. (60 points)

B. *General criterion* (assigned weight—0.2)

Application clearly states objectives that respond directly to the specialized international tourism promotion needs of the impacted area.

(1) Application states clear and achievable objectives to be carried out over an appropriate length of time. (25 points)

(2) Application demonstrates that project is aimed at international markets that have been identified using credible market research. (25 points)

(3) Application demonstrates that project is fully integrated (in terms of multiple activities) with a generally cohesive approach. (25 points)

(4) Application demonstrates that applicant has the organizational quality and competence to effectively carry out the project. The application must include an organizational chart and a biographical sketch of the program director with the following information: Name, address, phone number, background and other qualifying experience for the project; and a list of other key personnel, consultants, etc. engaged in the project, which includes names, training and background. Applications by non-profit organizations must include a copy of the articles of incorporation, charter, trust statement, or other similar documentation which sets forth the authorizing powers and purposes of the organization, together with bylaws or other code of regulations; a brief description of organizational arrangements for fiscal and managerial control, including the extent to which these overlap or are integrated with other organizations; a copy of a current financial statement of the organization; and a copy of the current Internal Revenue Service tax exemption letter which certifies the organization's not-for-profit status. (25 points)

C. *Project criterion* (assigned weight—0.4)

Each application must include a project or projects from at least two of the five project areas set forth below. The project evaluation component score will be determined by adding the points awarded for each of the applicable project areas set forth below divided by the number of applicable project areas.

1. Media Product Information

Media product information projects are those that include the development of journalist familiarization tours and dissemination of product information on the destination.

The applicable criteria are:

a. Correlation of media programs with applicant's overall international tourism marketing strategy. (30 points)

b. Program timing and content, and potential acceptance by the target media. (25 points)

c. Project cost versus media space/time return (a minimum 10 to 1 return on investment is suggested). (20 points)

d. Measurement plan to assess program effectiveness. (25 points)

2. Market Development

Market development projects are those designed to *develop* increased travel to the impacted area from primary international markets of opportunity. Criteria are set forth for the following three types of such projects:

a. Operator/Agent Familiarization Tours

1. Preliminary planning and packaging of the familiarization tour(s) to cities, States or regions for tour operators to introduce the touristic product for marketing to the foreign consumer. (30 points)

2. Plans for subsequent implementation of the familiarization tour program in coordination with USTTA or VISIT USA Committees. (45 points)

3. Measurement plan to assess project return versus outlay. (25 points)

b. Tour Package Development

1. Preliminary planning for and packaging of tour development program, *i.e.*, selection of target market and components. (30 points)

2. Plans for subsequent implementation of the program in conjunction with tour wholesalers, etc. (45 points)

3. Measurement to assess program effectiveness. (25 points)

c. Special Travel Shows/Workshops

1. Preliminary planning and packaging of product primarily in support of market development efforts in foreign markets. (30 points)

2. Plans for subsequent follow-up and implementation of the project. (45 points)

3. Measurement of project effectiveness. (25 points)

3. Cooperative Advertising

Applications for advertising projects should include planned campaign details, including program narrative, description of proposed layouts, copy and specific media plans. If a complete media schedule is not available at the time application is submitted, an outline of media plans will be accepted, provided that specific campaign details are submitted to the Office of Tourism Marketing prior to the actual placement of the advertising in the media.

The applicable criteria are:

a. Basic marketing approach and objectives. (20 points)

b. Correlation with existing USTTA initiatives in this marketplace. (20 points)

c. Evidence that economic, marketing and statistical data necessary to develop marketing and advertising strategy is available. (10 points)

d. Creative interpretation of this strategy. (20 points)

e. Expected reach of the advertising campaign in relation to its cost and short-term impact on the market. (15 points)

f. Measurement plan to assess program cost/return effectiveness. (15 points)

4. Trade Development

Trade development projects are those which complement ongoing VISIT USA marketing programs directed toward the members of the travel trade in foreign markets. Target markets include: Argentina, Australia, Belgium, Brazil, Canada, Colombia, Ecuador, France, Germany, Hong Kong, Italy, Japan, Korea, Mexico, Nordic countries, the Netherlands, New Zealand, Spain, Switzerland, Taiwan, United Kingdom, and Venezuela. For application purposes, trade development projects are not concerned with either the development or promotion of tour packages.

Such projects may include: Trade-oriented travel missions, on-site training workshops/seminars, in-country training workshops/seminars, trade advertising, familiarization tours for foreign retail travel agents, and participation in foreign travel trade shows.

The applicable criteria are:

a. Techniques used to create an awareness and encourage selling of the destination by the foreign travel trade. (25 points)

b. Implementation time and anticipated project benefits derived after grant expiration. (25 points)

c. Goals of project and methods used to measure program results. (50 points)

5. Consumer and Trade Literature

Consumer and trade literature must be designed specifically for use in foreign countries. Special attention should be devoted to designing literature to meet the needs of the target market.

The applicable criteria are:

a. Preliminary planning for design and content of brochures. (15 points)

b. Evidence that market planning research has been utilized to identify visitor preferences and information needs. (15 points)

c. Correlation between literature program and overall marketing plan. (25 points)

d. Strategy for distribution of literature. (25 points)

e. Measurement plan to assess program effectiveness. (20 points)

V. Other Requirements

1. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Indirect costs are allowable; however, the total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

3. No Federal funds will be awarded to an applicant who has an outstanding delinquent Federal debt until either: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department of Commerce are made.

4. Applications under this program are subject to the requirements of Executive Order No. 12372, "Intergovernmental Review of Federal Programs."

5. A false statement on an application is grounds for denial or termination of funds and for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

6. *Primary Applicant Certification.*—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

a. *Nonprocurement Debarment and Suspension.*—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonporocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. *Drug-Free Workplace.*—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. *Anti-Lobbying.*—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. *Anti-Lobbying Disclosures.*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

7. *Lower Tier Certification.*—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities," CD–512's are intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL's submitted by any tier recipients or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

8. Unsatisfactory performance of an applicant under prior Federal awards may result in an application not being considered for funding.

9. If applicants incur any costs prior to an award being made, they do so

solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover preaward costs.

10. If an applicant is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

11. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, or perjury, or are involved in other matters which significantly reflect on the applicant's management honesty or financial integrity.

Classification

This notice of availability of financial assistance is issued under the authority of Public Law 102–368.

This notice has been determined to be not significant for purposes of Executive Order 12866.

The requirements of section 553 of the Administrative Procedure Act (5. U.S.C. 553) including having to give notice and an opportunity for comment do not apply to this notice because the notice relates to grants, benefits, or contracts. Since notice and an opportunity to comment is not required under any other statute, a Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act and was not prepared.

The Department has determined that the Federal assistance covered by this notice will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The standard forms referenced in this notice are cleared under OMB Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046 pursuant to the Paperwork Reduction Act.

Greg Farmer,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–8384 Filed 4–6–94; 8:45 am]

BILLING CODE 3510–11–P–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0079]

Clearance Request for Corporate Aircraft Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0079).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Corporate Aircraft Costs.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 510–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information to ensure that costs are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 3,000; hours per recordkeeper, 6; total recordkeeping burden hours, 18,000.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: March 30, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–8344 Filed 4–6–94; 8:45 am]

BILLING CODE 6820–34–M

Office of the Secretary

Renewal of 22 Department of Defense (DoD) Advisory Committees

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the following 22 DoD advisory committees have been determined to be in the public interest and have been renewed:

Advisory Council on Dependents' Education
Advisory Group on Electron Devices
Air University Board of Visitors
Armed Forces Epidemiological Board
Army Science Board
Board of Advisors to the President, Naval War College
Board of Advisors to the Superintendent, Naval Postgraduate School
Board of Visitors, National Defense University
Chief of Engineers Environmental Advisory Board
Chief of Naval Operations Executive Panel Advisory Committee
Command and General Staff College Advisory Committee
Community College of the Air Force Advisory Committee
Defense Advisory Committee on Military Personnel Testing
Defense Advisory Committee on Women in the Services
Defense Policy Advisory Committee on Trade
Defense Science Board
DoD Wage Committee
National Security Agency Scientific Advisory Board
Naval Research Advisory Committee
Scientific Advisory Board of the Armed Forces Institute of Pathology
Strategic Advisory Group for the U.S. Strategic Command
U.S. Air Force Scientific Advisory Board

These committees provide necessary and valuable advice to the Secretary of Defense and other senior officials in the DoD in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education and training, and various technical program areas. Several of them are mandated by law.

It is a continuing DoD policy to make every effort to achieve a balanced membership in DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure that a high degree of balance is obtained.

For further information, about the committees, contact Hank Gioia, 703–695–4281.

Dated: April 1, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–8263 Filed 4–6–94; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the National Advisory Panel on the Education of Handicapped Dependents

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Assistant Secretary of Defense (Personnel and Readiness).

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice also describes the functions of the Panel. Notice of this meeting is required under the National Advisory Act. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the Office of Dependents Education (ODE) special education coordinator.

DATES: May 16–18, 1994.

ADDRESSES: Office of Dependents Education, 4040 N. Fairfax Dr., Arlington, Virginia 22203–1635.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, Special Education Coordinator, ODE, (703) 696–4493.

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under the Individuals with Disabilities Education Act (20 U.S.C., sections 1400 *et seq.*). The Panel is directed to: (1) Review information regarding improvements in services provided to handicapped students in DoDDS; (2) receive and consider the views of various parents, students, handicapped individuals, and professional groups; (3) review the finding of fact and decision of each impartial due process hearing; (4) assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (5) make recommendations based on program and operational information for changes in the budget, organization, and general management of the special education program, and in policy and procedure; (6) comment publicly on rules or standards regarding the education of handicapped children; and (7) submit an annual report on its activities and suggestions to the Director, DoDDS, by July 31 of each year. The Panel will review the following areas: Transition services for secondary students, preschool for the disabled, and DoDI 1342.12.

Dated: April 1, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–8264 Filed 4–6–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Middle Wabash River Area, Greenfield Bayou Project in Vigo and Sullivan Counties, IN

AGENCY: U.S. Army Engineer District, Louisville, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Engineer District, Louisville is initiating the preparation of a DEIS for the Middle Wabash River Area, Greenfield Bayou Project in Vigo and Sullivan Counties, Indiana. The proposed action is the partial reconstruction of an existing levee, the construction of additional levee, and the restoration of the fish and wildlife habitat of a significant portion of the previously forstated floodplain. The study area consists of over 12,000 acres of both cropland and bottomland forest.

ADDRESSES: Questions or comments concerning the preparation of this DEIS should be addressed to: U.S. Army Engineer District, Louisville, Corps of Engineers, ATTN: CEORL–PD–R, P.O. Box 59, Louisville, Kentucky 40201–0059.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Siemsen, (502) 582–5550.

SUPPLEMENTARY INFORMATION: Five alternative levee alignments were developed during reconnaissance stage study, providing flood protection to a wide range of acreage of agricultural land. Additional alternative levee locations may be investigated during the current feasibility stage study.

The potential effects of the reconstruction of the existing levee, the addition of new levee, and the restoration of areas to offset previous losses of wetlands (including bottomland hardwood forest) will be reviewed in the DEIS. Significant issues to be addressed will include, but not be limited to, terrestrial and aquatic vegetation, terrestrial and aquatic wildlife, surface and ground water resources, geological and crude oil production, soils, agricultural production, local population and residences, and roadways and local travel patterns.

All Federal, state, and local agencies, organized groups, and individuals are invited to participate by providing their concerns in writing to the point of contact. An interagency (Federal, state, and local government agencies) scoping meeting will be held in the near future. No public scoping meeting is planned at this time.

It is estimated that the DEIS will be made available for comment on or about October 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–8345 Filed 4–6–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Savannah River Operations Office (SR) Financial Assistance Award; Intent To Award a Noncompetitive Grant

SUMMARY: The DOE announces that it plans to accept an unsolicited proposal and award a grant to South Carolina Research Authority, 5300 International Boulevard, North Charleston, SC 29418. The project entitled, "The Reclamation and Reduction of Nuclear Residuals Program," will be awarded for a six-month period with DOE support of $298,602. Pursuant to Section 10 CFR 600.7(b) and 600.14, eligibility for this award has been limited to South Carolina Research Authority as a result of acceptance of their unsolicited proposal, and DOE has determined that award of a grant is appropriate.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Operations Office; P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

SUPPLEMENTARY INFORMATION:

Procurement Request Number: 09–94SR18422.000.

Project Scope: The proposed program will involve the performance of an assessment of a concept to manage, in a comprehensive manner, the residues from the use and production of nuclear materials in South Carolina. The proposal includes a phased approach for the assessment, with the first phase assessing the technical, environmental and economic feasibility, benefits and risks regarding the reclamation and reduction of nuclear residues. The result of Phase I will be an assessment that will define a nuclear materials management program that vastly improves the existing means of nuclear material storage, handling and disposal

of nuclear materials in South Carolina. The assessment will specifically address the concept that irradiated and contaminated materials be converted into containers that are necessary to hold and store nuclear materials, wastes and by-products. This assessment will further define a Nuclear Materials Management Program centered at the Savannah River Site (SRS) that may improve the situation regarding nuclear material storage and disposal in South Carolina.

South Carolina Research Authority is a not-for-profit, public corporation established by an act of the South Carolina Assembly on April 29, 1983, to enhance the research capabilities of the State's public and private universities, establish a continuing forum to foster greater dialogue throughout the research community within the State, and to promote the development of high technology industry and research facilities in South Carolina. The proposed project is considered meritorious and represents a unique and innovative idea and approach which is not eligible for financial assistance under a recent, current or planned solicitation. Based on documentation presented and appropriate evaluation, it is determined to be in the best interest of DOE to award a grant to South Carolina Research Authority.

Issued in Aiken, South Carolina, on: March 18, 1994.

Robert E. Lynch,

DOE Savannah River Operations Office, Head of Contracting Activity, Designee.

[FR Doc. 94–8359 Filed 4–6–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: University of Missouri-Rolla

AGENCY: U.S. Department of Energy, Metairie Site Office.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE), Metairie Site Office, announces that pursuant to 10 CFR 600.7(b)(2)(i)(D) it intends to make a Non-Competitive Financial Assistance Award (Grant) through the Pittsburgh Energy Technology Center to the University of Missouri-Rolla.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Center, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn.: Nancy Toppetta, Telephone: (412) 892–5715.

SUPPLEMENTARY INFORMATION: The University of Missouri-Rolla (UMR) has proposed that DOE sponsor a study of Area of Review (AOR) variance possibilities for the East Texas field, with Phase I beginning in April 1994. A further study of other high-priority areas in Texas, Phase II, will be initiated and completed in 1995. It is expected that the Phase I data required for AOR variance consideration will be supplied by the East Texas Salt Water Disposal Company, which operates injection wells for the field on behalf of field owners.

When the Underground Injection Control (UIC) regulations were promulgated under the Safe Drinking Water Act in 1980, existing Class II injection wells were excluded from AOR requirements. The Environmental Protection Agency (EPA), through a Federal Advisory Committee (FAC), has recently recommended that AORs for existing wells (which were not previously subject to that requirement) be performed within five years of promulgation of amended UIC regulations. The FAC has, however, recognized that conditions can exist that make it unnecessary to perform well-by-well AORs and that wells in a basin, producing trend, region or field, or a portion of such areas can be exempted from an AOR through a variance program.

A methodology for identifying areas that would be eligible for variance from AOR requirements based upon the FAC criteria has been developed by a research team in the School of Mines and Metallurgy at the UMR under sponsorship of the American Petroleum Institute (API). The methodology provides for evaluation of an area for variance based upon certain conditions or based upon the manner by which wells in the area were constructed and abandoned. Wells not excluded by variance would be subject to well-by-well AORs. With continuing sponsorship from the American Petroleum Institute, the AOR variance methodology developed at the UMR has been applied to 24 oil fields undergoing injection in the San Juan Basin of New Mexico and is currently being applied to injection fields in selected counties of the Permian basin in West Texas. In the San Juan Basin, at least two variance criteria were found to apply to all 24 fields and are believed to provide good possibilities for variances in 20 fields and some possibilities in the remaining four.

The East Texas Field was discovered in 1930 and is the largest oil field in the Lower-48 states. Recovery from the field is expected to ultimately be about 5.6 billion barrels. The AOR, which has a ¼ mile radius, frequently includes 25 or more wells. Since the field is over 60 years old and many of the wells have been abandoned for a number of years, the abandonment records are sometimes not readily available. More than 30,000 wells have been drilled in the field and less than 8,000 are currently producing. Records on 22,000 abandoned and inactive wells (some of which are over 60 years old) will be hard to locate.

Requirement for complete AORs on all existing injection wells could create an unbearable burden of proof on the East Texas Saltwater Disposal Company and many of the independent operators in the East Texas field who can least afford the expense of such compliance. The cost of compliance with EPA's proposed revisions to the UIC Class II regulations is estimated to be $86.2 million to the East Texas Saltwater Disposal Company and the East Texas field operators for the first five years after promulgation of the regulations. Variance from complete AORs for the East Texas field could significantly reduce these anticipated costs. Successful application of the UMR variance methodology would also further establish the potential value of the methodology to other producing areas in Texas and the United States.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (D), a noncompetitive Financial Assistance Award to the UMR has been justified. DOE support of the activity would provide that analysis be made of proprietary non-public data which would otherwise be unavailable. In addition, DOE support would allow the results of the research to be transferred to oil and gas operators, to the State of Texas, and to the public. This effort is therefore considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a solicitation.

DOE funding for this research is estimated to be approximately $500,000 for the 24 month duration of the project. These funds shall be used to pay for the reasonable cost of research staff, equipment, administrative support personnel, consultants, experts, and printing costs as necessary for the research project.

Dated: March 28, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94–8360 Filed 4–6–94; 8:45 am]

BILLING CODE 6450–01–P

Electric Power and Natural Gas Supply Curtailments in the Middle Atlantic States on January 18, 19, and 20, 1994

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) is examining the electric power and natural gas service curtailments that occurred in the Middle Atlantic States during the period of severe cold weather the week of January 16, 1994. This examination will attempt to identify ways to improve emergency preparedness and response measures. The examination will: (1) Define the disruption experience in terms of service interrupted, the impacts of the disruptions on public health, safety and other essential services, and the economic costs incurred; (2) identify the precise cause of the disruptions; (3) identify the response actions taken by industry, State and local governments, and Federal agencies; and (4) identify specific actions which may reduce the vulnerability to similar disruptions in the future or improve the response actions. A draft report on the results of the examination will be released in the summer of 1994.

FOR FURTHER INFORMATION CONTACT: Dennis K. Taillie, Director, Office of Emergency Planning, room 8F–055, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3271.

Dated: March 30, 1994.

Inja K. Paik,

Acting Director, Office of Emergency Planning.

[FR Doc. 94–8322 Filed 4–6–94; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

The Eugene Water and Electric Board Proposed Billing Credits Generation Agreement

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent. BPA announces its intention to sign a billing credits generation agreement for the Wauna Cogeneration Project located in Clatskanie, Oregon.

SUMMARY: BPA has previously signed other Billing Credits Generation Agreements, in addition to the contract described in this Notice. The Wauna Cogeneration Project is located at the James River Wauna Oregon mill. The size of the Project is based on thermally matching the mill's steam needs for the pulp and paper making process. The generator will have an approximate nameplate rating of 36 megawatts. The incremental fuel used for electrical generation is natural gas. The backpressure turbine installation will augment existing pressure reducing valves. The expected annual energy production is estimated at 26.4 average megawatts beginning in January 1996. The Project will be interconnected to the mill electrical system at 13.8 KV.

BPA, pursuant to its Billing Credits Policy, as amended August 30, 1984, (49 FR 34395), and revised on January 29, 1993, (58 FR 37918) has negotiated this Billing Credits Generation Agreement with Eugene Water and Electric Board (EWEB) for the Wauna Cogeneration Project.

Responsible Official: Mr. George Bell, Lower Columbia Area Office, is the official responsible for EWEB's Billing Credits contract and the Administrative Record.

DATES: BPA will receive comments on the proposed Billing Credits Generation Agreement for 30 days, after which time BPA may execute the contract. Payment or credits will not be made or granted until 90 days after BPA executes the Billing Credits Generation Agreement.

FOR FURTHER INFORMATION CONTACT: For a copy of the EWEB Billing Credits Generation Agreement, or the Administrative Record, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Telephone numbers, voice/TTY, for the Public Involvement Office are (503) 230–3478 in Portland, or toll-free (800) 622–4519. Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, (503) 230–4552.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Suite 500, Crescent Court, 707 Main, Spokane, Washington 99201, (509) 353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, (406) 329–3060.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Avenue North, Seattle, Washington 98109–1030, (206) 553–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, 1520 Kelly Place, Walla Walla, Washington 99362, (509) 527–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 523–2706.

Mr. Jim Normandeau, Boise District Manager, Room 450, 304 North Eighth Street, Boise, Idaho 83702, (208) 334–9137.

Mr. Robert Laffel, Eugene District Manager, 86000 Franklin Blvd., Eugene, Oregon 97405, (503) 465–6952.

Ms. Carol S. Fleischman, Spokane District Manager, Crescent Court, suite 500, 707 Main, Spokane, Washington 99201, (509) 353–3279.

SUPPLEMENTARY INFORMATION: The Administrative Record, available for public review, contains background on BPA's Billing Credits Policy and a Record of Decision for the Wauna Cogeneration Project and environmental considerations.

I. Background

BPA is a self-financing power marketing agency with the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 *et seq.*, to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839c(b)(1) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839d(h). Billing Credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for Billing Credits include conservation and generation.

Specific requirements for resources and the amount BPA can pay for these resources are outlined in the Northwest Power Act and BPA's Billing Credits Policy.

BPA's Billing Credits Policy interprets the Billing Credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting Billing Credits.

II. Description of the Generation Proposal

BPA proposes to issue the Billing Credits as a method to facilitate Project construction pending the issuance of a ruling by the Internal Revenue Service under section 9(f) of the Northwest Power Act relating to the portion of the Project's output that will be furnished to nongovernmental persons and the extent to which the private business use test of section 141(b) of the Internal Revenue Code of 1986, as amended, will

be met. Upon issuance of a ruling favorable to EWEB, the Billing Credits will terminate in favor of a negotiated Power Purchase Agreement with similar terms and conditions for all parties.

This project meets the qualifications for Billing Credits, and BPA has completed its obligations under the National Environmental Policy Act. EWEB will comply with all applicable environmental requirements in the construction of the project and during the operation phase.

III. Methodology for Determining Generation Billing Credits

The payment for Billing Credits for EWEB will be calculated and paid monthly as follows:

EWEB is a Computed Requirements Customer under its Power Sales Contract with BPA, the monthly Billing Credits will be the lesser of the Adjusted Alternative Cost or Net Cost multiplied by the monthly amounts of Assured Energy Capability of the Billing Credits Resource, less the amount of Priority Firm Rate dollars EWEB avoids paying as a result of the Billing Credits Resource. There is no annual true-up because EWEB is required to maintain the Assured Energy Capability for the Billing Credits Resource, as it must do for all its firm resources under the Power Sales Contract.

IV. Materials Available

Copies of the Billing Credits Policy and the Administrative Record are available from BPA's Public Involvement Office. Refer to the "For Further Information Contact" section of this notice.

Issued in Portland, Oregon, on March 24, 1994.

Randall W. Hardy,

Administrator.

[FR Doc. 94–8361 Filed 4–6–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP94–260–000]

Algonquin Gas Transmission Co.; Intent To Prepare An Environmental Assessment for the Proposed Canal Lateral Project and Request for Comments on Environmental Issues

April 1, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Canal Lateral Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

Algonquin proposes to construct, own, and operate 4 miles of 18-inch-diameter pipeline, a meter station, valve site, and tap. Algonquin would use the facilities to transport up to 75,000 MMBtu of natural gas from Algonquin's existing G–111A valve site in Barnstable County, Massachusetts, to a valve site that would interconnect with nonjurisdictional facilities planned to be built by Canal Electric Company (CEC).

CEC would construct 0.9 mile of nonjurisdictional 18-inch-diameter pipeline and a regulator station. The facilities would supply an electric generating station operated by CEC and Montaup Electric Company (MEC) in Sandwich, Massachusetts.

The general location of these facilities is shown in appendix 1.[2]

Land Requirements for Construction

The proposed lateral would be built adjacent and parallel to existing rights-of-way. Algonquin intends to use a construction right-of-way that would vary between 40 and 50 feet during construction within roads, 70 feet for crossing wetlands and waterbodies, 80 feet for upland areas, and 85 feet where additional spoil pile placement would be required due to site specific constraints. About 50 feet of the planned widths would use existing right-of-way; however, about 25 feet of new clearing would be required in many areas. Following construction, about 30 feet of the construction right-of-way would be allowed to revert to its former land use. Additional working space would be required adjacent to the planned construction right-of-way at road and stream crossings.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Algonquin. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The construction right-of-way for the lateral would be within 50 feet of 10 residences.
- The pipeline would cross one perennial stream (Herring River) and two wetlands.
- The entire project would be within the Plymouth/Carver Sole Source

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[1] Algonquin Gas Transmission Company's (Algonquin) application was filed with the Commission under section 7(c) of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Aquifer and about 90 percent of the proposed route crosses a "high yield" area.

• The pipeline would cross three roads and be within four roads.

• The project may have an impact on a state-listed Area of Critical Environmental Concern, and several state-listed rare flora and fauna.

• The project would cross or be near 19 known prehistoric and 1 historic sites. There is high potential for additional cultural resources concerns within the project area.

• The project would require a coastal zone consistency determination.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

• Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;

• Reference Docket No. CP94–260–000;

• Send a copy of your letter to: Mr. Jeff Shenot, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., room 7312, Washington, DC 20426; and

• Mail your comments so that they will be received in Washington, DC on or before May 2, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Shenot at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Jeff Shenot, EA Project Manager, at (202) 208–2269.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8302 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2490–001—Vermont]

Central Vermont Public Service Corp.; Availability of Draft Environmental Assessment

April 1, 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 a subsequent, minor license for the Taftsville Hydroelectric Project, located on the Ottauquechee River, in the Town of Woodstock, Windsor County, Vermont and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2490 to all comments. For further information, please contact Jim Haimes, Environmental Coordinator, at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8300 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2323–012, et al.]

Hydroelectric Applications [New England Power Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New License.

b. *Project No.:* 2323–012.

c. *Date Filed:* December 27, 1991.

d. *Applicant:* New England Power Company.

e. *Name of Project:* Deerfield River Project.

f. *Location:* On the Deerfield River, Windham and Bennington Counties, Vermont, and Franklin and Berkshire Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark E. Slade, New England Power Company, 25 Research Drive, Westborough, MA 01582, (508) 366–9011.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Deadline Date:* See paragraph D9.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The Deerfield project consists of eight facilities as follows:

Somerset

The Somerset facility, located on the East Branch of the Deerfield River, consists of (1) an earthfill dam structure about 110 feet high and 2,101 feet long with a crest elevation of 2133.58 feet (MSL), (2) main outlet works located at the eastern end of the dam which consists of two gated, 48 inch diameter pipes that are used to control reservoir discharge and (3) a side channel spillway located at the western end of the dam with a crest elevation of 2133.58 (MSL). The spillway channel is about 800 feet long, 45 feet wide, and from 6 to 30 feet deep. The (4) impoundment is about 5.6 miles long, and has a gross surface area of about 1,514 acres (AC), a gross storage capacity of 57,345 acre-feet (AF), a usable storage capacity of 20,614 (AF) and a normal pool headwater elevation range of 2,113.10 to 2,128.10 feet msl. There are no power generating units at this facility and therefore, no diversion canals or penstocks.

Searsburg

The Searsburg facility consists of (1) an earthfill dam structure about 50 feet high and 475 feet long with a 137 foot

long concrete gravity spillway, with a crest elevation of 1749.66 feet msl, topped with 5-foot flashboards (from May 1 to October 31), (2) intake and penstock with (a) wood stave conduit 8 feet in diameter and 18,412 feet long, (b) steel differential surge tank 50 feet in diameter and 34 feet high, and (c) steel penstock 6.5 feet in diameter and 495 feet long. Bond Brook, which enters the Deerfield River at RM 58.6, is diverted into the 8-foot diameter wood stave conduit, (3) a powerhouse containing one vertical Francis hydroelectric unit with a nameplate capacity of 4,160 kW, (4) an impoundment, about 0.9 miles long, a gross storage capacity of 412 AF, a usable storage capacity range of 67 to 197 AF, and a normal pool elevation range of 1746.66 to 1754.66 feet msl, and (5) appurtenant facilities.

Harriman

The Harriman facility consists of (1) an earthfill dam 215.5 feet high and 1,250 feet long, (2) a storage reservoir, 9 miles long, having a surface area of about 2,039 AC, a gross storage capacity of 117,300 AF, a usable storage capacity of 103,375 AF (from elevation 1405.66 to 1491.66 feet msl), and a normal pool headwater elevation of 1449.70 to 1491.66 feet msl; (3) morning glory spillway, with sixteen gates, at a sill elevation of 1491.66 msl, topped with 6-foot-high flashboards, and (4) an intake tunnel and penstocks which convey water to the powerhouse by means of two-eight foot diameter valves. Water is conveyed through these valves to the powerhouse via (a) a 12,812-foot-long, 14-foot-diameter concrete lined horseshoe shaped tunnel, (b) a steel differential surge tank 34 feet in diameter and 184 feet high, (c) and three steel penstocks 9 feet in diameter and 620 feet long. The (5) powerhouse contains three vertical Francis hydroelectric units with a total hydraulic capacity of 1,600 cfs, and a nameplate capacity of 11,200 kW each, as well as appurtenant facilities.

Sherman

The Sherman facility consists of (1) an earthfill dam which is 110 feet high and 810 feet long, with a crest elevation of 1129.66 feet msl; (2) a 179-foot-long concrete gravity spillway, with a crest elevation of 1103.66 feet msl, topped with 4-foot-high flashboards which operate year-round; (3) a concrete and brick intake structure and penstock which conveys water to the powerhouse via a concrete conduit 98 feet in length with a cross-sectional area of 142 square feet, and a steel penstock 13 feet in diameter and 227 feet long; (4) an impoundment, about 2 miles long, having (a) a surface area of about 218 AC; (b) a gross storage capacity of 3,593 AF; (c) a useable storage capacity of 1,359 AF; and (d) a normal pool headwater elevation range of 1104.66 to 1107.66 feet msl. There are no diversion canals or tunnels associated with the Sherman Development. The (5) powerhouse contains (a) one vertical Francis hydroelectric unit with a capacity of 7,200 kW, and (b) other appurtenant facilities.

Deerfield No. 5

The Deerfield No. 5 facility consists of (1) two dams. The Deerfield No. 5 Dam, is comprised of (a) a concrete gravity spillway about 35 feet high and 90 feet long, with a top elevation of 1,109.66 feet msl, topped with 8-foot-high hydraulic steel flap gates which maintain a normal reservoir elevation of 1027.66 feet msl, and a (b) concrete intake structure, consisting of two 8-foot wide by 7.75 foot-high sluice gates, with a sill elevation of 1002.28 feet msl, and a single 12.5 foot by 13-foot intake gate with a sill elevation of 1008.16 msl. There is a small diversion structure on Dunbar Brook which is a concrete gravity structure approximately 12 feet high and 160 feet long. The Deerfield No. 5 facility contains (2) conveyance sections of tunnel, concrete conduit, and canal totaling 14,941 feet, as well as (3) a steel penstock 10 feet in diameter and 400 feet long. The (4) impoundment is about 0.75 miles long, having a surface area of about 38 AC, a storage capacity of 118 AF, and a normal pool headwater elevation range of 1022.66 to 1026.66 feet msl. The (5) powerhouse contains one vertical Francis hydroelectric unit with a nameplate capacity of 17,550 kW and a hydraulic capacity of 1,250 cfs. The minimum turbine flow is 500 cfs. The (5) switchyard is located on River Road across from the Bear Swamp Visitor's Center and contains appurtenant facilities.

Deerfield No. 4

The Deerfield No. 4 facility contains (1) an earthfill dam (with a concrete core) about 50 feet high and 160 feet long, (2) a 241 foot long concrete gravity spillway with a crest elevation of 465.66 feet msl, topped with 6- to 8-foot-high wooden flashboards; and (3) three sluice gates located in the east abutment, two with a sill elevation of 462.66 feet msl and another with a sill elevation of 4642.66 feet msl. The (4) impoundment is about 2 miles long, having a surface area of about 75 AC, a gross storage capacity of 467 AF, and a usable storage capacity of 432 AF, and a normal pool headwater elevation range of 465.66 to 473.66 feet msl. The (5) power tunnel conveys water from the intake structure at the impoundment via a 12.5-foot-diameter, 1,514-foot-long concrete and brick-lined horseshoe shaped tunnel that leads to the powerhouse forebay. The (6) powerhouse contains three horizontal Francis hydroelectric units with a nameplate capacity of 1,600 kW each, and a hydraulic capacity of 1,490 cfs. The powerhouse also contains appurtenant facilities.

Deerfield No. 3

The Deerfield No. 3 Dam is composed of (1) a concrete gravity spillway about 15 feet high and 475 feet long with a crest elevation of 396.66 feet msl, topped with 6-foot-high wooden flashboards; (2) 2 sluice gates and a (3) power tunnel intake located in the south abutment. The power tunnel exiting the gated intake is a 677-foot-long, 17-foot-wide by 12.5-foot-high concrete conduit. The (4) impoundment is about 1.3 miles long, having a surface area of about 42 AC, a gross storage capacity of 221 AF, a usable storage capacity of 200 AF and a normal pool headwater elevation range of 396.66 to 402.66 feet msl. The (5) Deerfield No. 3 powerhouse contains three horizontal Francis hydroelectric units with a nameplate capacity of 1,600 kW each and a hydraulic capacity of 1,490 cfs. The (6) switchyard is located within the powerhouse and contains appurtenant facilities.

Deerfield No. 2

The Deerfield No. 2 facility contains a (1) concrete gravity spillway about 70 feet high and 447 feet long, with a top elevation of 284.66 feet msl, topped with 6-foot-high wooden flashboards and four sluice gates. The (2) impoundment is about 1.5 miles long, with a surface area of about 63.5 AC, a gross storage capacity of 350 AF, a usable storage capacity of 300 AF, and a normal pool headwater elevation range of 284.66 to 290.66 feet msl. The (3) powerhouse is located adjacent to the Deerfield No. 2 Dam, thus there are no canals, conduits, or tunnels required at this development. The powerhouse contains three horizontal Francis hydroelectric units with a nameplate capacity of 1,600 kW each and a hydraulic capacity of 1,450 cfs. The (4) switchyard is located within the powerhouse and contains appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric energy to meet New England Power Company's

peak energy demand and provide electric system operating reserves.

n. *This Notice Also Consists of the Following Standard Paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at New England Power Company, 25 Research Drive, Westborough, MA, 01582.

p. *Scoping Process:* In gathering background information for preparation of the environmental document for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental assessment as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

q. *Request for Scoping Comments:* Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

• Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.

• Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.

• Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat loss or proposals to develop land and water resources within the basin.

• Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.

• Documentation that would support a conclusion that the project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded for further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not be limited to: how the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental document should be filed by the deadline date.

2a. *Type of Application:* New license.

b. *Projects Nos.:* 2404–017 and 2419–007.

c. *Date Filed:* December 30, 1991.

d. *Applicant:* Thunder Bay Power Company.

e. *Name of Project:* Thunder Bay and Hillman Hydro Project.

f. *Location:* On the Thunder Bay River in Alpena, Alcona, and Montmorency Counties, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Roger Steed, President, Thunder Bay Power Company, 10850 Traverse Hwy., suite 1101, Traverse City, MI 49684, (616) 941–5444.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Deadline Date:* See paragraph D9.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The existing project consists of the following:

A. Thunder Bay Hydroelectric Project FERC No. 2404

This project consists of the following five developments:

The Ninth Street Development which includes: (1) An existing retaining wall, 6 feet high by 285 feet long; (2) an existing buttressed retaining wall, 145 feet long; (3) an existing abandoned fishway; (4) an existing concrete uncontrolled spillway section; 47 feet long; (5) an existing gated spillway section, 131 feet long, containing seven tainter gates, each 14 feet long by 12 feet high; (7) an existing concrete gravity non-overflow section, 47 feet long; (8) an existing reinforced concrete non-overflow section (a retaining wall about 20 feet long); (9) an existing reservoir with a surface area of 700 acres and a total storage volume of 6,000 acre-feet at the normal maximum surface elevation of 598.5 feet NGVD; (10) an existing reinforced concrete and masonry powerhouse, 92 feet long by 84 feet wide, containing (a) three horizontal shaft Sampson runner turbines with a combined hydraulic capacity of 1620 cfs, manufactured by James Leffel Company and rated at 600 hp each, and (b) three General Electric generators, each rated at 400 Kw, providing a total plant rating of 1,200 Kw; and (11) existing appurtenant facilities.

The Four Mile Development which includes: (1) An existing concrete ogee spillway (constructed immediately downstream from the original rock filled timber dam), 445 feet long, topped by needle beams, containing (a) a log chute bay, and (b) an abandoned fishway bay; (2) an existing reservoir with a surface area of 90 acres and a total storage capacity of 900 acre-feet at the normal maximum surface elevation of 634.9 feet NGVD; (3) an existing concrete and masonry powerhouse, 72 feet by 72 feet, containing (a) a concrete forebay, (b) three existing horizontal shaft Sampson runner turbines with a combined hydraulic capacity of 1790 cfs, rated at 850 hp each, and (c) three existing General Electric generators, each rated at 600 Kw, providing a total existing plant rating of 1,800 Kw, (d) a proposed Flygt Corporation turbine equipped with an elbow draft tube, (d) a proposed Flygt Corporation generator, rated at 600 Kw, providing a total proposed plant rating of 2,400 Kw; and (4) existing appurtenant facilities.

Norway Point Development which includes: (1) Two existing earth dikes, 1,460 feet long and 500 feet long yielding a total length of 1,960 feet; (2) an existing abandoned fishway; (3) an existing beartrap gate section, 120 feet long, containing three beartrap gates, each 26 feet long by 27 feet high; (4) an existing mass concrete multiple barrel arch spillway section with removable needle beams, 320 feet long; (5) an existing reservoir with a surface area of

1,700 acres and a total storage volume of 27,550 acre-feet at the normal maximum surface elevation of 671.6 feet NGVD; (6) an existing reinforced concrete and masonry powerhouse, 86 feet long by 49 feet wide, containing (a) two vertical shaft Francis turbines with a combined hydraulic capacity of 1650 cfs, the first manufactured by Wellman-Seaver-Morgan Company and rated at 3,350 hp and the second rated at 1,400 hp, and (b) two General Electric generators, rated at 2,800 Kw and 1,200 Kw, providing at total plant rating of 4,000 Kw; and (7) existing appurtenant facilities.

Hubbard Lake Development which includes: (1) An existing reinforced concrete spillway section, 20 feet long, containing two needle beam controlled bays; (2) two existing 45 foot long earth embankment sections, each overlapped on the upstream and downstream sides with concrete wingwalls extending from both sides of the spillway; (3) an existing reservoir with a surface area of 9,280 acres and a total storage volume of 57,000 acre-feet at the normal maximum surface elevation of 710.5 feet NGVD; and (4) existing appurtenant facilities.

Upper South Development which includes: (1) Two existing earth embankment sections, 220 feet long and 40 feet long for a total length of 260 feet, (2) an existing reinforced concrete spillway section, 40 feet long, containing (a) four needle beam controlled bays, and (b) concrete wingwalls on the upstream and downstream sides overlapping the earth embankments on both sides of the spillway; (3) an existing reservoir with a surface area of 7,000 acres and a total storage volume of 55,000 acre-feet at the normal maximum surface elevation of 731.0 feet NGVD; (4) two proposed submersible Flygt Corporation turbines with a combined hydraulic capacity of 170 cfs, each equipped with a siphon penstock and an elbow draft tube; (5) two proposed Flygt Corporation generators, each rated at 100 Kw, providing a total plant rating 200 Kw; and (6) existing appurtenant facilities.

B. Hillman Hydropower Project FERC No. 2419

This project consists of: (1) An existing earth fill section, approximately 50 feet long; (2) an existing concrete gated spillway section, approximately 38 feet long, containing (a) three needle beam controlled bays, (b) a concrete training wall extending upstream of the spillway along the right side, and (b) a reinforced concrete apron, constructed along the downstream toe of the spillway; (3) an existing non-overflow section which includes part of the Hillman grist mill house, 26 feet long, constructed of upstream and downstream concrete gravity walls with pressure grouted earth and rock fill between the two walls; (4) an existing concrete uncontrolled spillway section, 27 feet long, (formerly the intake structure of the grist mill in the early 1900's); (5) an existing non-overflow section, 20 feet long, constructed of upstream and downstream concrete gravity walls with pressure grouted earth and rock fill between the two walls; (6) an existing reservoir with a surface area of 160 acres and a total storage volume of 500 acre-feet at the normal maximum surface elevation of 747.2 feet NGVD; (7) an existing reinforced concrete and masonry powerhouse, 17 feet by 21 feet, containing (a) a vertical shaft Francis turbine with a hydraulic capacity of 270 cfs, manufactured by James Leffel Company, and (b) a vertical shaft generator, manufactured by Westinghouse and rated at 250 Kw; and (8) existing appurtenant facilities.

The applicant estimates the proposed total installed project capacity would be 8.25 MW and the total average annual generation would be 8.26 GWH. The dam and existing project facilities of each development are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This Notice Also Consists of the Following Standard Paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Thunder Bay Power Company, 10850 Traverse Hwy., suite 1101, Traverse City, MI 49684 or by calling (616) 941–5444.

p. *Scoping Process:* In gathering background information for preparation of the Environmental Assessment for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental assessment as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

q. *Request for Scoping Comments:* Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat loss or proposals to develop land and water resources within the basin.
- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.
- Documentation that would support a conclusion that the project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded for further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not limited to: how the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource

management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental assessment should be filed by the deadline established in paragraph D9.

3a. *Type of Application:* Minor license.

b. *Project No.:* 10625–003.

c. *Date Filed:* March 27, 1992.

d. *Applicant:* Kittitas Reclamation District.

e. *Name of Project:* Taneum Chute Hydroelectric.

f. *Location:* On the Bureau of Reclamation's South Branch Canal in Kittitas County, Washington, partially on U.S. lands administered by the Bureau of Reclamation and the Bureau of Land Management. Township 19 N, Range 17 E.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Paul A. Davenport, Kittitas Reclamation District, P.O. Box 276, Ellensburg, WA 98926, (509) 925–6158.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Deadline Dates:* (1) For interventions or protests—May 16, 1994 and (2) For written comments on scoping (environmental issues)—May 2, 1994.

k. *Status of Environmental Analysis:* The application is ready for environmental analysis at this time—see attached paragraph D4.

l. *Intent To Prepare an Environmental Assessment and Request for Written Scoping Comments:* The Commission staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act. The EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include economic, financial and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All timely filed comments on the draft EA will be analyzed by the staff and considered in the final EA. The staff's conclusions and recommendations will then be presented for consideration of the Commission in reaching its final licensing decision.

Scoping: Interested individuals, organizations, and agencies with environmental expertise are invited to assist the staff in identifying the scope of environmental issues that should be analyzed in the EA by submitting written scoping comments. To help focus those comments, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the Commission mailing list. Copies of the scoping document may also be requested from FERC staff.

Persons who have views on issues or information relevant to the issues may submit written statements for inclusion in the public record. Those written comments should be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, by the deadline date shown in Item (j) above. All written correspondence should clearly show the following caption on the first page: Taneum Chute Hydroelectric Project, FERC No. 10625.

Intervenors are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

m. *Description of Project:* The proposed project would consist of: (1) A gated intake structure adjacent to the existing Taneum Chute intake; (2) a buried 42-inch-diameter, 1,250-foot-long steel penstock; (3) a 60-foot-long, 11-foot-wide fenced enclosure containing four 200–Kw generating units that discharge through draft tubes into the Chute's stilling basin; and (4) a vertical connection from the transformer to a planned Puget Sound Power & Light Company distribution line.

n. *Purpose of Project:* Power generated at the project will be used by the Applicant or sold to an electric utility.

o. *This Notice Also Consists of the Following Standard Paragraphs:* A2, A9, B1, and D4.

p. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

4a. *Type of Application:* Major license.

b. *Project No.:* 11408–000.

c. *Date Filed:* April 28, 1993.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Salmon River Hydroelectric Project.

f. *Location:* On the Salmon River in the Towns of Redfield and Orwell, Oswego County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jerry L. Sabattis, P.E., Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline Date:* See paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The proposed project consists of two developments progressing downstream of the Salmon River: Bennetts Bridge and Lighthouse Hill.

The Bennetts Bridge development consists of: (1) An existing dam 607 feet long and 45 feet high; (2) an existing reservoir 6 miles long; (3) an existing 10,000-foot-long conduit system; (4) an existing powerhouse containing four existing turbine-generator units with a total installed capacity of approximately 31,500 kilowatts (kW); (5) three existing 12-kilovolt (kV) electric transmission lines; and (6) appurtenant facilities.

The Lighthouse Hill development, located approximately 1 mile downstream of the Bennetts Bridge powerhouse, consists of: (1) An existing 382-foot-long concrete gravity dam; (2) an existing 4,300-foot-long reservoir; (3) three existing 17-foot-wide by 8-foot-high by 62-foot-long concrete penstocks; (4) an existing powerhouse containing two existing turbine-generator units with an installed capacity of 8,200 kW (NIMO proposes to install a 2,150-kW (nameplate rating) turbine-generator unit in the empty turbine bay in the Lighthouse Hill powerhouse; (5) an existing 400-foot-long, 12-kV transmission line; and (6) appurtenant facilities. The average annual generation for both developments with the proposed new unit would increase from 108,000,000 to 113,246,000 kilowatthours. The owner of the project facilities is the Niagara Mohawk Power Corporation.

m. *Purpose of the Project:* All project energy generated would be utilized by the applicant for sale.

n. *This Notice Also Consists of the Following Standard Paragraphs:* A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at

941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Jerry L. Sabattis, P.E., Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.

p. *Scoping Process:* In gathering background information for preparation of the Environmental Assessment for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental assessment as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

q. *Request for Scoping Comments:* Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic water quality data and the reasons for improvement or degradation of the quality, and any wetland habitat loss or proposals to develop land and water resources within the basin.
- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.
- Documentation that would support a conclusion that the project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded from further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but be not limited to: how the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

FERC staff will be issuing shortly the Scoping Document for the preparation of the Salmon River Project Environmental Assessment. Comments concerning the scope of the environmental assessment should be filed by the deadline date.

5a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11446–000.

c. *Date Filed:* November 2, 1993.

d. *Applicant:* Mid-Atlantic Energy Engineers, Ltd.

e. *Name of Project:* Cuffs Run Pumped Storage.

f. *Location:* On Cuffs Run and the Susquehanna River in York and Lancaster Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William M. McMahon, Jr., P.O. Box 32, Reading, PA 19603, (215) 373–6667.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Comment Date:* May 19, 1994.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) An upper reservoir having a 580-acre surface area and a 26,000-acre-foot storage capacity at water surface elevation 680 feet msl, created by a 225-foot-high, 9,800-foot-long dam, a 95-foot-high, 700-foot-long dike, and a 35-foot-high, 1,300-foot-long dike; (2) a 300-foot-long, 110-foot-wide channel leading to a submerged intake structure; (3) a shaft and tunnel trifurcating into three 20-foot-diameter steel-lined tunnels; (4) an underground powerhouse containing three reversible pump-turbine units rated at 330–MW each operated at a 450-foot head; (5) a 1,500-foot-long powerhouse access tunnel and an 18-foot-diameter vent and cable shaft; (6) three concrete-lined tunnels leading to an outlet structure in Lake Clarke; (7) an above-ground switchyard; (8) a three-mile-long, 250-kV transmission line; and (9) appurtenant facilities. Lake Clarke, an existing reservoir formed by the Safe Harbor Dam (FERC Project No. 1025) would be utilized as a lower reservoir.

Core boring of the foundation overburden and underlying rock formation would be required. Applicant estimates that the cost of the studies under the terms of the permit would be $235,000. Project energy would be purchased from and sold to local utilities. A portion of the proposed project boundary for Project No. 11446 lies within the approved project boundary for licensed project No. 1025. However, the proposed project facilities could be mutually compatible.

l. *This Notice Also Consists of the Following Standard Paragraphs:* A5, A7, A9, A10, B, C & D2.

6a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11462–000.

c. *Date Filed:* February 18, 1994.

d. *Applicant:* Public Utility District #1 of Klickitat County.

e. *Name of Project:* Dalles Dam JBS.

f. *Location:* On the Columbia River, at the Dalles Dam, in Klickitat County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Alexander Thomson, PUD #1 of Klickitat County, 1313 South Columbus, Goldendale, WA 98620, (509) 773–5891.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* May 27, 1994.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' existing Dalles dam and consist of: (1) a 10-foot-diameter, 30-foot-long penstock within the dam which is part of the dam's fish passage facilities; and (2) a powerhouse containing a generating unit with a capacity of 3.6 kW and an average annual generation of 26.0 GWh.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $180,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11457–000.

c. *Date Filed:* January 18, 1994.

d. *Applicant:* Sun River Partners.

e. *Name of Project:* Turnbull Drop.

f. *Location:* At the existing Bureau of Reclamation Sun River Canal System, near Fairfield, in Teton County, Montana. Township 21N, Range 4W, sections 1–3, and Township 22N, Range 4W, section 36.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Ted Sorenson, 5203 South 11th East, Idaho Falls, ID 93404, (208) 522–8069.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* May 27, 1994.

k. *Description of Project:* The proposed project would utilize the Bureau of Reclamation's Sun River Canal System and would consist of: (1) An existing drop inlet structure; (2) a 9,000-foot-long, 8.5-foot-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 9.8 MW and an estimated average annual generation of 25.0 GWh; and (4) a 2-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $35,000.

l. *Purpose of Project:* Project power would be sold.

m. *This Notice Also Consists of the Following Standard Paragraphs:* A5, A7, A9, A10, B, C, and D2.

8a. *Type of Application:* Amendment of license.

b. *Project No.:* 2848–017.

c. *Date Filed:* March 10, 1994.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Cascade Project.

f. *Location:* On the North Fork Payette River in Valley County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert W. Stahman, Vice President, Secretary, and General Counsel, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 383–2676.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* May 16, 1994.

k. *Description of Amendment:* Idaho Power Company (IPC) proposes to relocate approximately 0.65 miles of transmission lines along Warm Lake Road between State Highway 55 and Warm Lake. IPC proposes to relocate the line 13 to 21 feet due north of the existing line because Valley County is widening Warm Lake Road. All new transmission poles will be of similar height and configuration to the existing poles and will be of raptor-safe design. The relocated poles will be within the road right-of-way and will meet Valley County's requirement of being no closer than 27 feet from the planned centerline of the new road alignment.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

9a. *Type of Application:* Surrender of Exemption.

b. *Project No:* 8321–003.

c. *Date Filed:* January 18, 1994.

d. *Applicant:* Murray W. Thurston.

e. *Name of Project:* Thurston Mill Dam.

f. *Location:* On the Swift River, Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(r)

h. *Applicant Contact:* Mr. Murray W. Thurston, The J. A. Thurston Co., Inc., Hale Road, Rumford, ME 04276, (207) 364–7921.

i. *FERC Contact:* Patricia Massie, (202) 219–2681.

j. *Comment Date:* May 4, 1994.

k. *Description of Proposed Action:* The existing project, for which the exemption is being surrendered, consists of: (1) A concrete gravity dam, built in 1920; (2) a power canal with an intake gate and a fish passage; (3) a powerhouse with 3 units having a total generating capacity of 350 kilowatts; and (4) appurtenant structures. The project is financially infeasible to operate.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (May 16, 1994 for Project No. 10625–003). All reply comments must be filed with the Commission within 105 days from the date of this notice (June 29, 1994 for Project No. 10625–003).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (May 9, 1994 for Project Nos. 2323–012, 2404–017 and 2419–007). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 22, 1994 for Project No. 2323–012, and June 23, 1994 for Project Nos. 2404–017 and 2419–007).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b).

Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (May 9, 1994 for Project No. 11408–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 22, 1994 for Project No. 11408–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: March 31, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8311 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Availability of Revised Instructions, Record Formats, Software and User Manual for Certificate Applications

Issued April 1, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of availability of revised instructions, record formats, software and user manual for certificate applications.

SUMMARY: The Certificate Application instructions and record formats are being modified to provide for the revised Exhibit H—Total Gas Supply Data reporting requirement pursuant to Order No. 554, issued July 13, 1993; and to modify the pipeline construction/replacement annual report data record (CA15) to correct certain deficiencies and provide more clarity to the information reported. These modifications and revisions will assist the natural gas pipelines in complying with the electronic submission requirement for filing certificate applications, amendments, supplements and reports in accordance with Order Nos. 493 (53 FR 15025 (Apr. 27, 1988)) et al.

DATES: The revised instructions, record formats, software and user manual are available on April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Camilla Ng, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, Room 6006–F, 825 North Capitol Street, Washington, DC 20426, (202) 208–0758.

SUPPLEMENTARY INFORMATION: The general instructions, record formats, software and user manual for NATURAL GAS PIPELINE COMPANY CERTIFICATE FILINGS previously issued on April 16, 1993, are being revised as detailed in the Appendix to this notice.

Copies of the new Certificate Application (1) instructions and record formats documentation (2) software modules and (3) user manual are available on four diskettes through the Commission's duplication contractor, LaDorn System Corporation (LaDorn). The diskettes can be purchased in the following ways:

(1) By written request to the Commission, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, Attn: Mr. William McDermott, Chief, Public Reference & Files Branch. Please enclose a check, payable to LaDorn System Corporation for $7.00 per diskette ordered and $3.40 to cover postage and handling. Allow 10–14 days for processing and delivery.

(2) Directly from LaDorn System Corporation at the cashier's window in the Commission's Public Reference Room for $7.00 per diskette plus applicable sales tax, if any. The Public Reference Room is located on the third floor, 941 N. Capitol Street, NE., Washington, DC.

(3) By telephone request to LaDorn Energy Information Services at 1–800–676–FERC. Orders placed by phone will be assessed charges as follows:

(a) A $25.00 processing fee,

(b) $7.00 per diskette ordered, and

(c) Cost of shipping and handling.

(The requestor will have a choice of regular mail, 2-Day Express Mail or Federal Express).

Please contact the Commission's Public Reference & Files Maintenance Branch on (202) 208–1371 or LaDorn (1–800–676–FERC) for information and the cost of purchasing the paper version of any documents.

LaDorn System Corporation employees cannot answer questions regarding the use of the record formats and software. Any questions concerning the application of the information contained in these documents should be directed to the individual listed in the FOR FURTHER INFORMATION section of this notice.

This notice, including all of the appendices, is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600

baud dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems, please call (202) 208–2474. The notice will be available on CIPS for 30 days from the date of issuance of the notice. In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (Room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

Appendix

Summary of Revisions to the Certificate Application Electronic Filing Instructions, Software and User Manual

(This is a summary of the revisions only. Please refer to the revised record format and user manuals for the complete information.)

General Instructions

1. Deleted all references and instructions with respect to Schedule/Record CA04—Total Gas Supply, Exhibit H.
2. Revised General Instruction #3 to allow for reporting of negative numbers.
3. Deleted the last sentence in General Instruction #8.
4. Deleted the last sentence in General Instruction #24.
5. Deleted General Instruction #25 and renumbered old #26 as #25.

Record Formats

1. Modified Schedule/Record CA09 and CA10:

• Added an explanation note at the beginning of these two record formats to show the relationship of the CA09 and CA10 records. The note states "For every CA10 record there must be at least one corresponding CA09 record with the identical Project Number, Facility/Segment Number and Identification Reported Code. However, it is possible to have multiple CA09 records for each related CA10 record."

2. Modified Schedule/Record CA09:

• Item 112, Code = 6 has been deleted.
• Item 113, Code = 12, Compressor (Upgrade) has been added.
• Deleted NOTE 9a.

3. Modified Schedule/Record CA15

Changed Item 154a, Record Type:
Code = 1, detail record,
Code = 2, total record.

• Added New Item 154b, Facility Type:
Code = 1, pipeline,
Code = 2, meter,
Code = 3, tap,
Code = 4, compressor station,
Code = 5, other facility.

• Added New Item 154c, Activity:
Code = 1, construction,
Code = 2, acquisition,
Code = 3, abandonment.

• Renamed Item 154 as Item 154d, changed the name of this item to "Status & Annual Reports Filing Code", and added new codes 5 and 6 as follows:
Code = 5, § 2.55,
Code = 6, § 157.20.

• Changed character positions for reporting Items 154 through 169. Field size increased for Item 169.
• Deleted Items 161, 162 and 167 and created a new Item 161 "Number of Facilities Reported" in which users will report:
• Number of Meter Stations, when Item 154a = 1 and Item 154b = 2.
• Number of Taps, when Item 154a = 1 and Item 154b = 3.
• Number of Compressor Units, when Item 154a = 1 and Item 154b = 4.
• Number of Other Facilities, when Item 154a = 1 and Item 154b = 5.
• Modified the reporting requirement for Items 173 through 178. These fields are now only to be used for reporting information for the § 157.20 Report.
• Modified the reporting requirement for Items 179 and 180.
• Added a new Note 11 to explain the reporting requirements for items 154a through 154c for "detail project" or "total project" information provided on this record.
• Deleted the reference to § 284.11 in Note 15.
• Added new comments for reporting Abandonment Cost information in NOTE 16.

Appendix C:

1. For code 118: CA04 record reference deleted from Structured Data Record(s) column, Regulation Section code 157.14(a)(10)(i)—(vii) deleted and Exhibit H reference deleted.
2. Added new code 144 for Regulation Section 157.14(a)(10)(i),(ii)—Exhibit H.
3. Deleted code 404, regulation § 284.223(c)(1–6) for Contents of Prior Notice filings under § 284.223.

Appendix I:

1. Deleted all Hardcopy Formats which referenced the CA04 record only (Gas Supply).
2. Revised the titles for all Hardcopy Formats which referenced the CA05 record to reflect "Gas Requirements" only.
3. Revised the cost column headers for the § 284.11 Annual Cost report referenced by the CA15 record.
4. Added new column title "Other Facil." for all cost reports filed pursuant to § 2.55 and referenced by the CA15 record.

Software:

1. The Data Entry module has been modified to allow for a 'Delete' mode which allows the user to delete unwanted records in the electronic filing. Record ID and Sequence Number are required elements for referencing the specific records to be deleted.
2. In the Edit Check program, Company ID source codes have been updated to correspond to the latest available list in Appendix H.
3. The Data Entry, Edit Check, and Print programs have been modified to delete routines for processing Schedule/Record CA04.
4. The Edit and Print modules have been enhanced to provide for the printing of the output file(s) created during the execution of these modules.

[FR Doc. 94–8303 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD93–07446T Oklahoma–33]

State of Oklahoma; Amended NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 1, 1994.

Take notice that on March 25, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above referenced amended notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore and Woodford Formations, underlying a portion of Stephens County, Oklahoma, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The Commission received Oklahoma's original notice of determination on April 26, 1993. The amended notice of determination reduces the original recommended area from approximately 4,640 acres to approximately 1,920 acres. The new recommended area covers all of Section 4, the E/2 of Sections 5 and 8, the NW/4 of Section 15, the N/2 of Section 16, and the NE/4 of Section 17 in T1S, R4W, within Stephens County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8310 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP94-5-000]

Railroad Commission of Texas, Tight Formation Determination—Texas 156, Spraberry (Trend Area) Formation, FERC No. JD94-02876T; Preliminary Finding

Issued April 1, 1994.

The Railroad Commission of Texas (Texas) determined that the Spraberry (Trend Area) Formation (Spraberry Formation), underlying the Preston and Shackelford Units in portions of Midland County, Texas, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978.

For the reasons discussed below, the Commission issues this Notice of Preliminary Finding that the determination is not supported by substantial evidence.

Background

1. Texas' Determination

On February 15, 1994, the Commission received Texas' notice determining that the Spraberry Formation underlying the Preston and Shackelford Units in Midland County, Texas, qualifies as a tight formation. Parker & Parsley Development Company (Parker & Parsley) is the applicant before Texas. The recommended area is approximately 52,000 acres in size.

The record shows that the Spraberry Formation consists of three distinct productive intervals—the Upper Spraberry, Lower Spraberry, and Dean formations—and that these reservoirs have been producing oil and/or gas for more than 40 years. The record further shows that there are approximately 182 currently active wells in the Spraberry Formation within the recommended area and that at least 100 additional wells have been produced to abandonment. The record also indicates that natural fractures enhance the permeability of the formation.

Texas concluded that the Spraberry Formation meets the Commission's permeability guideline based on:

(1) Pre-stimulation pressure buildup test data from one well drilled in the recommended area, the Preston Unit Well No. 3414-A (#3414-A well);

(2) Type curve data from 22 stimulated Spraberry wells, 17 of which are located outside of the recommended area;

(3) Core tests from three wells within the recommended area; and

(4) A table from the "Atlas of Major Texas Oil Reservoirs" (1983) showing that the average permeability to oil in the Spraberry (Trend Area) formation is zero.

Texas' finding that the formation meets the Commission's oil and gas flow rate guidelines is based on pre-stimulation flow test rates from the #3414-A well, which was drilled late in 1992.

2. Regulations/Commission Precedents

To qualify a formation as a tight formation, § 271.703(c)(2)(i)(A) of the Commission's regulations requires the jurisdictional agency to determine that the expected *in situ* (matrix and natural fracture) gas permeability throughout the pay section is 0.1 millidarcy (md) or less.[1] § 271.703(c)(2)(i)(B) of the regulations requires the jurisdictional agency to show that the expected pre-stimulation stabilized natural gas flow rate, against atmospheric pressure, for wells completed for production in the formation is not expected to exceed the applicable maximum flow rate specified in the table in that section (290 Mcf per day in this case).[2] Finally, § 271.703(c)(2)(i)(C) of the regulations requires the jurisdictional agency to show that wells completed for production in the formation are not expected to produce more than five barrels of crude oil per day, prior to stimulation.[3] According to Texas, the Spraberry Formation meets these guidelines.

However, in Order No. 99, the Commission defined a tight formation as "a sedimentary layer of rock cemented together in a manner that greatly hinders the flow of gas through the rock."[4] The Commission held in a prior preliminary finding that:

The Commission established guidelines on permeability and flow rates to be used to evaluate the physical characteristics of the rock in the formation in order to show that the formation is tight, which should have been the case *prior to the onset of sustained production from the formation.* (emphasis added) Accordingly, the Commission further clarified [in Order No. 99] that the objective of the rule was to "provide incentives to develop tight formations, not to provide incentives to develop all formations with low pre-stimulation production rates."[5] As a result, the Commission did not intend to permit a formation that does not actually meet the definition of a "tight formation" to qualify based on currently low permeability and flow rate values that are merely a side effect of prior conventional levels of production."[6]

Similarly, the Commission held in another preliminary finding that the formation did not qualify as a tight formation because current-day qualifying values were the result of water influx due to sustained production, not the result of the way the rock was cemented together.[7]

Discussion

Based on a review of the current record, the records in another proceeding involving the Spraberry Formation,[8] and a study by the Texas Bureau of Economic Geology addressing the Spraberry Formation underlying the recommended area,[9] the Commission believes that the determination is not supported by substantial evidence, as explained below.

Commission review shows that the record does not reflect initial conditions (i.e., before sustained production, pressure decline, and filling of rock pore spaces with water) because virtually all of the data wells were completed in the Spraberry Formation from 1980 to 1993, long after production from the formation commenced.[10] In addition, the record does not contain substantial evidence supporting the use of oil production type curve analysis as a method to calculate effective gas permeability. First, all 22 type curve wells were analyzed with equations where current gas-oil rations were used, as well as a

[1] 18 CFR 271.703(c)(2)(i)(A) (1993).

[2] 18 CFR 271.703(c)(2)(i)(B) (1993).

[3] 18 CFR 271.703(c)(2)(i)(C) (1993).

[4] Order No. 99, FERC Statutes & Regulations, Regulations Preambles (1977-1981) ¶ 30,183 at 31,261.

[5] FERC Statutes & Regulations, Regulations Preambles (1977-1981) ¶ 30,183 at 31,276. See also Interim Rule, FERC Statutes & Regulations, Regulations Preambles (1977-1981) ¶ 30,130 at 30,906.

[6] Railroad Commission of Texas, 63 FERC ¶ 61,067 (1993). A final order affirming the tight formation determination was issued by the Commission (64 FERC ¶ 61,225) after the applicant supplemented the record with data showing that original reservoir conditions also met the Commission's guidelines.

[7] Mississippi Oil and Gas Board, 57 FERC ¶ 61,129 (1991). The Commission did not issue a final order because the applicant withdrew the application.

[8] See 64 FERC ¶ 61,004 (1993) where the Commission preliminarily found that the Spraberry Formation in the Midkiff Unit did not meet the tight formation guidelines because the record did not:

(1) Reflect natural fracture permeability;

(2) Contain gas flow rate data that was representative of initial conditions in the reservoir; and

(3) Contain substantial evidence that the formation met the oil flow rate guideline. The Commission did not issue a final order because the applicant withdrew its application. The acreage covered by the current recommendation is contiguous to the Midkiff Unit.

[9] "Heterogeneous Deep-Sea Fan Reservoirs, Shackelford and Preston Waterflood Units, Spraberry Trend, West Texas," 1988, Texas Bureau of Economic Geology.

[10] The one exception is a 1966 core permeability data well.

single current reservoir pressure of 1,000 psia and the corresponding fluid properties at that pressure.[11] Second, the oil permeabilities used in the calculations were derived by the analysis of the 22 wells' historical oil production. It is unclear how the oil permeabilities thus calculated can apply to the calculation of gas permeability prior to sustained production.

Moreover, the Commission believes that the record does not show initial conditions since waterflooding projects initiated in 1964 have affected most of the recommended area. Specifically, Commission records show that the Upper Spraberry formation in the Preston and Shackelford Units, the most productive interval of the three productive intervals, has undergone unitized waterflooding since 1964.[12] These records also show that by 1980, the waterflood front had expanded over most of the Preston and Shackelford Units and as a result, most wells were producing more than 75% water.[13]

Our review also shows that at original conditions, the Spraberry Formation was a crude oil reservoir with a solution gas drive. Such reservoirs initially have zero effective gas permeability by virtue of the fact that all the gas is dissolved in oil until reservoir pressure declines sufficiently, through sustained production, to allow free gas to form (known as the "bubble point"). Thus, it appears that gas could not flow at initial conditions because the pores of the rock were filled only with oil and water, not because of the way the rock was cemented together.

Finally, we conclude that one oil and gas flow rate data well (#3414–A), regardless of its completion date, does not constitute substantial evidence showing that the Spraberry Formation meets the flow rate guidelines in the recommended area because of the geological characteristics of the Spraberry Formation in the recommended area. Commission records show that Spraberry sediments in this area were deposited along two depositional axes running roughly north-south. The records further show that, at initial conditions, wells located along the eastern axis produced two to six times as much oil as wells located between the two axes, and that wells located along the western axis are characterized by high water production. The records also show that Spraberry reservoirs in the recommended area are highly compartmentalized due to extensive natural fracturing and complex depositional boundaries. Accordingly, we conclude that data from the #3414–A well does not provide sufficient evidence to support Texas' determination that the formation meets the oil and gas flow rate guidelines.

Our review also shows that the record does not reflect the natural fracture permeability in the formation.[14] The Commission's records clearly show that the original permeability of the formation (before sustained production and water injection) substantially exceeded 0.1 md due to the existence of interconnected, well-developed natural fractures that extend throughout the Spraberry Formation within the recommended area. The Commission's records also show that wells located parallel to the northeast trend of the fractures have substantially better reservoir permeability and flow rates than those located perpendicular to the trend. Therefore, wells draining sands that do not intersect the fracture system would be expected to reflect matrix permeability only, the pressure regime of a closed system, and low flow rates.

When a well has been cored, natural fracture permeability can only be analyzed if the core has intersected a fracture, and the well operator requests that vertical permeability be measured. Of the three core analyses in the record, only one (the Shackelford No. 138–A well) shows both horizontal (matrix) and vertical (fracture) permeability values. However, only the horizontal permeability was used by the applicant. Although the reported vertical permeabilities in the well are lower than the horizontal permeabilities in the majority of the core, the vertical permeability is listed as 55.27 md from one zone and as "TBFA" (too broken for analysis) in another zone. In addition, the record contains no evidence showing that the cored intervals in the three wells are pay zones that were completed for production.

Finally, the record includes one data well (#3414–A) where pressure buildup calculations found that each of the three producing intervals' permeability was less than 0.1 md. We acknowledge that pressure buildup test analyses usually reflect total (i.e., matrix and fracture) permeability found in a well's drainage area, and that, despite its 1992 drilling date, initial reservoir pressures in the #3414–A well appear to be as high as those found in the Spraberry Formation at original conditions. However, the record also shows that the Upper and Lower Spraberry intervals produced high volumes of water during the tests, and the record contains no evidence that any of the tested intervals was actually completed for production. Therefore, we conclude that the #3414–A well's high initial pressures and low permeability values may be the result of its location in an area of lower reservoir quality, and that the well's permeability does not reflect the formation's original permeability throughout the recommended area.

In light of the above, the Commission is issuing this preliminary finding since the record:

(1) Contains only gas permeability and hydrocarbon flow rate data that do not represent initial conditions found in the reservoir prior to sustained production, pressure decline, and water injection; and

(2) Does not reflect natural fracture permeability.

Under § 275.202 (a) of the regulations, the Commission may make a preliminary finding, before any determination becomes final, that the determination is not supported by substantial evidence in the record. Based on the foregoing facts, the Commission hereby makes a preliminary finding that Texas' determination is not supported by substantial evidence in the record upon which it was made. Texas or the applicant may, within 30 days from the date of this preliminary finding, submit written comments and request an informal conference with the Commission pursuant to § 275.202 (f) of the regulations. A final Commission order will be issued within 120 days after the issuance of this preliminary finding.

[11] The Commission also notes that the record does not show how current pressures in wells first produced from 1980 to 1988 would be the same.

[12] The records show that unitized waterflooding also began in the Lower Spraberry in 1964, but was discontinued in 1968 when it was determined that 80% of producing capacity was attributable to the Upper Spraberry and that water injection did not cause additional oil to be produced from the Lower Spraberry. None of the records reviewed shows any waterflooding operations in the Dean formation.

[13] The Commission's records do not show whether the Lower Spraberry interval also produces 75% water. However, the record contains no evidence showing that hydraulically fractured Lower Spraberry wells would not be in communication with the Upper Spraberry interval as a result of the extensive system of interconnected natural fractures throughout the Spraberry Formation, thereby allowing water encroachment.

[14] The Interim Rule issued February 20, 1980, in Docket No. RM79–76, states that matrix permeability alone "will not be sufficient to qualify a formation, because formations with very low matrix permeabilities may be economic to develop if fractures have developed naturally. Therefore, to fulfill the guideline containing the specific permeability limit, the formation's average effective or *in situ* permeability throughout the pay section must be expected to be 0.1 millidarcy, or less." FERC Statutes & Regulations, Regulations Preambles (1977–1981) ¶ 30,130 at 30,906–07

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8304 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP93–4–000 and RP94–68–000 (Not consolidated)]

Mississippi River Transmission Corp.; Informal Settlement Conference

April 1, 1994.

Take notice that an informal settlement conference will be convened in these proceedings on Tuesday, April 5, 1994, at 10 a.m., and continuing at 10 a.m. on Wednesday, April 6, 1994, and 10 a.m. on Thursday, April 7, 1994, if necessary, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to invervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood at (202) 208–2091.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8305 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–191–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

April 1, 1994.

Take notice that on March 28, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet Nos. 237D and 237E, with a proposed effective date of April 1, 1994.

National states that the proposed tariff sheets flow through to National's customers the initial direct bill proposed by Columbia Gas Transmission Corporation (Columbia) for collection of Account No. 191 transition costs from National and Columbia's other customers. National is authorized to flow through such costs pursuant to § 21.5 of its tariff and tendered its filing as a limited application pursuant to section 4 of the Natural Gas Act.

National also states that its initial share of Columbia's transition costs attributable to Columbia's balance of Account No. 191 on December 31, 1993, is $12,084.00.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before April 8, 1994. Protestants will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8307 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–106–000, et al.]

Texas Gas Transmission Corp.; Informal Settlement Conference

April 1, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 2 p.m. on April 14, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets. The conference will resume at 11 a.m. Friday, April 15, 1994, and conclude that day.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined at 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur (202) 208–1076, or Arnold H. Meltz (202) 208–2161.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8309 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–19–017]

Wyoming Interstate Co., Ltd.; Proposed Changes in FERC Gas Tariff

April 1, 1994.

Take notice that on March 28, 1994, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Original Sheet No. 5A. WIC states that the substitute tariff sheet reflects a computational correction of the tariff sheet Original Sheet No. 5A filed on March 17, 1994 and noticed by the Commission on March 21, 1994 in this docket.

WIC states that it tenders the above corrected tariff sheet pursuant to the Commission's Order dated March 2, 1994, in Docket No. RP85–39–015. The corrected filed tariff sheet reflects the monthly reservation charge credit related to excess deferred income tax (DIT). In addition, WIC's filing indicates DIT flowback amounts, including illustrative interest through March 14, 1994, due each customer for the period January 1, 1993 through February 28, 1994.

WIC states that copies of this filing were served on all participants listed on the Commission's official service list in this docket, as well as on all jurisdictional customers and interested state commissions.

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 April 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8306 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–192–000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

April 1, 1994.

Take notice that on March 30, 1994, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the

Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover stranded Account No. 858 costs (Stranded Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states that it is filing to recover Stranded Costs pursuant to section 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume 1.

Original Sheet No. 182
Original Sheet No. 183
Original Sheet No. 184
Original Sheet No. 185
Sheet Nos. 186–199

The proposed effective date of these tariff sheets is May 1, 1994.

Texas Eastern states that by this filing it seeks to recover known and measurable Stranded Costs totalling $2,649,696.51 incurred from December 1, 1993 through February 28, 1994. Interest of $32,597.28 at the current FERC annual rate of 6.00%, net of deferred income tax impact, is included for the carrying charges from the date of payment of the costs to the projected date of payment by the Customers.

Texas Eastern states that Stranded Costs shall be allocated to Texas Eastern's Customers under Rate Schedules CDS, FT–1, and SCT in accordance with the methodology specified in section 15.2(D) of the General Terms and Conditions. At each customer's individual option, payment of these Stranded Costs amounts may be amortized over as much as a twelve month period with carrying charges calculated on amounts uncollected, net of deferred taxes, pursuant to § 154.305 of the Commission's Regulations.

Texas Eastern states that if the commission approves without unacceptable modification or condition the global Settlement filed by Texas Eastern on January 31, 1994, in Docket Nos. RP85–177–119, et al., which covers, inter *alia*, recovery of stranded costs, this instant proceeding would be resolved, except with respect to Protesting Parties as defined in the Settlement. Accordingly, Texas Eastern requests that the Commission not establish any proceedings in the instant docket prior to acting on Texas Eastern's global Settlement.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 8, 1994. Protests will be considered to 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 a file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–8308 Filed 4–6–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4860–8]

Cheyenne River Sioux Tribe; Tentative Adequacy Determination of Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region 8).

ACTION: Notice of tentative determination on application of Cheyenne River Sioux Tribe for full program adequacy determination, public comment period and public hearing.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs. EPA believes that adequate authority exists under RCRA to allow Tribes to seek an adequacy determination for purposes of sections 4005 and 4010.

Cheyenne River Sioux Tribe applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Cheyenne River Sioux Tribe's MSWLF application and made a tentative determination that all portions of Cheyenne River Sioux Tribe's MSWLF permit program are adequate to ensure compliance with the revised MSWLF Criteria. Cheyenne River Sioux Tribe's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If sufficient people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the **DATES** section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **CONTACTS** section below.

DATES: All comments on Cheyenne River Sioux Tribe's application for a determination of adequacy must be received by June 1, 1994. The public hearing is tentatively scheduled for 7 p.m. to 9 p.m., June 1, 1994, at the Elderly Nutrition Center, Eagle Butte, South Dakota, 57625. Should a hearing be held, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing at the hearing on June 1, 1994. The hearing may adjourn earlier than 9 p.m. if all of the speakers deliver their comments before that hour. Representatives of the Cheyenne River Sioux Tribe will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of Cheyenne River Sioux Tribe's application for adequacy determination are available from 8 a.m. to 4 p.m. at the following addresses for inspection and copying: Cheyenne River Sioux Tribe, Environmental Protection Department, Eagle Butte, South Dakota, 57625, telephone (605) 964–6559; USEPA Region 8 Library, 999 18th Street, Denver, Colorado, 80202–2466, telephone (303) 293–1444. Written comments should be sent to Ms. Judith Wong, Mail Code 8HWM-WM, USEPA Region 8, 999 19th Street, suite 500, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Wong, Mail Code 8HWM-WM, Waste Management Branch, USEPA Region 8, 999 19th Street, suite 500, Denver, Colorado, 80202–2466, telephone (303) 293–1667.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States (and, as discussed below, allows Indian Tribes,) to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

EPA is extending to Tribes the same opportunity to apply for permit program approval as is available to States. Providing Tribes with the opportunity to apply for adequacy for purposes of adopting and implementing MSWLF permit programs is consistent with EPA's Indian Policy. This Policy, formally adopted in 1984, recognizes Tribes as the primary sovereign entities for regulating the reservation environment and commits the Agency to working with Tribes on a "government-to-government" basis to effectuate that recognition. A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to Tribal assumption of Federal environmental programs. Today's tentative determination to approve a tribal MSWLF permit program represents another facet of the Agency's continuing commitment to the implementation of this long-standing policy.

EPA's interpretation of RCRA is governed by the principles of *Chevron, USA* v *NRDC*, 467 U.S. 837 (1984). Where Congress has not explicitly stated its intent in adopting a statutory provision, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. Id. at 844. Interpreting RCRA to allow Tribes to apply for an adequacy determination satisfies the *Chevron* test.

States generally are precluded from enforcing their civil regulatory programs on Tribal lands, absent an explicit Congressional authorization or State-Tribal agreement to do so. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 216 and n.18 (1987). Yet, under the current statutory scheme, EPA generally is precluded from enforcing the MSWLF Criteria as well. Furthermore, Congress has not yet created an explicit role for Tribes to implement the subtitle D program, as it has done under most other major environmental statutes amended since 1986 (Safe Drinking Water Act, CERCLA, Clean Water Act, Clean Air Act).

RCRA does not explicitly define a role for Tribes under sections 4005 and 4010 and reflects an undeniable ambiguity in Congressional intent. Indeed, the only mention of Tribes anywhere in RCRA is in section 1004(13), a part of the "Definitions" of key terms in RCRA. Section 1004(13) defines the term "municipality" to mean:

> A city, town, borough, county, parish, district or other public body created by or pursuant to State law, with responsibility for the planning or administration or solid waste management, *or any Indian tribe or authorized tribal organization or Alaska Native village or organization[.]*

Id. (emphasis added). The term "municipality", in turn, is used in sections 4008(a)(2) and 4009(a) of RCRA with reference to the availability of certain Federal funds and technical assistance for solid waste planning and management activities by municipalities. Thus, Congress apparently intended to make explicit that Tribes could receive funds and assistance when available in the same manner as municipal governments. However, Congress did not explicitly recognize any other role for Tribes under other provisions. There is no accompanying legislative history which explains why Tribes were included in section 1004(13) and nowhere else.

EPA does not believe that Congress, by including Tribes in section 1004(13), intended to prohibit EPA from allowing Tribes to apply for an adequacy determination under subtitle D. First of all, it is clear that Tribes are not "municipalities" in the traditional sense. Tribes are not "public bodies created by or pursuant to State law." Indeed, Tribes are not subject to State law except in very limited circumstances. *Cabazon, supra*. Indian Tribes are sovereign governments whose authority is subject only to Congressional approval. *Worcester* v. *Georgia*, 31 U.S. (10 Pet.) 515 (1832). There is no indication in the legislative history that Congress intended to abrogate any sovereign Tribal authority by defining them as "municipalities" under RCRA, i.e., that Congress intended section 1004(13) to subject Tribes to State law for RCRA purposes. Moreover, it is a well-established principle of statutory construction that Federal statutes which might arguably abridge Tribal powers of self-government must be construed narrowly in favor of retaining Tribal rights. F. Cohen, Handbook of Federal Indian Law, 224 (1981); *See, e.g. Ramah Navajo School Board* v. *Bureau of Revenue, 458 U.S. 832, 846 (1982)*.

EPA believes that inclusion of Indian Tribes in section 1004(13) was a definitional expedient, to avoid having to include the phrase "and Indian tribes or tribal organizations or Alaska Native villages or organizations" wherever the term "municipality" appeared, not to change the sovereign status of Tribes for RCRA purposes. Second, given the limited number of times the term "municipality" appears in RCRA, it does not appear that Congress intended to define an all-inclusive role for Tribes for all potential statutory purposes.

The ambiguity in RCRA regarding Indian Tribes also is evident from the structure of the 1984 Amendments. As mentioned earlier, Congress expressed a strong preference for a State lead in ensuring compliance with 40 CFR part 258, in that section 4005(c) allows EPA to enforce the Criteria only after a finding of inadequacy of the State permit program. Yet, the legislative history of the 1984 Amendments does not suggest that Congress intended to authorize States to implement such programs on Tribal lands or that Congress intended to override the general legal principle that States generally are precluded from such implementation. *Cf. Washington Dept. of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985) (RCRA Subtitle C does not constitute an explicit delegation of authority to States to implement hazardous waste programs on Indian lands); *accord, Nance* v. *EPA* [1], 645 F.2d

[1] By today's action EPA does not intend to prohibit a State from applying for approval of its

Continued

701 (9th Cir. 1981). Thus, Congress has otherwise put States in a primary role for the MSWLF program, yet on Indian lands has failed to define how Tribes participate where States lack authority. EPA believes it necessary to harmonize the conflicts and resolve the ambiguities created by these provisions.

EPA concludes that interpreting sections 4005, 4008, and 4010 to allow Indian Tribes to seek an adequacy determination is reasonable. Several factors enter into this determination. First, as discussed in the previous paragraph, this approach is consistent with subtitle D because it preserves Congressional intent to limit the Federal government's role in MSWLF programs. Absent the opportunity to seek a determination of adequacy, there would be few or no adequate permit programs in place on Indian lands (because the State lacked the authority and the Tribe could not apply for program approval), requiring the Federal government to assume a substantial role in MSWLF programs by having EPA enforce 40 CFR part 258 directly.

In addition to expanding the Federal role, failure to approve Tribal programs would deny Tribes the option available to approved States of granting their MSWLF owners and operators flexibility in meeting the requirements of 40 CFR part 258. The revised Federal Criteria (40 CFR part 258) would be implemented without benefit of an EPA approved permit process and EPA would take enforcement actions as appropriate. All MSWLFs on Indian Lands, whether Tribal or private, would be in a disadvantaged position relative to other MSWLFs, being unable to take advantage of the flexibility that Congress built into Sections 4005 and 4010 and that EPA has incorporated into 40 CFR part 258. By approving Tribal permit programs, however, MSWLFs on Indian Lands would be under the jurisdiction of the closest sovereign with sufficient permitting authority, i.e. the Tribe, rather than the Federal government.

In the case of other environmental statutes (e.g., the Clean Water Act), EPA, in accord with its Indian Policy, has worked to ensure that Congress revises them at the earliest opportunity to define explicitly the role for Tribes under these programs. Yet, EPA also has stepped in on at least two occasions to allow Tribes to seek program approval despite the lack of an explicit Congressional mandate. Most recently, EPA recognized Indian Tribes as the appropriate authority under the Emergency Planning and Community Right-to-Know Act (EPCRA), despite silence on the Tribal role under EPCRA. 55 FR 30632 (1990). EPA reasoned that since EPCRA has no Federal role to backup State planning activities, failure to recognize Tribes as the authority under EPCRA would leave gaps in emergency planning on Indian lands. 54 FR 13000–13001 (1989).

EPA filled such a statutory gap much earlier as well, even before development of its formal Indian Policy. In 1974, EPA promulgated regulations which authorized Indian Tribes to redesignate the level of air quality applicable to Indian lands under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act in the same manner that States could redesignate for other lands. See *Nance* v. *EPA*, 645 F.2d 701 (9th Cir. 1981) (upholding regulations). EPA promulgated this regulation despite the fact that the Clean Air Act at that time made no reference whatsoever to Indian Tribes or their status under the Act.[2]

One Court already has recognized the reasonableness of EPA's actions in filling such regulatory gaps on Indian lands. In *Nance, supra*, the U.S. Court of Appeals for the Ninth Circuit affirmed EPA's PSD redesignation regulations described in the previous paragraph. The Court found that EPA could reasonably interpret the Clean Air Act to allow for Tribal redesignation, rather than allowing the States to exercise that authority or exempting Indian lands from the redesignation process. Id. at 713. The Court noted that EPA's rule was reasonable in light of the general existence of Tribal sovereignty over activities on Indian lands. Id. at 714.

Today's tentative determination to approve the Cheyenne River Sioux Tribe's MSWLF permit program is analogous to the rule upheld in *Nance*. EPA is proposing to fill a gap in jurisdiction on Indian lands. As with the redesignation program, without recognition of Tribal MSWLF programs, there would be no acceptable way to implement at the Federal level a key statutory provision, i.e., the MSWLF permitting process. Furthermore, the case law supporting EPA's interpretation is even stronger today than at the time of the *Nance* decision. First, the Supreme Court reaffirmed EPA's authority to develop reasonable controlling interpretations of environmental statutes. *Chevron, supra*. Second, the Supreme Court emphasized since *Nance* that Indian Tribes may regulate activities on reservations, including those of non-Indians, where the conduct directly threatens the health and safety of the Tribe or its members. *Montana* v. *United States*, 450 U.S. 544, 565 (1981).

In the case of MSWLFs, EPA believes that improperly maintained MSWLFs would not be protective of human health (including that of Tribal members) and the environment (including Indian lands). Tribes are likely to be able to assert regulatory authority over landfills on tribal lands to protect these interests. Allowing Tribes to seek adequacy would reflect general principles of Federal Indian law. Thus, as in *Nance*, EPA believes that allowing Tribes to apply for program approval reflects the sovereign authority of Tribes under Federal law.

To have its MSWLF permit program deemed adequate by EPA, a tribe must have adequate authority over the regulated activities. Indian reservations include lands owned in fee by non-Indians. The extent of Tribal authority to regulate activities by non-Indians on such land has been the subject of considerable recent discussion. The test for civil regulatory authority over nonmember lands within Indian reservations was stated in *Montana* v. *U.S.*, 450 U.S. 544, 565–66 (1981) (citations omitted):

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate * * * the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. * * * A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

In *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989), the Court applied this test. Both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land

MSWLF program extending to Indian lands. However, the State would either have to enter into an agreement with a Tribe or show the existence of specific Congressional authorization or independent civil regulatory authority to regulate these landfills. See, e.g., 53 FR 43080 (1988) (Washington application to regulate UIC wells on Indian lands).

[2] Congress ratified EPA's regulation in 1977 by explicitly authorizing Tribes to make PSD redesignations; the 1990 Amendments to the Act authorize EPA to allow Tribes to apply for approval to implement any programs EPA deems appropriate.

was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length, the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area.

Specifically, the Court recognized Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–444 (Stevens, J., writing for the Court); id. at 449–450 (Blackmun, J. concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities "would not threaten the Tribe's * * * health and welfare." Id. at 432 (White, J., writing for the Court). Given the lack of a majority rationale, the primary significance of *Brendale* is in its result, which was fully consistent with *Montana* v. *United States*.

In evaluating whether a Tribe has authority to regulate a particular activity on land owned in fee by nonmembers but located within a reservation, EPA will examine the Tribe's authority in light of the evolving case law as reflected in *Montana* and *Brendale* and applicable Federal law. The extent of such Tribal authority depends on the effect of that activity on the Tribe. As discussed above, in the absence of a contrary statutory policy, a Tribe may regulate the activities of non-Indians on fee lands within its reservation when those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the Tribe. *Montana*, 450 U.S. at 565–66. For further discussion of this issue see 56 FR 64876.

However, in *Brendale* several justices argued that for a Tribe to have "a protectable interest" in an activity, the activity's effect should be "demonstrably serious . * * *" *Brendale*, 492 U.S. at 431 (White, J.). In addition, in a more recent case involving Tribal criminal jurisdiction, a majority of the Court indicated in *dicta* that a Tribe may exercise civil authority "where the exercise of tribal authority is vital to the maintenance of tribal integrity and self-determination." *Duro* v. *Reina*, 110 S.Ct. 2053, 2061 (1990). See also *Brendale*, 492 U.S. at 450 (Blackmun, J.) (test for inherent Tribal authority whether activities "implicate a significant tribal interest"); *id.* at 462 (Blackmun, J.) (test for inherent Tribal authority whether exercise of authority is "fundamental to the political and economic security of the tribe * * *").

As discussed above, the Supreme Court, in recent cases, has explored several options to assure that the impacts upon Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis*, although to date the Court has not agreed, in a case on point, on any one reformulation of the test. In response to this uncertainty, the Agency will apply, as an interim operating principle, a formulation of the standard that will require a showing that the potential impacts of regulated activities of non-members on the Tribe are serious and substantial.

The choice of an Agency operating principle containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard per se. Moreover, as discussed below, the Agency believes that the activities regulated under the various environmental statutes generally have serious and substantial impacts on human health and welfare. As a result, the Agency believes that Tribes usually will be able to meet the Agency's operating principle, and that use of such a test by the Agency should not create an improper burden of proof on Tribes or create the administratively undesirable result of checkerboarding reservations.

Whether a Tribe has jurisdiction over activities by nonmembers will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances. Nonetheless, the Agency also may take into account the provisions of environmental statutes and any legislative findings that the effects of the activity are serious in making a generalized finding that Tribes are likely to possess sufficient inherent authority to control reservation environmental quality. See, e.g., *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 476–77 and nn.6, 7 (1987). As a result, in making the required factual findings as to the impact of a solid waste activity on a particular Tribe, it may not be necessary to develop an extensive and detailed record in each case. The Agency also may rely on its special expertise and practical experience regarding the importance of solid waste management.

The Agency believes that Congressional enactment of RCRA establishes a strong Federal interest in effective management of solid waste. EPA also notes that, where solid waste affects ground water which has pathways that allow it to migrate readily, it would be practically very difficult to separate out the effects of solid waste disposal on non-Indian fee land within a reservation from those on Tribal portions. In other words, any environmental impairment that occurs on, or as a result of, activities on non-Indian fee lands is very likely to impair Tribal lands. This also suggests that the serious and substantial effects of solid waste within the non-Indian portions of a reservation are very likely to affect Tribal health and welfare. EPA believes that a "checkerboard" system of regulation, whereby the Tribe and State split up regulation of solid waste on the Indian Lands, would exacerbate the difficulties of assuring compliance with RCRA requirements.

The Agency also believes that the effects on Tribal health and welfare necessary to support Tribal regulation of non-Indian activities on Indian Lands may be easier to establish in the context of environmental regulation than with regard to zoning, which was at issue in *Brendale*. There is a significant distinction between land use planning and environmental regulation of solid waste under RCRA. The Supreme Court has explicitly recognized such a distinction: "Land use planning in essence chooses particular uses for the land; environmental regulation does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." *California Coastal Comm'n* v. *Granite Rock Co.*, 480 U.S. 572, 587 (1987). The Court has relied on this distinction to support a finding that States retain authority to carry out environmental regulation even in cases where their ability to carry out general land use regulation is preempted by Federal law. Id. at 587–89.

Further, management of solid waste serves the purpose of protecting public health and safety, which is a core governmental function, whose exercise is critical to self-government. The special status of governmental actions to protect public health and safety is well established.[3] By contrast, the power to zone can be exercised to achieve purposes which have little or no direct nexus to public health and safety. See, e.g., *Brendale*, 492 U.S. at 420 n.5 (White, J.) (listing broad range of consequences of state zoning decision). Moreover, solid waste may affect ground water, which is mobile, freely migrating from one local jurisdiction to another, sometimes over large distances. By

[3] This special status has been reaffirmed by all nine justices in the context of Fifth Amendment takings law. See *Keystone Bituminous Coal Ass'n* v *DeBenedictis*, 480 U.S. 470, 491 n. 20 (1987); *id.* at 512 (Rehnquist, C.J., dissenting).

contrast, zoning regulates the uses of particular properties with impacts that are much more likely to be contained within a given local jurisdiction.

Operationally, EPA's generalized findings regarding the relationship of solid waste management to Tribal health and welfare will affect the legal analysis of a Tribal submission by, in effect, supplementing the factual showing a Tribe makes in applying for program approval. Thus, a Tribal submission regarding jurisdiction will need to make a relatively simple showing of facts that there is or may be solid waste within the meaning of Subtitle D on the reservation and that the Tribe or Tribal members could be subject to exposure to that waste. The Tribe also must explicitly assert that activities of non-Indians regarding that waste would have a serious and substantial effect on the health and welfare of the Tribe. Once the Tribe meets this initial burden, EPA will, in light of the facts presented by the Tribe and the generalized statutory and factual findings regarding the importance of solid waste discussed above, presume that there has been an adequate showing of Tribal jurisdiction on fee lands, unless an appropriate governmental entity (e.g., an adjacent Tribe or State) demonstrates a lack of jurisdiction on the part of the Tribe.

The Agency recognizes that jurisdictional disputes between Tribes and States can be complex and difficult and that it will, in some circumstances, be forced to address such disputes by attempting to work with the parties in a mediative fashion. However, EPA's ultimate responsibility is protection of the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection, rather than engage in confrontations over jurisdiction.

For purposes of this determination, Tribe is defined to mean any Indian tribe, band, nation, or other organized group or community which is recognized by the Secretary of the Interior or Congress and which exercises substantial governmental duties and powers over any area. While the definition of Tribes in today's determination does not explicitly include Alaska Native Villages, EPA has not determined that such entities are ineligible to apply for permit program approval. Alaska Native entities (e.g., villages) may apply for permit program approval. Alaska Native Villages that demonstrate that their permit programs meet the requirements of today's proposal will be deemed adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA is further requesting Tribes to provide a statement of legal authority from the Tribal Attorney General or its equivalent demonstrating that the Tribe has adequate jurisdiction to regulate the MSWLFs on the reservation. In addition, EPA is requesting Tribes seeking program approval to demonstrate that it:

(1) Is Federally recognized;

(2) Has a government exercising substantial duties and powers; and

(3) Is capable of administering a permit program. If the Tribe has already demonstrated to EPA that it meets the first two of these Criteria in the context of the approval to operate another EPA program, it need not do so again. EPA is also requesting Tribes to provide an explanation of the jurisdiction and responsibilities of all Tribal program implementing agencies (including any State agency acting pursuant to an agreement with the Tribe) and designation of a lead agency to facilitate communications between EPA and the Tribe. If a Tribe has already provided information and/or a legal statement on the Tribe's jurisdiction and capability to operate another EPA program, EPA requests the Tribe to provide only those additional materials necessary to support its application for MSWLF permit program approval. These requests incorporate the Criteria used in other environmental statutes to assess whether Tribes may apply for program approval.

EPA Regions will determine whether a Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Cheyenne River Sioux Tribe

On August 31, 1993, the Cheyenne River Sioux Tribe submitted an application for adequacy determination. EPA reviewed the Cheyenne River Sioux Tribe's application and tentatively determined that all portions of the Tribe's MSWLF permit program will ensure compliance with the revised Federal Criteria.

The Cheyenne River Sioux Tribe is a Federally recognized Tribe (53 FR 52830). The Tribe has a tri-partite system of government. The Tribal Council is the governing legislative body, comprised of fifteen elected representatives. The Tribe's Chairman is its chief executive officer. The Chairman and Executive Committee oversee day-to-day operations of the Tribal government departments subject to supervision and oversight by the Tribal Council. The judicial branch consists of criminal, civil, juvenile and appeals courts and operates independently of the Tribal Council and Executive branch. The Tribe's Environmental Protection Department administers the solid waste permit program.

In making today's tentative determination that the Cheyenne River Sioux Tribe's MSWLF permit program is adequate, the Agency has tentatively determined that the Tribe has adequate authority over the activities regulated by such a program. This includes adequate authority to regulate the activities of non-Indians on fee lands within the Cheyenne River Sioux Reservation. The Agency believes that the Tribe has satisfactorily demonstrated that there is or may be solid waste within the meaning of Subtitle D on the Reservation and that the Tribe or Tribal members could be subject to exposure to that waste. The Tribe has also explicitly asserted that the threat to tribal health is serious and substantial. In light of the legal argument and facts presented by the Tribe and the generalized statutory and factual findings regarding the importance of solid waste discussed above, the Agency believes, after consultation with the Department of the Interior, that the Cheyenne River Sioux Tribe has adequate authority over the activities to be regulated by the Tribe's MSWLF permit program, including the activities of non-Indians.

In its application, the Tribe has also demonstrated that it has adequate resources to manage a MSWLF permit

program and adequate authority to issue permits, ensure compliance monitoring and enforcement, and to provide for intervention in civil enforcement proceedings.

During a 30 day period starting November, 29, 1993, EPA requested comment on the Tribe's application from certain affected parties. The State of South Dakota submitted written comments.

Following review of South Dakota's comments and consultation with the Department of Interior, the Agency believes that the Cheyenne River Sioux Tribe has demonstrated adequate jurisdiction to justify the Agency in making its tentative determination that the Tribe's MSWLF permit program is adequate. In reaching this conclusion, the Agency has considered whether the risk of potential impacts on tribal health and welfare from existing or future MSWLFs on fee lands is sufficient to justify tribal regulation of MSWLFs at this time. However, as today's Agency determination is only tentative and as public comments are solicited and will be considered before any final Agency decision, the Agency will welcome any available information from public or private sources that pertain to the potential impacts of MSWLFs on tribal health or welfare.

In its comments, the State of South Dakota presented three main arguments:

(1) That the Supreme Court opinion in *Brendale* v. *Confederated Yakima Nation* precludes an assertion of tribal jurisdiction in this case,

(2) That the Supreme Court opinion in *South Dakota* v. *Bourland* reaffirms and extends the "Montana-Brendale rule," as interpreted by the State of South Dakota, and

(3) That Congress has not "expressly delegated" to any Indian tribe the power to regulate non-Indians on fee lands for purposes of the RCRA.

The Agency has analyzed the significance of *Brendale* in detail and has summarized its conclusions in the Background section above. After considering the arguments provided by the State of South Dakota and after consultation with the Department of Interior on those arguments, the Agency has concluded that its analysis of tribal jurisdiction, summarized above, is sound. Further, the Agency believes that its analysis is not changed by the Supreme Court's opinion in *Bourland*. Lastly, with regard to Congressional delegation of regulatory power to Indian Tribes, the Agency's does not believe that a finding of such delegation is necessary to today's tentative determination.

The Cheyenne River Sioux Tribe's MSWLF permit program, and the Agency's tentative determination of adequacy, extend to all Indian Country, defined in 18 U.S.C. section 1151, under the Tribe's control. This includes all lands within the exterior boundaries of the Cheyenne River Sioux Reservation and trust lands located outside the Reservation boundaries.

The public may submit written comments on EPA's tentative determination until June 1, 1994. Copies of the Cheyenne River Sioux Tribe's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF permit program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact within 30 days of the publication of this notice, the Region will hold a hearing on June 1, 1994, at the Elderly Nutrition Center, Eagle Butte, South Dakota, 57625.

EPA will consider all public comments on its tentative determination received during the public comment period or any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for the Cheyenne River Sioux Tribe's program. EPA will make a final determination on whether or not to approve the Cheyenne River Sioux Tribe's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF Criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that approval of the Tribal MSWLF permit program will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, 6949a.

Dated: March 31, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–8358 Filed 4–6–94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–4860–7]

South Dakota; Tentative Determination of Adequacy of State's Municipal Solid Waste Permit Program over Non-Indian Lands for the Former Lands of the Yankton Sioux, Lake Traverse (Sisseton-Wahpeton) and Parts of the Rosebud Indian Reservations

AGENCY: Environmental Protection Agency (Region 8).

ACTION: Notice of tentative determination on application of the State of South Dakota for program adequacy determination, public comment period and public hearing.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve

adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

The State of South Dakota applied for a determination of adequacy under section 4005 of RCRA for jurisdiction over non-Indian lands for the former lands of the Yankton Sioux Reservation, Lake Traverse (Sisseton-Wahpeton) Reservation and parts of the Rosebud Indian Reservation lying within Gregory, Tripp, Lyman and Mellette Counties. EPA has reviewed South Dakota's application and has made a tentative determination that the South Dakota application is adequate for all lands, *other than Indian Country as defined in 18 U.S.C. section 1151*, located in the following areas:

(1) Former lands of the Lake Traverse Indian Reservation of the Sisseton-Wahpeton Sioux Tribe;

(2) Former lands of the Yankton Sioux Reservation; and

(3) Former lands of the Rosebud Sioux Reservation, lying within Gregory, Tripp, Lyman and Mellette Counties.

South Dakota's application for program adequacy determination and the Tribal comments received in regard to that application are available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on South Dakota's application for a determination of adequacy must be received by the close of business on June 2, 1994. The public hearing is tentatively scheduled for 1 p.m. to 3 p.m., June 2, 1994, at the South Dakota Department of Environment and Natural Resources, 523 East Capitol, Floyd Matthews Training Center, Pierre, South Dakota, 57501. Should a hearing be held, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing by close of business on June 2, 1994. The hearing may adjourn earlier than 3 p.m. if all of the speakers deliver their comments before that hour. South Dakota will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of South Dakota's application for adequacy determination are available from 8 a.m. to 4 p.m. at the following addresses for inspection and copying: South Dakota Department of Environment and Natural Resources, Office of Waste Management, Foss Building, 523 East Capitol, Pierre, South Dakota, 57501; and USEPA Region 8 Library, 999 18th Street, First Floor, Denver, Colorado, 80202–2466, telephone (303) 293–1444. Written comments should be sent to Ms. Judith Wong, Mail Code 8HWM-WM, USEPA Region 8, 999 18th Street, suite 500, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Judith Wong, Mail Code 8HWM-WM, Waste Management Branch, USEPA Region 8, 999 18th Street, Denver, Colorado, 80202–2466, telephone (303) 293–1667.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On April 29, 1993, South Dakota submitted an application for adequacy determination for the State's municipal solid waste landfill permit program. On October 8, 1993 (58 FR 52486), EPA determined that South Dakota's application for adequacy determination met all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota was granted a determination of adequacy for all portions of its municipal solid waste landfill permit program. However, EPA's decision to approve the South Dakota MSWLF permitting program did not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State of South Dakota:

1. Cheyenne River;
2. Crow Creek;
3. Flandreau;
4. Lower Brule;

5. Pine Ridge;
6. Rosebud;
7. Sisseton;
8. Standing Rock; and
9. Yankton.

Before EPA would be able to approve the State of South Dakota MSWLF permit program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA had reason to believe that disagreement exists with regard to the State's jurisdiction over "Indian Country," and EPA was not satisfied that South Dakota had, at that time, made the requisite showing of its authority with respect to such lands.

B. State of South Dakota's Application Concerning Former Lands of the Yankton Sioux, Sisseton-Wahpeton and Parts of the Rosebud Indian Reservations

On October 8, 1993, the State of South Dakota submitted an application amendment to EPA for approval of its solid waste permit program "for regulation of solid waste activities on non-Indian lands for the former lands of the Yankton Sioux, Sisseton and parts of the Rosebud Indian Reservations." During a 30 day period, starting November 29, 1993, EPA requested comment on the State's application from certain affected parties. Cheyenne River Sioux, Sisseton-Wahpeton Sioux, Yankton Sioux and Rosebud Sioux Tribes submitted written comments on the State's assertion of jurisdiction.

The Sisseton-Wahpeton Dakota Nation responded to the application of the State of South Dakota, expressing concern regarding issuance of a permit to Roberts County (South Dakota) for a new sanitary landfill and gave notice of the Tribe's intent to develop its capacity to manage its natural resources and enforce its codes within the original 1867 boundaries of the Lake Traverse Reservation. All permits issued under a program determined by EPA to be adequate must meet minimum Federal standards, including a permit to Roberts County for a new sanitary landfill. The Tribe's intentions with regard to activities within the original boundaries of the Lake Traverse Reservation are duly noted, but the Tribe's authority to take such actions is not before EPA for decision at this time.

On review of the arguments presented and following consultation with the Department of the Interior, EPA believes that the State of South Dakota has sufficiently demonstrated that the former Lake Traverse reservation was disestablished by Act of Congress (26 Stat. 1039), as decided by the U.S. Supreme Court in *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975).

The Yankton Sioux Tribe argued that the Act of August 15, 1894 (28 Stat. 286, 314) did not expressly disestablish the Yankton Sioux Reservation and that the Federal Court opinions relating to the issue are not controlling. On review of the arguments and consultation with the Department of the Interior, EPA believes that the State of South Dakota has sufficiently demonstrated that the Yankton Sioux Reservation was disestablished by the Act of 1894. See *Weddell* v. *Meierhenry*, 636 F.2d 211 (8th Cir. 1980).

The Rosebud Sioux Tribe argued that the Tribal Constitution asserts jurisdiction over all "territory within the original confines of the Rosebud Indian Reservation" and that *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977) upheld tribal regulatory jurisdiction over all lands within Todd Country and on trust lands outside. The Agency does not today comment on the potential extent of tribal jurisdiction, but is only concerned with the extent of jurisdiction of the State of South Dakota. On review of the arguments and consultation with the Department of the Interior, EPA believes that the State of South Dakota has sufficiently demonstrated that the Rosebud Sioux Reservation was diminished by three Acts of Congress (33 Stat. 254; 34 Stat. 1230; and 36 Stat. 448) to exclude from the Reservation all lands *other than Indian Country* lying within Gregory, Tripp, Lyman and Mellette Counties. See *Rosebud Sioux Tribe* v. *Kneip*.

Accordingly, the Agency is making a tentative determination that the South Dakota program is adequate under section 4005 of RCRA for the disestablished areas within the former boundaries of the Lake Traverse and Yankton Reservations and the diminished portions of the Rosebud Sioux Reservation lying within Gregory, Tripp, Lyman and Mellette Counties. This tentative determination of adequacy does not extend to Indian Country presently located within these disestablished and diminished areas.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact within 30 days of the publication of this notice, the Region will hold a hearing on June 2, 1994, 1 p.m. to 3 p.m. at the South Dakota Department of Environment and Natural Resources, 523 East Capitol, Floyd Matthews Training Center, Pierre, South Dakota, 57501.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for State of South Dakota's program. EPA will make a final decision on whether or not to approve South Dakota's program and give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945 and 6949(a).

Dated: March 31, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–8354 Filed 4–6–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Program Announcement No. 93612–944

Administration for Native Americans: Availability of Financial Assistance for Improving the Capability of Indian Tribal Governments To Regulate Environmental Quality

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance for American Indian Tribes for environmental regulatory enhancement projects.

SUMMARY: The Administration for Native Americans (ANA) announces the availability of fiscal year 1994 funds for environmental regulatory enhancement projects. Financial assistance provided by ANA is designed to assist tribes advance their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

DATES: The closing date for submission of applications is June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Rita LeBeau (202–690–5790) or Richard Longmire (202–690–6265), Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., 349F, Washington, DC 20201–0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The purpose of this program announcement is to announce the availability of Fiscal Year 1994 financial assistance to promote the goal of environmental regulatory enhancement for American Indians and Alaska Natives through the planning, development and implementation of projects that advance tribal capacity to perform environmental regulatory functions. Funds will be awarded under section 803(d) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 et seq.

The Congress has enacted statutes for the purpose of protecting the environment. Several of these statutes provide a role for Indian tribes. In addition, tribes may also regulate the environment pursuant to their own laws.

Despite this increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes. Some of the critical issues identified by tribes before congressional committees include: the need for assistance to train professional staff to monitor and enforce tribal environmental programs; the lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and the resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality. As a result, Congress enacted Public Law 101–408 to strengthen tribal governments through building capacity within the tribes to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that acknowledges tribal sovereignty and is consistent with tribal culture.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

Background

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions. Other functions leading toward enhancing local regulatory capacity include, but are not limited to: environmental assessments, development and use of environmental laboratories, and development of court systems for enforcement of tribal and Federal environmental laws. Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

The Administration for Native Americans bases its policies on three interrelated goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources, including environmental resources.

(2) *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being, consistent with environmental protection.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs (including pollution prevention activities) which safeguard the health and well-being of people and the tribal environment, provide support services and training so people can work and which are essential to a thriving and self-sufficient community.

To achieve these goals, ANA supports tribal and village governments, and other Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS)—strategies that promote the goal of self-sufficiency in local communities. These basic ANA goals also form the basis for this environmental program.

The SEDS policy supports ANA's goals and is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community

makes local self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

(2) Economics, governance, and social development are interrelated. Development in one area should be balanced with development in the others in order to move toward self-sufficiency. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures (including those for environmental protection) needed to promote self-sufficient communities.

The principles of the SEDS approach discussed above assume these definitions of important terms linked to the SEDS process:

• *"Governmental infrastructure"* includes the constitutional, legal, and administrative development requisite for independent governance.

• *"Economic infrastructure"* includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.

• *"Social infrastructure"* includes those components through which health of the people and the environment and economic well-being are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local strategy is developed as part of the application for project funding. Without a careful balance between governmental, economic and social development infrastructures, a community's development efforts could be jeopardized. The recently added emphasis on environmental concerns (Pub. L. 103–139 and Pub. L. 101–408) does not in any way negate the SEDS approach but requires the enrichment of each dimension of SEDS. For example, expansion of social services, without providing opportunities for employment, economic development and environmental protection, could lead to dependency on social services. Conversely, inadequate social support services and training could seriously impede productivity and local economic development and environmental protection. Additionally, infrastructures must be developed or expanded at the tribal or village level to support social and economic development and growth with proper consideration of their impacts on the environment.

B. Proposed Projects To Be Funded

1. General Considerations

The Administration for Native Americans assists eligible applicants (see section C below) in undertaking one-to-three year development projects that are a part of long-range comprehensive plans to move toward environmental regulatory enhancement and be interrelated with a community's social and economic development plans.

Applicants must also propose a concrete, locally determined strategy to carry out the project's goals, objectives, and work plans. Local long-range planning must consider the maximum use of all available resources, how these resources will be directed toward planning and development opportunities, and present a strategy for overcoming the local issues that hinder environmental regulatory enhancement.

The Administration for Native Americans encourages applicants to design project strategies to achieve their specific environmental regulatory enhancement goals and to use available human, natural, financial, and physical resources to which the applicant has access.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that *are* funded with ANA grant funds.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

2. Activities That Cannot Be Funded by ANA

The Administration for Native Americans does not fund programs which operate indefinitely or require ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. "Core administration" is defined as funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are therefore grant eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

C. Eligible Applicants

1. Who Is Eligible To Apply?

The following organizations are eligible to apply:

• Federally recognized Indian tribes as listed in the **Federal Register** Notice dated October 21, 1993;

• Incorporated non-Federally and state recognized Indian tribes;

• Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Nonprofit Alaska Native Regional Corporations and/or associations with village specific projects;

• Other tribal or village organizations or consortia of Indian tribes.

2. Who Is Not Eligible?

The following organizations are not eligible to apply:

• Urban Indian Centers;

• Incorporated nonprofit multi-purpose community-based Indian organizations;

• Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, Palau, or the Commonwealth of Northern Mariana Islands;

• Incorporated nonprofit Alaska Native multi-purpose community based organizations;

• National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

D. Available Funds

Approximately $3 million of Fiscal Year 1994 funds were appropriated and are available to support this regulatory enhancement effort. ANA expects to award approximately 35 grants in amounts up to $250,000 per budget period.

Each tribe, Native American organization, or other eligible applicant

can receive only *one* grant award under this announcement. The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application. Applicants who have current ANA SEDS grants are eligible to apply for funds under this program announcement.

E. Multi-Year Projects

This announcement is soliciting applications for project periods up to three years. Awards on a competitive basis, will be for a one-year budget period, although project periods may be for up to three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three year project period, will be entertained in subsequent years on a non-competitive basis subject to availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government. A multi-year project *cannot* be a series of unrelated objectives with activities presented in chronological order over a two or three period. Timely submission of objective progress reports on work under a grant is essential to continued funding of that grant.

Applicants may apply for projects of up to 36 months duration. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project *cannot* be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

The budget period for each multi-year project grant is 12 months. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project, according to the approved Objective Work Plan (OWP), the availability of Federal funds, and compliance with the applicable statutory, regulatory and grant requirements, including timely submission of objective progress reports (OPRs).

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or through the provision of in-kind property or services, but only to the extent that cash or property is from any source (including any Federal agency) other than a program, contract or grant authorized under the Native American Programs Act of 1974, as amended. Therefore, a project requesting $300,000 in Federal funds (based on an award of $100,000 per budget period for three years), must include a match of at least $75,000 (20% of the total project costs). An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: Rita LeBeau, Phone: (202) 690–5790.

2. Application Submission

One signed original, and two copies of the grant application, including all attachments, must be hand delivered or postmarked by the closing date to: Department of Health and Human Services, Administration for Children and Families, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The application must be signed by an individual authorized (1) to act for the applicant, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including statutory and regulatory requirements.

3. Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken on each grant application received under this program announcement. The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section I below). An independent review panel consisting of reviewers familiar with American Indian Tribes, tribal communities and organizations, and environmental issues evaluates each application against the published criteria in this announcement. The review will result in a numerical score attributed to each application. The results of this review assist the Commissioner in making final funding decisions.
- The Commissioner's funding decision also takes into account the analysis of the application, and recommendations and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

1. Initial Application Review

Timely applications submitted under this program announcement will undergo a pre-review to determine that:

• The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and

• The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit.)

2. Determination of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. Section 810(b) [42 U.S.C. 2991h] of the Native American Programs Act Amendments provides for an appeals process when ANA determines that an organization or activities are ineligible for assistance. Section 810(b) [42 U.S.C. 2991h] provides that if an application is rejected on the grounds that the applicant is ineligible or that activities proposed by the applicant are ineligible for funding, the applicant may appeal to the Secretary, not later than 30 days after the date of receipt of notification of such rejection, for a review of the grounds for such rejection. On appeal, if the Secretary finds that an applicant is eligible or that its proposed activities are eligible, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration.

3. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the five evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

The five programmatic and management criteria are closely related to each other. They are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) Long-Range Goals and Available Resources (15 Points)

(a) The application explains how the specific environmental regulatory enhancement goal relates to the proposed project. The description includes local objectives related to the program purpose of this announcement. The discussion should highlight specific environmental regulatory needs and explain how the community intends to achieve the goal. It documents the type of involvement and support of the community in the planning and implementation of the project. The application has a clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project, are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is not considered a binding commitment of outside resources.

(2) Organizational Capabilities and Qualifications (15 Points)

(a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the staff and consultants that it has agreed to hire should contain the required experience and capability. The applicant should clearly describe any previous or current activities of all participants in support of environmental regulatory enhancement.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) Project Objectives, Approach and Activities (40 Points)

The application proposes specific project objective work plans with activities related to the environmental regulatory enhancement strategy and the overall long-term goals. The objective work plan(s) in the application include(s) project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

• Are measurable and/or quantifiable in terms of results or outcomes;

• Are based on the fully described and locally determined strategy narrative for environmental regulatory enhancement;

• Clearly relate to the community's long-range environmental goals which the project addresses;

• Can be accomplished with the available or expected resources during the proposed project period;

• Indicate when the objective, and major activities under each objective, will be accomplished;

• Specify who will conduct the activities under each objective; and,

• Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 Points)

The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the community meet its environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget (10 Points)

There is a detailed budget with comprehensive narrative provided for each budget period requested. The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

J. Guidance to Applicants

The following is provided to assist applicants in developing a competitive application.

1. Program Guidance

• The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's environmental regulatory enhancement goals. The Administration for Native Americans does not fund on the basis of need alone.

• In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning environmental issues and/or progress to date, as well as the size of the population to be served.

• An application should describe a clear relationship between the proposed project and the community's long-range environmental goals or plan.

• The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and its positive or continuing impact on the community.

• Supporting documentation or other testimonies from interested parties other than the applicant should be included to provide support for the feasibility and the commitment of other resources to implement or conduct the proposed project.

• In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

• ANA defines "environmental regulatory enhancement" as encompassing (but not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

2. Technical Guidance

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for environmental regulatory enhancement projects.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• There is no maximum or minimum amount of Federal funds that may be requested.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date.

• The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from a Federally recognized tribe or an organization serving members of a Federally recognized tribe must be from the governing body of the tribe.

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans recommends that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. If the application narrative and Form 424 propose different project periods, ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

3. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Projects that request funds for feasibility studies, plans, or written materials, such as manuals, that are not an essential part of the applicant's environmental regulatory enhancement strategy. The Administration for Native Americans is not interested in funding 'wish lists.' The Administration for Native Americans expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to proposed projects.

• Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions.

• Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. In situations where both consortia of tribes and individual consortia tribal members receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates what their member tribes are doing.

• Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• The purchase of real estate (see 45 CFR 1336.50 (e)) or construction.

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approvable application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing date for applications submitted in response to this program announcement is June 17, 1994.

M. Receipt of Applications

Applications must either be hand delivered, or postmarked by the closing date, to the address in Section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines. Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either: (1) Received on or before the deadline date at the address specified in Section H, Application Submission, or (2) postmarked by the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612)

Dated: January 24, 1994.

Dominic Mastrapasqua,

(Acting) Commissioner, Administration for Native Americans.

[FR Doc. 94–8273 Filed 4–6–94; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 93N–0195]

Fish and Fishery Products Hazards and Controls Guide; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 31, 1994, the comment period on a notice that appeared in the in the **Federal Register** of March 18, 1994 (59 FR 12949). The document announced the availability of a draft guidance document entitled "Fish and Fishery Products Hazards and Controls Guide." In response to several requests, FDA is publishing a document elsewhere in this issue of the **Federal Register** to extend the comment period on the proposal to adopt regulations to ensure the safe processing and importing of fish and fishery products, including procedures for the monitoring of selected process in accordance with Hazard Analysis Critical Control Point (HACCP) principles (59 FR 4142, January 28, 1994). Because the Fish and Fishery Products Hazards and Control Guide was developed to serve as an adjunct to the proposal, the agency believes that it would be appropriate also to extend the comment period on it.

DATES: Written comments by May 31, 1994.

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

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 18, 1994 (59 FR 12949), FDA issued a notice of availability for a draft guidance document, the "Fish and Fishery Products Hazards and Controls Guide" (hereafter referred to as the Guide). FDA has prepared this document as an adjunct to proposed regulations on the safe processing and importing of fish and fishery products.

The proposed regulations include procedures for the monitoring of selected processes in accordance with Hazard Analysis Critical Control Point (HACCP) principles. HACCP is a preventive system of hazard control that can be used by food processors and importers.

The agency anticipates that the Guide will help members of the seafood industry identify and control hazards associated with the fish and fishery products they process and import. The Guide consists largely of an inventory of known likely hazards and descriptions of control measures that can be taken to minimize or prevent the occurrence of those hazards. It includes a considerable amount of detail that, to the best of FDA's knowledge, is either new or has never been compiled in this manner before. For these reasons FDA believes

that public comment on the Guide would be extremely useful.

The notice of availability for the Guide stated that comments were due by April 28, 1994. Although many copies of the Guide had been distributed at public meetings and through other means before the publication of the notice of availability, FDA is concerned that the time between the publication of that notice and the end of the comment period is not sufficient.

FDA has concluded that it is in the public interest to allow an additional 30 days for comment. FDA considers that this amount of time should be more than ample for interested persons to complete and submit their comments.

FDA also believes that the reasons for extending the comment period on the proposed rule apply to the Guide as well. Elsewhere in this issue of the **Federal Register**, FDA is extending the comment period on the proposed rule until May 31, 1994, based on several requests for an extension.

Interested persons may, on or before May 31, 1994, submit to the Dockets Management Branch (address above) written comments regarding the Guide. 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 the heading of this document. Received comments may be seen in the office above between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 1, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–8267 Filed 4–6–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP for Research Project Grant Application(s) (RO1).

Dates of Meeting: April 14–15, 1994.

Time of Meeting: 8 p.m.

Place of Meeting: Bethesda Holiday Inn, Bethesda, Maryland.

Agenda: To evaluate and review grant application(s).

Contact Person: Robin Hill, Ph.D., 7550 Wisconsin Avenue, room 216, Bethesda, Maryland 20892, (301) 496–9380.

This notice is being published later than the fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 31, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–8299 Filed 4–6–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–03–4191–03]

Zortman Mine Expansion Project, Phillips County, Montana; Supplement to the Notice of Intent

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Supplement to the notice of intent to prepare an environmental impact statement (EIS) for the proposed Zortman Mine Expansion Project in Phillips County, Montana.

SUMMARY: This notice supplements the "Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed Zortman Mine Expansion Project, Montana" that the Bureau of Land Management published in the **Federal Register**, Volume 57, No. 230, page 56588, November 30, 1992.

This supplement notes that the scope of the Zortman Mine Expansion EIS is expanded to also include long-term mining and reclamation practices for the Landusky Mine to correct existing problems identified with acid rock drainage. The Landusky Mine is located approximately two miles west of the Zortman Mine and is also operated by Zortman Mining, Inc. The Landusky Mine is located in southwestern Phillips County about 50 miles south of Malta, Montana, near the southern boundary of the Fort Belknap Indian Reservation. Existing mine facilities include seven leach pads, four waste rock dumps, three open pit mining areas, a processing plant and associated infrastructure covering approximately 815 acres. The resulting combined Zortman-Landusky EIS will provide a comprehensive impacts analysis for deciding on future mine expansion and reclamation requirements at both operations.

DATES: Comments on the change in scope for the Zortman Mine Expansion EIS will be most helpful if received by May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Haight, BLM Project Coordinator, Airport Road, P.O. Box 1160, Lewistown, Montana 59457–1160, (406) 538–7461.

David L. Mari,

District Manager.

[FR Doc. 94–8337 Filed 4–6–94; 8:45 am]

BILLING CODE 4310–DN–M

[AK–060–4230–03; FF–91037]

Realty Action: Recreation and Public Purpose (R&PP) Act Classification; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands have been examined and found suitable for classification for lease to the University of Alaska Fairbanks, Institute of Arctic Biology for the use as a research facility under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 et seq.).

T. 9 S., R. 11 E., Umiat Meridian
Sections 29 and 32, partial
Containing 26.84 acres more or less.

The lands are not needed for Federal purposes. Lease of these lands is consistent with current land use planning for the area and would be in the public interest.

The lease, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purpose Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the

right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Arctic District Office, 1150 University Avenue, Fairbanks, Alaska, 99709.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purpose Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease or classification of the lands to the District Manager, Arctic District Office, 1150 University Avenue, Fairbanks, Alaska 99709.

Classification comments: Interested parties may submit comments involving the suitability of the land for a research facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a research facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of the publication of this notice in the **Federal Register**.

Dated: March 25, 1994.

Dee R. Ritchie,

Arctic District Manager.

[FR Doc. 94–8288 Filed 4–6–94; 8:45 am]

BILLING CODE 4310–JA–M

[ID–942–04–321A–02]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 1, 1994.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and meanders of the right and left banks of the Salmon River, the subdivision of section 7, and the survey of the meanders of the left bank of the Salmon River, Township 20 South, Range 22 East, Boise Meridian, Idaho, Group No. 811, Idaho, was accepted July 23, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 1, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–8336 Filed 4–6–94; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–788134

Applicant: Alvaro Morales, Denver, CO.

The applicant requests a permit to collect 7 young female and 5 adult male Devils Hole pupfish (*Cyprinodon diabolis*) from refugium at Ash Meadows National Wildlife Refuge, Nye County, Nevada, for the purpose of enhancement of propagation and survival through captive-breeding research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 1, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–8272 Filed 4–6–94; 8:45 am]

BILLING CODE 4310–55–P

Aquatic Nuisance Species Task Force; Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. A number of subjects will be discussed during the meeting including: Ballast water management activities/initiatives (including recent legislation); reauthorization of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; the recent International Maritime Organization meeting in London, England; the status of the Intentional Introductions Policy Review Report to Congress and the ANS Program; and upcoming events.

DATES: The ANS Task Force will meet from 9 a.m. to 1 p.m. on Thursday, April 28, 1994.

ADDRESSES: The ANS Task Force meeting will be held at the U.S. Fish and Wildlife Building, room 200, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, ANS Task Force Coordinator, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203 at (703) 358–1718.

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 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 will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: March 31, 1994.

Noreen Clough,

Acting Assistant Director, Fisheries, Acting Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 94–8276 Filed 4–6–94; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Section 5(b) Application No. 2]

Western Railroads Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Withdrawal of section 5(b) agreement.

SUMMARY: The Executive Committee of the Western Railroad Traffic Association (WRTA), by letter filed March 10, 1994, has asked to be allowed to withdraw and cancel the WRTA section 5(b) authority on file at the Commission. The Committee indicates that WRTA no longer conducts any of the discussions or joint voting covered by 49 U.S.C. 10706. The Committee states that WRTA "does not conduct any discussion related to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classification, divisions or rules related to them or procedures for joint consideration, initiation, or establishment of them under the agreement approved in section 5(b) Application No. 2, Western Railroads Agreement." WRTA added that, "[F]or the future, the Organization will exist solely for compilation, publication and other distribution of rates as provided for in section 10706(a)(4) Paragraph 4."

DATES: Anyone who has comments on this filing should submit them May 9, 1994 under "Section 5(b) Application No. 2 Western Railroads—Agreement."

ADDRESSES: Send comments referring to section 5(b) Application No. 2, Western Railroads—Agreement to Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Tom Yates (202) 927–5296. [TDD for hearing impaired: (202) 927–5721.]

Decided: April 1, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8351 Filed 4–6–94; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 290 (Sub No. 4)]

Railroad Cost Recovery Procedures-Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Continuance of advance notice of rail productivity growth estimate.

SUMMARY: In Productivity Adjustment-Implementation, 9 I.C.C.2d 1072 (1993), the Interstate Commerce Commission (ICC) prescribed the use of a 5-year moving average for measuring changes in railroad productivity used in calculating the Rail Cost Adjustment Factor (RCAF). Annually this method produces a productivity growth estimate from an output/input index. The annual estimates are used, in turn, to generate a geometric mean over a moving five year time span. The resulting mean productivity factor is then used to adjust the RCAF. Thus, the RCAF (adjusted) (to reflect changes in productivity) is the product of both the productivity factor and the quarterly output/input index. Railroad rates linked to the RCAF cannot exceed the level of the RCAF (adjusted) in a given quarter if they are to retain their statutory immunity to challenge.

EFFECTIVE DATE: This decision will be effective on April 5, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer E. Gladieux or (202) 927–6219 Thomas A. Schmitz (202) 927–5720; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: In disseminating the annual productivity growth estimate and the new 5-year average, the ICC has traditionally published its calculations in a separate Ex Parte No. 290 (Sub-No. 4) decision in advance of the effective date. In a decision served in this docket on December 3, 1993, we proposed to eliminate that notice and requested comments on its elimination would be detrimental to the rail cost adjustment process.

Our proposal to streamline the process by eliminating an administrative step has been opposed by the parties. Concern over mathematical errors appears to be the major issue of commentors. The Western Coal Traffic League (WCTL) wishes to continue reviewing and verifying the productivity factor in advance of its effectiveness.

Additionally, both the Association of American Railroads (AAR) and WCTL urge the Commission to continue advance publication of the productivity growth estimate and the new 5-year average. In their view, this procedure encourages public dissemination and review of these calculations, thereby affording interested parties an opportunity to verify the data inputs and to detect computational problems before the productivity adjustments is applied to the RCAF. Both contend the burden is minimal, and the current advance notice procedure prevents major expenditures to correct the RCAF if the preliminary calculations require modification.

After consideration of the comments, we will continue to give timely advance notice of the yearly productivity estimate in this proceeding which will be published in the **Federal Register** no later than November 15 in the year preceding its effective date. This will give the public ample time to review the calculations before the effective date.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: March 29, 1994.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8350 Filed 4–6–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub-No. 1138X)]

Consolidated Rail Corp.—Abandonment Exemption—in Lake County, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately a 0.71-mile line of railroad known as the Whiting Industrial Track, from approximately milepost 448.89± to approximately milepost 449.60±, in East Chicago, Lake County, IN.

Conrail has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 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 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.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 18, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 27, 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 applicant's representative: Robert S. Natalini, Two Commerce Square, 2001 Market St., P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 12, 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 31, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8352 Filed 4–6–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joseph Paul Mikalonis, M.D.; Denial of Application

On January 28, 1994, the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph Paul Mikalonis, M.D. (Respondent), of South Boston, Massachusetts, proposing to deny his pending application for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f). The proposed action was based on Respondent's material falsification of his application for a DEA Certificate of Registration submitted on July 20, 1992. In addition, the Order to Show Cause alleged that Respondent issued anorectic controlled substances as appetite suppressants, in violation of applicable state law.

The Order to Show Cause was sent to Respondent by registered mail. More than thirty days have passed since the Order to Show Cause was received by Respondent and the DEA has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Respondent is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that Respondent submitted an application for a DEA Certificate of Registration on July 20, 1992. Respondent indicated on such application that he had never surrendered a DEA Certificate of Registration for cause, when in fact, he had voluntarily surrendered his prior DEA Certificate of Registration, AM1950371, for cause, on May 20, 1992.

Between December 1991 and May 1992, Respondent also issued numerous prescriptions for anorectic controlled substances for purposes of weight reduction. Under the laws of the Commonwealth of Massachusetts, a physician is prohibited from prescribing anorectic controlled substances for these purposes. Although Respondent eventually admitted that the prescriptions were issued for the purpose of appetite suppression, the prescriptions themselves indicated that they were issued for other medical reasons.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "(i)n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

In determining whether a registration would be inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, 53 FR 5326 (1988).

In this proceeding factors two, four and five apply. Factors two and four apply because Respondent prescribed numerous anorectic controlled substances to patients for weight reduction in violation of state law. Furthermore, Respondent issued these prescriptions under false pretenses by indicating on the prescriptions that they were issued for medical treatment other than weight reduction. Factor five is established based upon Respondent's material falsification of his application for a DEA Certificate of Registration, dated July 20, 1992.

No evidence of explanation or mitigating circumstances has been offered by Respondent. Therefore, the Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application executed by Joseph Paul Mikalonis, M.D., on July 20, 1992, for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective April 7, 1994.

Dated: March 31, 1994.

Thomas A. Constantine,

Administrator.

[FR Doc. 94–8287 Filed 4–6–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; North American Agreement on Labor Cooperation; Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines

AGENCY: Office of the Secretary, Labor.

ACTION: Revised notice of establishment and procedural guidelines.

SUMMARY: This revised notice announces certain modifications to the notice of establishment of the U.S. National Administrative Office (Office), published in the **Federal Register** on December 30, 1993, and sets out procedural guidelines pertaining to the public submission, review, and reporting process utilized by the Office. The Office was established on January 1, 1994.

The revised notice also affirms that the Office will conduct its activities in accordance with the cooperative principles upon which the North American Agreement on Labor Cooperation (Agreement) is based and provides for the office's significant role in the development and implementation of the cooperative activities envisioned by the Parties to the Agreement. Finally, the revised notice sets out procedures for inspection of public information and designation and treatment of information submitted in confidence.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew Samet, Associate Deputy Under Secretary, Bureau of International Labor Affairs, Department of Labor, 200 Constitution Avenue, NW., room S-2235, Washington, DC 20210. Telephone: (202) 219-6043 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Agreement was signed by the Presidents of the United States of America and of the United Mexican States and the Prime Minister of Canada on September 8, 9, 12, and 14, 1993. On January 1, 1994 the Governments of the countries exchanged notes providing for the entry into force of the Agreement. See section 101(b)(2) of Public Law 103-182, the North American Free Trade Agreement Implementation Act.

Article 15(1) of the Agreement requires each Party to establish a National Administrative Office at the federal government level and notify the other Parties of its location. Article 16 of the Agreement requires the Office to perform several functions: to serve as a U.S. point of contact with respect to the Agreement for other U.S. government agencies, for the National Administrative Offices of Canada and Mexico, and for the Secretariat of the Commission for Labor Cooperation established by the Agreement; to provide publicly available information about U.S. labor law matters upon request from the Secretariat, the Canadian or Mexican National Administrative Office, or an Evaluation Committee of Experts (ECE) formed under Articles 23-26 of the Agreement to analyze labor law matters; and to provide for the submission and receipt of public communications on labor law matters in Canada and Mexico and the review of such matters by the United States.

Article 21 of the Agreement outlines procedures for National Administrative Offices to consult with one another about labor law in the three countries, its administration, or labor market conditions. In such consultations, a National Administrative Office must promptly provide to another National Administrative Office publicly available data or information, including: (a) Descriptions of laws, regulations, procedures, policies or practices; (b) proposed changes to such procedures, policies or practices; and (c) such clarifications and explanations related to such matters, as may assist the consulting National Administrative Office to better understand and respond to the issues raised.

On December 30, 1993 the Department published a notice of establishment and request for comments. 58 FR 69410. The notice announced the establishment of the U.S. National Administrative Office, effective January 1, 1994, discussed its responsibilities, and set out a tentative framework to be utilized in regard to the public submission, review, and reporting responsibilities of the Office. Public comments and suggestions were invited on procedural guidelines for submitting and processing requests for review, with the comment period ending on February 15, 1994.

Two sets of comments were timely received from the following organization:

—The Industrial Relations Committee of the U.S. Council for International Business (the Business Roundtable's Task Force on Human Resources and International Trade and Investment concurred in these comments, and they were also endorsed by the international labor affairs group of the National Association of Manufacturers); and

—The International Labor Rights Education and Research Fund.

The Department has carefully reviewed and considered the comments in revising the earlier notice and developing the procedural guidelines. The revised notice is set out below.

One year from the date of publication in the **Federal Register** of the revised notice, the Department will undertake a review of the operation and procedures of the U.S. National Administrative Office.

Signed at Washington, DC, on April 1, 1994.

Robert B. Reich,

Secretary of Labor.

Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines

Section A. Establishment.—

1. Effective January 1, 1994, there is established, within the Bureau of International Labor Affairs (ILAB) of the Department of Labor, the U.S. National Administrative Office, as required by the North American Agreement on Labor Cooperation between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States.

2. The Secretary of Labor shall designate the Secretary of the Office, who shall have expertise or experience in labor matters or other appropriate disciplines.

Section B. Definitions.—

As used herein:

"Agreement" means the North American Agreement on Labor Cooperation between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993;

"another Party" or "other Parties" means a Party or Parties other than the United States of America;

"Council" means the Council of the Commission for Labor Cooperation established under Article 8 of the Agreement;

"Evaluation Committee of Experts" means an Evaluation Committee of Experts established under Article 23 of the Agreement;

"labor law" means "labor law" as defined in Article 49 of the Agreement;

"labor organization" includes any organization of any kind, including such local, national, and international organizations or federations, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates

of pay, hours, or other terms or conditions of employment;

"non-governmental organization" means any scientific, professional, business, non-profit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

"Office" means the U.S. National Administrative Office;

"Party" means a Party to the Agreement;

"publicly available information" means "publicly available information" as defined in Article 49 of the Agreement;

"person" includes one or more individuals, non-governmental organizations, labor organizations, partnerships, associations, corporations, or legal representatives;

"Secretariat" means the Secretariat of the Commission for Labor Cooperation established under Article 8 of the Agreement; and

"Secretary" means the Secretary of the U.S. National Administrative Office.

Section C. Functions of the Office.—

1. The Office shall provide assistance to the Secretary of Labor on all matters concerning the Agreement, including the development and implementation of cooperative activities under Article 11, as set out in Section D.

2. The Office shall serve as a point of contact with agencies of the United States Government, the National Administrative Offices of the other Parties, the Secretariat, and the Council.

3. The Office shall promptly provide publicly available information requested by the Secretariat for reports and studies under Article 14 of the Agreement, by a National Administrative Office of another Party, or by an Evaluation Committee of Experts.

4. The Office shall receive, accept for review, and review submissions on labor law matters arising in the territory of another Party, as set out in Sections F, G, and H.

5. The Office may, at the discretion of the Secretary, initiate a review of any matter covered by the Agreement.

6. The Office may request consultations with the National Administrative Office of another Party in relation to that Party's labor law, its administration of the law, or labor market conditions in its territory, under Article 21(1) of the Agreement; as set out in Article 21(2), shall respond to requests for consultations made by another Party under Article 21(1); and shall participate in consultations conducted under Article 21(3) as appropriate.

7. The Office shall publish periodic and special reports, as set out in Section J, collect and maintain information on labor law matters involving another Party, and compile materials concerning labor law legislation of another Party.

8. The Office shall consider the views of committees established under Article 17 or 18 of the Agreement.

9. The Office shall consult with appropriate entities of the U.S. government.

Section D. Cooperation.—

1. The Office shall conduct at all times its activities in accordance with the principles of cooperation and respect embodied in the Agreement. In its dealings with the National Administrative Office of the other Parties and all persons, the Office shall endeavor to the maximum extent possible to resolve matters through consultation and cooperation.

2. The Secretary shall consult with the Secretary of the National Administrative Office of the appropriate Party or Parties at all states of the submission and review process set out in Sections G and H in order to obtain information and resolve issues that may arise.

3. The Office shall assist the Secretary of Labor in developing and implementing cooperative activities under Article 11 of the Agreement, which may include seminars, training sessions, working groups, conferences, joint research projects (including sectoral studies), and technical assistance, and may be carried out through such other means as the Parties may agree. In deciding which cooperative activities should be promoted by the Council under Article 11, the Secretary of Labor shall give due regard to the recommendations of the Office.

4. The Office shall receive and consider suggestions for cooperative activities submitted by any person.

Section E. Information.—

1. The Secretary shall maintain a reading room where submissions, public files, transcripts of hearings, Federal Register notices, reports, advisory committee information, and other public information shall be available for inspection during normal business hours, subject to the terms and conditions of the Freedom of Information Act, 5 U.S.C. 552.

2. Information submitted by a person to the Office in confidence shall be treated as exempt from public inspection if the information meets the requirements of 5 U.S.C. 552(b). Each person requesting such treatment shall clearly mark "submitted in confidence" on each page or portion of a page so submitted and furnish an explanation as to the need for exemption from public inspection. If the material is not accepted in confidence it will be returned promptly to the submitter with an explanation for the action taken.

3. The Office shall be sensitive to the needs of individuals' confidentiality and shall make every effort to protect such interests.

Section F. Submissions.—

1. Any person may file a submission with the Office regarding labor law matters arising in the territory of another Party. A single copy is satisfactory for filing. Filing may be by hand delivery, mail delivery, or facsimile transmission.

2. The submission shall identify clearly the person filing the submission and shall be signed and dated. It shall state with specificity the matters that the submitter requests the Office to consider and include supporting information available to the submitter. To the fullest extent possible, the submission shall address and explain whether:

(a) the matters complained of appear to demonstrate action inconsistent with another Party's obligations under Part II of the Agreement;

(b) there has been harm to the submitter or other persons, and, if so, to what extent;

(c) the matters complained of appear to demonstrate a pattern of non-enforcement of labor law by another Party;

(d) relief has been sought under the domestic laws of another Party, and, if so, the status of any legal proceedings; and

(e) the matters complained of are pending before an international body.

Section G. Acceptance of Submissions.—

1. Within 60 days after the filing of a submission, the Secretary shall determine whether to accept the submission for review. The Secretary may communicate with the submitter during this period regarding any matter relating to the determination.

2. In general, the Secretary shall accept a submission for review if it raises issues relevant to labor law matters in the territory of another Party and if a review would further the objectives of the Agreement.

3. The Secretary may decline to accept a submission for review if:

(a) the submission does not identify clearly the person filing the submission, is not signed and dated, or is not sufficiently specific to determine the nature of the request and permit an appropriate review;

(b) the statements contained in the submission, even if substantiated, would not constitute a failure of another

Party to comply with its obligations under Part II of the Agreement;

(c) the statements contained in the submission or available information demonstrates that appropriate relief has not been sought under the domestic laws of another Party, or that the matter or a related matter is pending before an international body; or

(d) the submission is substantially similar to a recent submission and significant, new information has not been made available.

4. If the Secretary accepts a submission for review, the Secretary shall publish promptly in the **Federal Register** a notice of the determination, a statement specifying why review is warranted, and the terms of the review, and notify promptly in writing such persons as may be appropriate.

5. If the Secretary declines to accept a submission for review, the Secretary shall notify promptly in writing the submitter and provide the reasons for the determination.

Section H. Reviews and Public Reports.—

1. Following a determination by the Secretary to accept a submission for review, the Office shall conduct such further examination of the submission as may be appropriate to assist the Office to better understand and publicly report on the issues raised. The Office shall keep the submitter apprised of the status of the review.

2. Except for information exempt from public inspection pursuant to Section E, information relevant to the review shall be placed in a public file. Information exempt from public inspection shall be placed in a separate file.

3. The Secretary shall hold promptly a hearing on the submission, unless the Secretary determines that a hearing would not be a suitable method for carrying out the Office's responsibilities under paragraph 1.

4. Notice of a hearing under paragraph 3 shall be published in the **Federal Register** 30 days in advance. The notice shall contain such information as the Secretary deems relevant, including information pertaining to requests to present oral testimony and written briefs.

5. The hearing shall be open to the public. All proceedings shall be conducted in English, with simultaneous translation provided as the Secretary deems necessary.

6. The hearing shall be conducted by the Secretary or the Secretary's designee, assisted by the Office staff and legal counsel, as appropriate. The public file shall be made part of the hearing record at the commencement of the hearing.

7. The Secretary of the National Administrative Office of another Party, or such Secretary's designee, may participate in the hearing.

8. Within 120 days of the acceptance of a submission for review, unless circumstances require an extension of time of up to 60 additional days, the Secretary shall issue a public report, which shall include a summary of the proceedings and any findings and recommendations.

Section I. Recommendations to the Secretary of Labor.—

1. If, after consultations under Article 21 of the Agreement, the Secretary determines that the matter has not been resolved satisfactorily, the Secretary shall recommend that the Secretary of Labor request consultations at the ministerial level under Article 22 of the Agreement.

2. If, following ministerial consultations under Article 22 of the Agreement, the Secretary determines that the matter has not been resolved satisfactorily and is within the scope of Article 23 of the Agreement, the Secretary shall recommend that the Secretary of Labor request that an Evaluation Committee of Experts be established under Article 23.

3. If, following presentation of a final Evaluation Committee of Experts report under Article 26(1) of the Agreement, the Secretary determines that the matter has not been resolved satisfactorily, the Secretary shall provide recommendations to the Secretary of Labor regarding pursuit of dispute resolution under Part Five of the Agreement. Before making such recommendations, the Secretary shall consult with appropriate entities of the U.S. government.

Section J. Periodic and Special Reports.—

1. The Office shall publish annually a list of submissions on labor law matters, including a summary of the disposition of the submissions.

2. The Office shall obtain the lists of public communications on labor law matters published by the National Administrative Offices of the other Parties under Article 16(3) of the Agreement and make such lists available at the Office's reading room.

3. The Office may publish special reports on any topic under its purview on its own initiative, or upon request from the Secretary of Labor, including reviews of the effectiveness of labor law enforcement in the territories of the other Parties.

[FR Doc. 94–8297 Filed 4–6–94; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

[TA–W–29,210]

Aluminum Company of America, Lafayette, IN; Negative Determination on Reconsideration

On March 22, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice will soon be published in the **Federal Register**.

The application for reconsideration states that the Department's survey was inadequate in that only the hard alloy customers were surveyed, not the soft alloy customers. It was also stated that (1) the Russians were dumping large amounts of aluminum in the open market and that (2) workers at two other Alcoa locations were certified for TAA—Newburgh, Indiana and Wenatchee, Washington.

Investigation findings show that the workers produce both hard and soft aluminum extrusions and tubes.

Other investigation findings show that in 1993 Lafayette exited the commercial extrusion (soft alloy) business because of non-trade reasons.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers; firm' major declining customers. The Department's survey showed that none of the respondents reported purchasing imports in the relevant period.

On reconsideration, the Department obtained the major declining customers of soft aluminum alloy extrusions. The customers accounted for over half of the 1993 sales decline of all aluminum extrusions. The Department survey on reconsideration found that the respondents did not import soft alloy extrusion during the relevant period but transferred their business from Alcoa to other domestic producers.

Other findings on reconsideration show that Alcoa's Lafayette ingot production was used internally for the production of extrusions and tubes at Lafayette. Lafayette did not use imported aluminum ingots. Lafayette's ingot production decreased in 1993 because the company exited the soft alloy extrusion business.

Workers at Alcoa's Newburgh, Indiana (TA–W–28,848) and Wenatchee, Washington (TA–W–28,882) produced aluminum ingots as the finished article and were certified for TAA because they

met all the worker group requirements in the period relevant to their petitions.

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 Aluminum Company of America in Lafayette, Indiana.

Signed at Washington, DC, this 29th day of March 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94-8295 Filed 4-6-94; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of March, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,405; General Motors Corp., Inland Fisher Guide Div., Syracuse, NY

TA-W-29,443; Posner Laboratories, South Plainfield, NJ

TA-W-29,437; Philips Technologies, Airpax Protector Group, Frederick, MD

TA-W-29,449; Hrubetz Oil Co., Westbrook, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-29,501; Denim Finishers, Middlesboro, KY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,454; Anchor Motor Freight, Inc., Champlain, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,469; Thomas Cook Travel Money Services, Princeton, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,299; Control Techniques (USA), Inc. (E.C.S.), Fairmont, WV

The predominate reason for the layoffs and closure of the subject facility was a decision by the parent company to consolidate production from the Fairmont location to another domestic affiliated facility.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29,494; Aileen's, South Hill, VA

A certification was issued covering all workers separated on or after February 2, 1993.

TA-W-29,485; Londontown Corp. (London Fog), Hancock, MD

A certification was issued covering all workers separated on or after January 12, 1993.

TA-W-29,384; Reynolds Metals Co., Troutdale, OR

A certification was issued covering all workers separated on or after September 30, 1993.

TA-W-29,478; Parkway Fabricators, South Amboy, NJ

A certification was issued covering all workers separated on or after December 18, 1992.

TA-W-29,371 and TA-W-29,371A; Sebago, Inc., Westbrook, ME and Bridgton, ME

A certification was issued covering all workers separated on or after December 16, 1992.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00029; Wundies Enterprises, Inc., Williamsport, PA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from subject firm to Canada or Mexico during the relevant period.

Workers layoffs at the Williamsport facility occurred as a result of the company increasing its imports of articles similar to those produced at the subject plant; these imports, however, were not sourced in Mexico or Canada. Workers at the subject firm were certified as eligible to apply for trade adjustment assistance on January 13, 1994 (TA-W-29,274) on the basis of increased company imports.

NAFTA-TAA-00046; Sears Logistics Services, Inc., Philadelphia, PA

The investigation revealed that workers of the subject firm do not

produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

NAFTA-TAA-00027; ACI America, Inc. (Currently VVP America, Inc.), DBA Glasscraft, Memphis, TN

The investigation revealed that criterion (1) has not been met in conjunction with the requirements of Section 506 (b)(2) of the Act. Workers at the subject firm were not separated from employment on or after December 8, 1993, the earliest date for which certification under NAFTA-TAA applies.

NAFTA-TAA-00031; Bus Industries of America, Inc., Oriskany, NY

The investigation revealed that criterion (3) and criterion (4) have not been met. There was no shift of production by the subject firm to Canada or Mexico, and increased imports from Canada or Mexico did not contribute importantly to worker separations at the subject firm. Further, as a result of the Department's denial for NAFTA-TAA, an investigation is being immediately instituted for trade adjustment assistance under Section 221 of the Trade Act. The number assigned for this trade adjustment assistance investigation is TA-W-29,680.

NAFTA-TAA-00028; McCreary Roofing Co., Erie, PA

The investigation revealed that workers of the subject firm do not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

NAFTA-TAA-00033; Fisher-Price, Inc., East Aurora, NY

The investigation revealed that workers of the subject firm do not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

Affirmative Determination NAFTA-TAA

NAFTA-TAA-00030; Dee Fashions, Inc., Centralia, PA

A certification was issued covering all workers separated on or after December 8, 1993.

An investigation is currently in process for trade adjustment assistance under section 221 of the Trade Act. The number assigned for this trade adjustment assistance investigation is TA-W-29,536.

NAFTA-TAA-00034; Rolls Royce Industries, Ferranti-Packard Transformers, Inc., Dunkirk, NY

A certification was issued covering all workers separated on or after December 8, 1993.

NAFTA-TAA-00026; Gandalf Systems Corp., Cherry Hill, NJ

A certification was issued covering all workers separated on or after December 8, 1993. The foregoing determination does not apply to workers engaged in regional sales.

An investigation is currently in process for trade adjustment assistance under section 221 of the Trade Act. The number assigned for this trade adjustment assistance investigation is TA-W-29,450.

I hereby certify that the aforementioned determinations were issued during the month of March, 1994. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: March 29, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-8296 filed 4-6-94; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94-022)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Aeronautics Advisory Committee Task Force on Advanced Manufacturing Technology.

DATES: May 10, 1994, 9 a.m. to 5 p.m.; and May 11, 1994, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 6H46-A, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Moran, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 202/358-4648.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows.

—Administration Technology.
—Existing Government Programs.

Dated: April 1, 1994.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 94-8321 Filed 4-6-94; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision or extension:* Revision.

2. *The title of the information collection:* Class exemption for reports concerning possible non-routine generic problems.

3. *The form number if applicable.* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Nuclear power plant and materials licensees and applicants.

6. *An estimate of the number of responses:* 217.

7. *An estimate of the total number of hours needed to complete the requirement or request:* 68,500 (316 hours per respondent).

8. *An indication of whether section 3504(h), Public Law 96-511 applies:* Not applicable.

9. *Abstract:* NRC is requesting approval authority to collect information concerning emergency non-routine generic problems which would require prompt action to preclude potential threats to public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0012), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 29th day of March 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–8316 Filed 4–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–3453]

Atlas Corp.; Receipt of Application To Amend Source Material License No. SUA–917 by Atlas Corp.

Notice is hereby given that the U.S. Nuclear Regulatory Commission has received, is reviewing and is offering an opportunity for a hearing on an application from Atlas Corporation to amend Source Material License No. SUA–917.

In general, the submittals referenced below propose to modify License Condition 41 by providing a revision of the 1982 approved reclamation plan for the mill tailings. As in the original reclamation plan, the proposed plan calls for reclamation of the tailings impoundment in place, covering the tailings with a soil cover to reduce radon emanation, and flattening the embankment side slopes to 10 horizontal to 3 vertical (10H:3V) or less. In addition, the license amendment application proposes the following modifications of the previous plan:

1. As means of promoting surface water drainage, the original domed top configuration would be changed to a system of channels. Three collection ditches would merge to form a larger drainage channel which would convey flood runoff from the reclaimed tailings surface into Moab Wash.

2. The soil cover thickness for radon attenuation purposes would be reduced based on an increase in the allowable radon emanation rate.

3. The erosion protection cover design would be modified. The top of the tailings impoundment would be covered with a layer of compacted rock and soil, and the embankment side slopes would be covered with rock native to the region.

4. Moab Wash would be reconfigured and designed to contain the Probable Maximum Flood, and convey flood flows into the Colorado River east of the tailings pile. On the southwest side of the tailings embankment, another drainage channel would divert runoff from the natural sandstone bluffs southwest of the channel.

The licensee's proposal, currently under review, was first proposed to the NRC by a letter dated August 2, 1988, and has been modified by submittals dated January 17, 1989, June 4, 1992, April 14, 1993, and April 23, 1993. Additional information has been requested from the licensee by NRC letters dated October 8, 1993, November 29, 1993, and January 3, 1994. Responses to these letters may result in futher modifications to the reclamation plan.

For Further Information Contact: Allan T. Mullins, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2578.

Availability of Application

Atlas Corporation's application would revise source material license SUA–917, The application, with the revisions thereto, describes the proposed modifications to the reclamation plan, and is being made available for public inspection at the Commission's Public Document room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Opportunity for Hearing

The licensee and any person whose interest may be affected by the issuance of a license amendment covering the proposal may file a request for hearing. A request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; must be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); must be served on the licensee (Atlas Corporation, 370 Seventeenth Street, suite 3150, Denver, Colorado 80202); and must comply with the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714. The request for hearing must 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, including the reasons why the request should be granted, 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, on the petitioner's interest, of any order which may be entered in the proceeding.

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 31st day of March, 1994.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Acting Chief, Uranium Recovery Branch, Division of Low-level Waste Management and Decommissioning, Office of Nuclear Materials Safety and Safeguards, NRC.

[FR Doc. 94–8315 Filed 4–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Co.; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Union Electric Company (the licensee) to withdraw its December 11, 1990, application for a proposed amendment to Facility Operating License No. NPF–30 for the Callaway Plant, Unit No. 1, located in Callaway County, Missouri.

The proposed amendment would have revised the Technical Specification Section 3/4.6.2.3 by deleting surveillance requirements to verify cooling water flow rates to the containment coolers.

The Commission had previously issued a notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 4, 1991 (56 FR 43815). However, by letter dated March 25, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 11, 1990, and the licensee's letter dated March 25, 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 20555, and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 30th day of March 1994.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–8314 Filed 4–6–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33843; File No. SR–CBOE–94–04]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Criteria for Certain Hybrid Securities

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 February 25, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to amend its rules to establish specific listing criteria for certain hybrid securities. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise certain of the Exchange's rules to permit the Exchange to list and trade the following securities:

1. Contingent Value Rights

The Exchange is proposing to add rule 31.5.H. to its rules to establish specific listing criteria for contingent value rights ("CVRs"). CVRs are unsecured obligations providing for a possible cash payment at maturity based on the value of an equity security issued by an affiliate of the issuer of the CVRs ("related security"). At maturity, the holder of a CVR would be entitled to a cash payment at maturity if the market price of the related security is lower than a predetermined target price. If the market price of the related security equals or exceeds the target price, the holder of the CVR would not be entitled to receive such a cash payment.

Under proposed rule 31.5.H., a CVR would be eligible for listing if:

(1) The issuer satisfies the net worth and earnings requirements set forth in Exchange Rule 31.5.A.;

(2) The issuer has assets in excess of $100 million;

(3) There is a minimum public distribution of 600,000 CVRs;

(4) There is a minimum of 1,200 public holders of the CVRs;

(5) The aggregate market value of the CVRs equals or exceeds $18 million; and

(6) The CVRs have an original term to maturity of at least one year. In the alternative, a CVR would be eligible for listing if it meets the minimum standards as established by another national securities exchange.

2. Equity-Linked Notes

The Exchange is proposing to add rule 31.5.I. to its rules to establish specific listing criteria for equity-linked notes ("ELNs"). ELNs are intermediate-term, non-convertible hybrid instruments whose value is based, in part, on the performance of a highly capitalized, actively traded U.S. common stock or foreign security that is traded in the U.S. in the form of American Depositary Receipts ("ADRs"), ordinary shares or otherwise. Under proposed rule 31.5.I., the issuer of ELNs must satisfy the earnings requirements set forth in Exchange Rule 31.5.A. and must have a minimum tangible net worth of $150 million. In addition, although the Exchange does not believe that ELNs will have any impact on the market for the underlying linked stock, ELNs listed for trading on the Exchange also must satisfy the following criteria:

(1) An ELN must have an original term to maturity of not less than two and not more than seven years;

(2) The total original issue price of an ELN (when combined with all of the ELNs issued by the issuer which are listed on a national securities exchange or traded through the facilities of the National Association of Securities Dealers Automated Quotation system ("NASDAQ")) cannot exceed 25 percent of the issuer's tangible net worth at the time of issuance;

(3) The underlying stock must be listed for trading on a national securities exchange or traded through the facilities of NASDAQ;

(4) The issuer of the underlying stock either must be subject to the reporting requirements set forth in section 13 of the Act or exempt from such requirements pursuant to SEC rule 12g3–2(b);

(5) The issuer of the underlying stock must have either (x) a minimum market capitalization of $3 billion and trading volume in the underlying stock during the 12-month period preceding the listing of the ELNs must have been at least 2.5 million shares, or (y) a minimum market capitalization of $1.5 billion and trading volume in the underlying stock during the 12-month period preceding the listing of the ELNs has been at least 20 million shares;

(6) The amount of stock underlying an ELN cannot exceed five percent of the total amount of outstanding common shares of such stock; and

(7) If the stock underlying an ELN is a foreign stock that is traded in the U.S. market, then either (x) the Exchange must have in place a market information sharing agreement with the primary exchange on which the foreign stock is traded, or (y) the combined U.S. trading volume of the foreign stock and other related securities[1] must represent (on a share equivalent basis with respect to ADRs) at least 50% of the combined worldwide trading volume in the foreign stock and other related securities over the three month period preceding the date of selection of the ELNs for listing. Prior to listing ELNs for trading, the Exchange will distribute a circular providing guidance regarding member firm compliance responsibilities when handling transactions in ELNs.

3. Paired Securities

The Exchange is also proposing to add rule 31.5.J. to its rules to set forth specific listing criteria for "paired securities." Under proposed rule 31.5.J., the term "paired securities" would be defined as securities which may be transferred and traded only in combination with one another as a single economic unit. Under the proposed rule, the issuers of the paired securities would be required to satisfy the size and earnings criteria set forth in Exchange Rule 31.5.A. on an aggregate basis. In the event the pairing agreement between the issuers of the paired securities is terminated, each issuer and

[1] Related securities include any ADRs overlying the foreign stock, other classes of common stock related to the foreign stock, and any ADRs overlying such other stock.

each security would be required to satisfy the Exchange's continuing listing guidelines on an individual basis in order for the security to remain listed for trading on the Exchange.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it perfects the mechanism of a free and open market by expanding the types of securities that may be listed for trading on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference 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 CBOE. All submissions should refer to File No. SR–CBOE–94–04 and should be submitted by April 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8281 Filed 4–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33839; File No. SR–NASD–94–17]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through June 1, 1994

March 31, 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 March 24, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a primary national securities exchange (collectively referred to as "OTC Equities").[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level ⅔ Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval that expires on April 1, 1994.[3]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through June 1, 1994. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding rule 19b–4 filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month ending February 28, 1993, the Service reflected the

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[2] 17 CFR 200.30–3(a)(12) (1993).

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] Certain securities listed on a regional exchange may now be eligible for OTCBB quotations. Specifically, on January 24, 1994, the Commission approved an NASD proposal to expand the universe of securities eligible for quotation in the OTC Bulletin Board to include securities which:

(1) Are listed on one or more regional stock exchanges; and

(2) Do not meet the requirements for dissemination of transaction reports through the facilities of the Consolidated Tape ("non-Tape B securities"). Securities Exchange Act Release No. 33507 (January 24, 1994) (order approving File No. SR–NASD–93–24).

[3] Securities Exchange Act Release No. 33522 (January 26, 1994) 59 FR 4733 (February 1, 1994).

market making positions of 384 NASD member firms displaying quotations/indications of interest in approximately 4,182 OTC Equities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the start-up of the Service in 1990, the NASD implemented a filing requirement (under Section 4 of the Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, particularly section 17B of the Act.[4] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b) (6) and (11), and section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through June 1, 1994 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as required in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,182 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to section 2 of Schedule H to the NASD By-Laws.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withhheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 28, 1994.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers' orders at best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in OTC Equities that are eligible and quoted in the Service, and in non-Tape B securities that are

[4] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to section 17B(b) of the Act. On December 30, 1992, the Commission granted "Qualifying Electronic Quotation System" status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. The OTCBB will retain its QEQS status for the term of the proposed extension.

listed on regional exchanges and quoted in the OTCBB by NASD members.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through June 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8278 Filed 4–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33844; File No. SR–NYSE–94–11]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Resolutions of the Exchange Board of Directors Authorizing the Exchange To Provide Information Concerning Pending Formal Exchange Disciplinary Proceedings to the Central Registration Depository for Disclosure to the Public

March 31, 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 March 17, 1994, 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 and II below, which Items have been prepared by the self-regulatory organization. The NYSE has requested accelerated approval of the proposal. 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 Exchange Board of Directors ("Board") has adopted the two resolutions shown below:

Resolved That each pending formal disciplinary proceeding initiated by the Division of Enforcement of the Exchange shall be reported to the Central Registration Depository system ("CRD") operated by the National Association of Securities Dealers, Inc. ("NASD"); and it is *Further resolved* That significant changes in the status of a pending formal disciplinary proceeding shall also be reported to the CRD during the pendency of such a proceeding including the issuance of a decision by an Exchange hearing panel, the filing of an appeal to the Exchange Board of Directors, and the issuance of a decision by the Exchange Board of Directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change authorizes the Exchange to provide information to the CRD[3] concerning pending formal NYSE disciplinary proceedings, for disclosure to the public. A formal disciplinary proceeding is considered to be pending from the time an executed stipulation is filed[4] or charges are issued[5] until the proceeding is completed. Currently, the NYSE discloses information only on final NYSE disciplinary actions to the CRD.

Information concerning final disciplinary actions taken by the NYSE, NASD and other self-regulatory and regulatory organizations, as well as information concerning certain criminal convictions contained in the CRD, has been disclosed to the public pursuant to the NASD's 800 number service since October 1991.[6]

On July 1, 1993, the SEC approved an NASD rule change to make more information available to the general public regarding pending disciplinary proceedings or actions taken by federal or state securities agencies and SROs that relate to securities or commodities transactions, and regarding criminal indictments and information.[7]

Information on pending formal SRO disciplinary proceedings, among other events, is currently in the CRD, to the extent that reports are made by members, member organizations and associated persons pursuant to their reporting obligations on the Uniform Application for Securities Industry Registration or Transfer (Form U–4) and Form BD, the uniform application form for broker-dealer registration. However, the NYSE does not currently report such pending events to the CRD.

The submission of information concerning pending formal disciplinary proceedings directly by the NYSE would enhance the CRD database, since the CRD would not have to rely solely on reports from members, member organizations and associated persons.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) in that it will protect investors and the public interest as the increased disclosure will enhance the access of members of the public to information regarding NYSE members, member organizations or any associated persons thereof.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no 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 regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The CRD is an automated industry database containing employment and disciplinary history of members and associated persons registered with self-regulatory organizations ("SROs") and state securities agencies. The CRD is operated by the NASD with input on policy and other matters from federal and state agencies and other SROs, including the NYSE.

[4] See NYSE Rule 476(g).

[5] See NYSE Rule 476(d).

[6] The Commission subsequently approved the NASD's procedures for operating its 800 number service in Securities Exchange Act Release No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992) (File No. SR–NASD–91–39) ("800 Number Service Plan Approval Order").

[7] See Securities Exchange Act Release No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993) (File No. SR–NASD–93–26) ("Pending Event Disclosure Approval Order").

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–11 and should be submitted by April 28, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[8] In particular, the Commission believes the proposal is consistent with the section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

In the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Penny Stock Reform Act"), Congress mandated that the NASD establish a toll-free telephone number ("800 number service") for the purpose of receiving and responding to inquiries from the public regarding the background of NASD members and their associated persons. The NASD began operating its 800 number service on October 1, 1991. Upon the request of a caller, the NASD may disclose, in the form of a written report, the following information contained in the CRD:[10] past and present employment history of NASD members and their associated persons; all final disciplinary actions,[11] taken by federal and state regulatory agencies and SROs, that relate to securities or commodities transactions; and all criminal convictions reported on Form BD or Form U–4.

In 1993, the Commission approved a rule change by the NASD to expand the scope of information that is reportable through its 800 number service.[12] Thus, in addition to the information set forth above, the NASD may disclose to the public such events as pending formal disciplinary actions initiated by federal and state regulatory agencies and SROs; criminal indictments or informations; civil judgments; and certain arbitration awards in securities and commodities disputes involving public customers. Currently, the NASD relies on members and associated persons to report these events to the CRD on Form BD or Form U–4, respectively.[13] Because this represents the only means by which the NASD can obtain data about pending disciplinary actions (other than its own), the quality of the CRD database, and thus of the 800 number service, depends on complete and timely reporting by members and associated persons.

In the Commission's opinion, the resolutions adopted by the Board should help fill a potential gap in the NASD's 800 number service, by authorizing the Exchange to report the initiation of a formal NYSE disciplinary proceeding[14] involving an Exchange member, member organization or associated person, and significant changes in the status thereof,[15] directly to the CRD. As a result, that information will be available to the public whether or not it is voluntarily reported by the member or associated person. The Commission therefore finds that the proposed rule change should enhance the fairness and accuracy of the CRD database and, accordingly, of information released to the public through the 800 number service.

The Commission has long believed that investors need access to reliable information in order to protect themselves against potential fraud and abuse. In this respect, the NYSE proposal should help customers make an informed decision about whether they should conduct or continue to conduct business with particular securities professionals. In sum, the Commission has concluded that the proposed rule change should increase the flow of information to the public and thus should ultimately strengthen investor protection.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The NYSE proposal will enable the Exchange to report and the NASD to disclose certain information about the disciplinary history of securities professionals that currently may not be available to the public. Accelerated approval thereof will allow investors to benefit from the implementation of these procedures as soon as possible. Further, the substance of the proposed resolutions is similar to an NASD proposal that was published in the **Federal Register** for the full comment period and was approved by the Commission.[16]

It is therefore ordered, Pursuant to section 19(b)(2)[17] that the proposed rule change (SR–NYSE–94–11) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8280 Filed 4–6–94; 8:45 am]

BILLING CODE 8010–01–M

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[8] 15 U.S.C. 78f (1988).

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] Under NASD procedures, the 800 number service operator does not provide any information over the telephone. Instead, a written copy of the information requested is sent to the caller and to the NASD member and/or associated person who is the subject of the inquiry. The identity of the caller remains confidential. See 800 Number Service Plan Approval Order, *supra*, note 6.

[11] The NASD's 800 number service plan does not define the term "disciplinary action." According to the NASD, however, the term includes, but is not limited to, information provided in response to question 7 on Form BD and question 22 on Form U–4. See Pending Event Disclosure Approval Order, *supra*, note 7.

[12] See Pending Event Disclosure Approval Order, *supra*, note 7. The Commission notes that, in 1992, Congress requested that the General Accounting Office ("GAO") conduct a review of various aspects of the Penny Stock Reform Act, including the NASD's 800 number service. Among other things, the GAO recommended that information about final arbitration awards be reported. Accordingly, the NASD submitted, and the Commission approved, a rule change authorizing the NASD to disclose certain arbitration awards, as well as pending formal disciplinary actions, through its 800 number service. In this context, the Commission notes that it ah requested all SROs to coordinate with the NASD the transfer of information about awards rendered in each exchange's arbitration program.

[13] See *supra*, note 11.

[14] For purposes of reporting to the CRD, the NYSE considers a formal disciplinary proceeding to be pending if an executed stipulation has been filed or charges have been issued. See *supra*, notes 4–5 and accompanying text.

[15] The NYSE provides the following examples of reportable changes in the status of a pending formal disciplinary proceeding: The issuance of a decision by a hearing panel; the filing of an appeal to the Board; and the issuance of a decision by the Board.

[16] No comments were received in connection with the proposed rule change which expanded the scope of the 800 number service to include pending formal disciplinary actions. See Pending Event Disclosure Approval Order, *supra*, note 7

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34-33841; File No. SR-NYSE-94-04]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Equity-Linked Debt Securities

March 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b-4 hereunder,[2] notice is hereby given that on March 1, 1994, 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 and II below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend Paragraph 703.21 of its Listed Company Manual ("Manual") regarding the listing of Equity-Linked Debt Securities ("ELDS"). ELDS are intermediate-term (2-7 years), non-convertible hybrid instruments whose value is based, in part, on the value of a highly capitalized, actively traded common stock or convertible preferred stock.[3] The proposed rule change would (1) provide alternative minimum capitalization and trading volume requirements for the security underlying an ELDS issue, and (2) allow the listing of ELDS linked to non-U.S. securities. The text of the proposed rule change is available at the Office of the Secretary, NYSE, 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 Exchange 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 NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make two changes to the Exchange's listing standards for ELDS.[4] The first change to the ELDS listing standards is to provide alternative market capitalization and trading volume criteria for the linked security, that is, the security on which the value of the ELDS is based. Currently, such a security must have a market capitalization of at least $3 billion and a trading volume of at least 2.5 million shares in the preceding year.[5] The proposed rule change will provide, as an alternative to that standard, the ability to list ELDS linked to a security that has a $1.5 billion market capitalization and a one-year trading volume of at least 20 million shares. The Exchange believes that this will provide additional flexibility in the listing of ELDS, while ensuring that the linked security is highly capitalized and that there is adequate liquidity in the market for the linked security.

The second change to the ELDS listing standards would allow the issuer of the linked security to be a non-U.S. company if certain criteria are met. Under the proposal, the issuer could be a non-U.S. company (whose securities are traded in the United States either as ordinary shares or as American Depositary Receipts ("ADRs")) if one of the following conditions is met:

- The Exchange has in place with the primary exchange for the security (and in the case of an ADR, with the primary exchange in the home country of the security underlying the ADR) an effective surveillance information sharing agreement;
- The United States is the primary market for the security (determined in the manner discussed below); or
- The staff of the Commission otherwise agrees to the listing.

In determining whether the U.S. is the primary market for the linked security, the combined trading volume of the security (including the security itself, any ADR overlying the security (adjusted on a share equivalent basis) and other classes of stock related to the underlying security) in the United States for the three month period preceding the date of listing must be at least 50% of the combined world-wide trading in such securities. The U.S. trading in the security would include only those U.S. self-regulatory organizations included in the Intermarket Surveillance Group[6] and linked through the Intermarket Trading System.[7]

Trading in the U.S. in other markets would be included in the world-wide volume for the security, but not in the U.S. volume.

The Exchange believes that allowing ELDS to be issued based on the value of eligible non-U.S. securities will provide significant benefits to investors and the capital markets by providing increased investment and corporate financing flexibility. The Exchange believes this flexibility will be achieved without compromising investor protection by ensuring that the linked security either has its primary market in the United States or that the Exchange has access to surveillance information from the primary exchange where the linked security is traded (and in the case of ADRs, with the primary exchange in the home country where the security underlying the ADR is traded).

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Commission approved the listing and trading of ELDS on January 13, 1994. See Securities Exchange Act Release No. 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994) ("Exchange Act Release No. 33468").

[4] The Commission notes that an ELDS which satisfies the criteria set forth in the proposed rule change must also satisfy the other listing criteria for ELDS set forth in Paragraph 703.21 of the Manual.

[5] *Id.*

[6] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG, (and accordingly, of the U.S. market) are: The American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[7] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiple trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is 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 NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the portion of the proposed rule change relating to the alternative minimum capitalization and trading volume requirements for securities underlying ELDS is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Specifically, the Commission finds that the proposal will expand the universe of securities that can be linked to ELDS while maintaining the requirement that the linked security be an actively traded common stock issued by a highly capitalized issuer. While the proposal introduces an alternative, reducing by one-half the minimum market capitalization of the linked security, the stock of such an issuer could only be linked to ELDS if its trading volume for the prior 12-month period exceeds by eight times the current minimum trading volume set forth in Paragraph 703.21 of the Manual. Furthermore, the proposal does not alter any of the other listing requirements applicable to ELNs contained in Paragraph 703.21 of the Manual which the Commission has previously approved.[9] As a result, the Commission finds that the proposed amendment is consistent with the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to allow the Exchange to list ELDS linked to stocks satisfying the proposed alternative market capitalization and trading volume guidelines without delay. In addition, the Commission notes it has not been made aware of any adverse comments concerning the ELDS series currently listed and trading on the Exchange. Furthermore, the Commission believes that the NYSE proposal does not raise any new issues that were not addressed to the Commission's satisfaction when the listing and trading of ELDS was originally approved. Finally, the Commission has approved identical alternative listing standards with respect to equity linked term notes ("ELNs") listed and traded on the American Stock Exchange ("Amex").[10] The Commission notes that the Amex proposal with respect to the alternative listing standards applicable to ELNs was published for the full 21-day comment period and no comments opposing the proposal were received by the Commission. Accordingly, the Commission believes that good cause exists to approve the proposed rule change on an accelerated basis.

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 NYSE. All submissions should refer to File No. SR-NYSE-94-04 and should be submitted by April 28, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[11] that the portion of the proposed rule change (SR-NYSE-94-04) allowing securities underlying an ELDS issue to have a minimum capitalization of $1.5 billion and a trading volume in the 12 months prior to issuance of at least 20 million shares, in addition to satisfying the other requirements set forth in Paragraph 703.21 of the Manual, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-8282 Filed 4-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33840; File No. SR-PTC-93-04]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Relating to the Percentage Margin Applied by PTC With Respect to GNMA Project, Construction, and Mobile Home Securities

March 31, 1994.

On November 8, 1993, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PTC-93-04) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on January 31, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

PTC seeks permanent approval of its proposed rule change establishing the percentages to be deducted from the market value of certain securities to determine how those securities should be valued for purposes of participants' Net Free Equity.[3] The current proposal

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[8] 15 U.S.C. 78f(b)(5) (1988).

[9] See Exchange Act Release No. 33468, *supra* note 3.

[10] See Securities Exchange Act Release No. 33328 (December 13, 1993), 58 FR 66041 (December 17, 1993).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 33513 (January 24, 1994), 59 FR 4302.

[3] Net Free Equity is calculated as the sum of: (1) The cash balance in the account;

is substantially the same as the one the Commission temporarily approved on October 7, 1991.[4]

Under PTC's rules, the Applicable Percentage[5] of the market value of securities is used in computing a participant's Net Free Equity. PTC's rules require participants to maintain Net Free Equity of zero or greater in each of their agency, pledgee transfer, or proprietary accounts in order for transactions to be processed. PTC has the right to borrow against or liquidate those assets that comprise the Net Free Equity computations in those accounts in the event that the participant responsible for one or more of those accounts fails to pay the account debit balance at the end of the day. By including only a portion of the market value of securities in Net Free Equity, *i.e.*, the Applicable Percentage, PTC attempts to limit the risk caused by fluctuations in the market value of securities in those accounts.

Under the proposal, PTC is seeking permanent approval of the following margin levels:

GNMA Project Loan Securities—10%
GNMA Project Note Securities—10%
GNMA Construction Loan Securities—12%
GNMA Mobile Home Securities—20%

PTC deducts 5% from the market value of GNMA Single-Family securities to arrive at their Applicable Percentage. That percentage is based upon historical price volatility figures. Historical volatility of the Project, Construction, and Mobile Home GNMA securities is similar to that of Single-Family GNMA securities, but PTC believes that the market for those securities is less liquid. This is reflected in the higher margin levels for those securities.

II. Discussion

The Commission believes that PTC's proposed rule change is consistent with section 17A of the Act, and, specifically, with sections 17A(b)(3) (A) and (F).[6] Those sections require a clearing agency to be organized, and its rules be designed, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The Commission approved the margin levels for Project, Construction, and Mobile Home GNMA securities on a temporary basis on October 7, 1991.[7] In that filing, PTC submitted historical data which suggested that the price movements of GNMA Project, Construction, and Mobile Home securities tracked those of GNMA Single-Family securities.[8] The Commission approved PTC's margin levels on a temporary basis to allow further evaluation by PTC of price movement correlations between GNMA Single-Family securities on the one hand, and GNMA Project, Construction, and Mobile Home securities on the other, as well as to gauge the volatility of such securities. In seeking permanent approval of its margin levels, PTC submitted in support of its proposal data consistent with the price movement data in the original filing.[9]

The Commission is satisfied that PTC's proposal is consistent with the Act, but suggests that PTC review periodically the price movement correlations and volatility described above. The Commission believes that the enhanced margin levels for these securities will promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in PTC's custody or control by limiting the risk arising from fluctuations in the market value of Project, Construction, and Mobile Home securities when used to collateralize intraday processing of securities transactions.

III. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that PTC's proposed rule change (File No. SR–PTC–93–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8279 Filed 4–6–94; 8:45 am]

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(2) The market value of securities in the account, less the appropriate haircut for such securities ("Applicable Percentage"); and

(3) The value of all Supplemental Processing Collateral; minus

(4) Reserve on Gain on transfers made that day. Supplemental Processing Collateral includes the following:

(1) The value of optional deposits to the participants fund allocated to that account (optional deposits to the participants fund are deposits that exceed the minimum deposit required pursuant to PTC's rules and procedures); and

(2) 20% of the mandatory deposits to the participants fund for the Master Account (mandatory deposits to the participants fund are minimum deposits required to be deposited into such fund pursuant to PTC's rules and procedures). Reserve on Gain means:

(1) The contract value credited to the cash balance of a delivering participant or limited purpose participant over the market value of securities credited to the transfer account associated with the account of the receiving participant; or

(2) The market value of securities credited to the transfer account associated with the account of a receiving participant over the contract value credited to the cash balance of the delivering participant or limited purpose participant. PTC Rules, Article I, Rule 1.

[4] Securities Exchange Act Release No. 29793 (October 7, 1991), 56 FR 51732.

[5] "Applicable Percentage" means that percentage of the market value of securities that is included in the computation of Net Free Equity. The Applicable Percentage is determined by deducting certain percentages (*i.e.*, margin) from the market value of securities. See also *supra* note 3.

[6] 15 U.S.C. 78q–1(b)(3) (A) & (F).

[7] Securities Exchange Act Release No. 29793, *supra* note 4.

[8] The price movement comparisons were based on prices of GNMA Construction Loan, Project Loan, and Single-Family securities, over the period from March 1990 to February 1991. Letter from Alison Hoffman, Assistant Counsel, PTC, to Scott Wallner, Staff Attorney, Division of Market Regulation, Commission, dated August 1, 1991.

[9] PTC compared daily price movements of GNMA Single-Family 10% securities against each of Project Note, Project Loan, Construction Loan, and Mobile Home 10% securities. File No. SR–PTC–93–04, appendix A.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a) (12).

[Rel. No. IC–20180; No. 811–5862]

General Services Life Insurance Company Group Variable Account A

March 31, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commissioner").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: General Services Life Insurance Company Group Variable Account A.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 13, 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 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 25, 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 Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicant, 2199 South McDowell Extension, Petaluma, CA 94954.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On August 15, 1989, Applicant filed a notification of registration as an investment company as a unit investment trust on Form N–8A; a registration statement on Form N–8B–2 (File No. 811–5862); and a registration statement on Form S–6 (File No. 33–30524) under the Securities Act of 1933 to register certain group variable life insurance policies and certificates thereunder (together, the "Policies"). The registration statement was declared effective on July 25, 1991.

2. Applicant was established under Iowa insurance law by its depositor, General Services Life Insurance Company ("General Services"), as a segregated asset account for the purpose of funding the Policies.

3. General Services has decided not to sell group variable life insurance policies. On July 7, 1993, the Board of Directors of General Services adopted a resolution authorizing the deregistration of the Applicant.

4. Applicant does not now have, nor did it ever have, any assets. No interests in Applicant have ever been issued. During the last 18 months, Applicant has not, for any reason, transferred any assets to a separate trust.

5. Applicant has no security holders. Applicant does not have any liabilities which remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8284 Filed 4-6-94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20181; No. 811–5861]

General Services Life Insurance Company Individual Variable Account B

March 31, 1994.

AGENCY: Securities and Exchange Commission "SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: General Services Life Insurance Company Individual Variable Account B.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 13, 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 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 25, 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 Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicant, 2199 South McDowell Extension, Petaluma, CA 94954.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On August 15, 1989, Applicant filed a notification of registration as an investment company as a unit investment trust on Form N–8A; a registration statement on Form N–8B–2 (File No. 811–5861); and a registration statement on Form S–6 (File No. 33–30523) under the Securities Act of 1933 to register certain individual variable life insurance policies (the "Policies"). The registration statement was declared effective on July 25, 1991.

2. Applicant was established under Iowa insurance law by its depositor, General Services Life Insurance Company ("General Services"), as a segregated asset account for the purpose of funding the Policies.

3. General Services has decided not to sell individual variable life insurance policies. On July, 1993, the Board of Directors of General Services adopted a resolution authorizing the deregistration of the Applicant.

4. Applicant does not now have, nor did it ever have, any assets. No interests in Applicant have ever been issued. During the last 18 months, Applicant has not, for any reason, transferred any assets to a separate trust.

5. Applicant has no security holders. Applicant does not have any liabilities which remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8285 Filed 4–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20179; No. 812–8800]

Norwest Select Funds, et al.

March 31, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Norwest Select Funds ("Trust") and Forum Financial Services, Inc. or any successor thereto ("Forum") (collectively "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of

the 1940 Act and rules 6e-2(b)(15) and 6e-3(T)(b)(15).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on January 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 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 requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Norwest Select Funds, 61 Broadway, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney, at (202) 272–2676, or Wendell 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 SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company that currently consists of three separate series (together with any future series, the "Funds"): (a) ValuGrowth Stock Fund, (b) Intermediate Bond Fund, and (c) Adjustable U.S. Government Reserve Fund, each with its own investment objective and policy. The Trust filed its Notification of Registration on Form N–8A under the 1940 Act on December 8, 1993, and its Pre-Effective Registration Statement on Form N–1A under the 1940 Act and the Securities Act on January 21, 1994.

2. Forum supervises the overall management of the Trust and provides certain administrative facilities and services for the Trust under a Management Agreement with the Trust. Forum also acts as the agent of the Trust in connection with the offering of shares of the Funds under a Distribution Agreement with the Trust. Forum receives no payments for its services as distributor.

3. Shares of the Funds will be offered initially only to the Minnesota Mutual Life Insurance Company ("Minnesota Mutual") and Fortis Benefits Insurance Company ("Fortis") to be used as investment vehicles for certain variable annuity contracts, variable life insurance contracts and variable group life insurance contracts. Shares of existing and future Funds also may be offered to separate accounts of insurance companies that are unaffiliated with Minnesota Mutual or Fortis (together, "Participating Insurance Companies") to be used to fund various variable annuity contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts issued by the unaffiliated insurance companies (collectively with the Fortis and Minnesota Mutual contracts, "Variable Contracts").

4. Norwest Investment Management ("Adviser") serves as Investment Adviser to the Funds. The Adviser is a part of Norwest Bank Minnesota, N.A., a subsidiary of Norwest Corporation, a multi-bank holding company. The Adviser has not registered under the Investment Advisers Act of 1940 ("Advisers Act") in reliance on the exclusions provided under section 202(a)(11) of the Advisers Act and in reliance on the provisions of rules 6e–2(a)(7) and 6e–3(T)(a)(6) of the 1940 Act.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("Trust Account"), rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

The exemptions granted by the rule 6e–2(b)(15) are available only where the management investment company underlying the Trust Account ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." Therefore, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

2. Additionally, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts that fund variable contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding."

3. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e–3(T) also is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by rule 6e–3(T) are available only where the Trust Account's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company * * *" Therefore, rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, rule 6e–3(T) does not permit shared funding because the relief granted by rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants therefore request that the Commission, under its authority in section 6(c) of the 1940 Act, grant relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder for themselves and for variable life insurance separate accounts of the Participating Insurance Companies, and the principal underwriters and depositors of such separate accounts, to the extent necessary to permit mixed funding and shared funding.

5. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to any disqualification specified in sections 9(a)(1) or 9(a)(2). Rule 6e–2(b)(15) (i) and (ii) and rule 6e–3(T)(b)(15) (i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund.

6. Applicants state that the partial relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants submit that there is no regulatory reason to apply the provisions of section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize a Fund as the funding medium for variable contracts.

7. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contractowners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make, or refrain from making, certain investments which would result in changes in the subclassification or investment objectives of such companies, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each rule.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in such company's investment policies or any principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each rule.

Applicants believe that the limits on pass-through voting privileges contained in rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) should continue to apply under mixed and shared funding.

8. Applicants submit that shared funding by unaffiliated insurance companies should not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

9. Applicants state further that, under rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii), the rights of the insurance company to disregard the voting instructions of its contractowners do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. Applicants state that the potential for disagreement is limited by the requirements in rules 6e-2 and 6e-3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

10. Applicants submit that mixed funding and shared funding should benefit variable contractowners by: (a) Eliminating a significant portion of the costs of establishing and administering separate funds; (b) allowing for a greater amount of assets available for investment by the Funds, thereby promoting economies of scale, permitting greater safety through greater diversification, and/or making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

11. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Trustees of the Trust ("Board") shall consist of persons who are not "interested persons," as defined by section 2(a)(19) of the 1940 Act and Rules thereunder and as modified by any applicable orders of the Commission, except that,

if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Trust. A material irreconcilable conflict may arise for a variety of reasons, including: (a) State insurance regulatory authority action; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Trust are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contractowners; or (f) a decision by an insurer to disregard contractowner voting instructions.

3. Participating Insurance Companies and Forum will report any potential or existing conflicts, of which they become aware, to the Board. Participating Insurance Companies and Forum will be obligated to assist the Board in carrying out its responsibilities by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contractowner voting instructions are disregarded. These responsibilities will be contractual obligations of all Participating Insurance Companies investing in the Trust under their agreements governing participation therein, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If a majority of the Board, or a majority of the disinterested members of the Board, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determinated by a majority of disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Trust or any Fund therein and reinvesting such assets in a different investment medium (including another Fund, if any, of the Trust), or submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance company's decision to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Trust, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Trust and these responsibilities will be carried out with a view only to the interests of the contractowners.

For the purposes of condition (4), a majority of disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Trust or Forum be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contractowners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, each Participating Insurance Company will vote shares of each Fund held in its separate accounts in a manner consistent with timely voting instructions received from contractowners. Each Participating Insurance Company also will vote shares of each Fund held in its separate accounts for which no timely voting instructions from contractowners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Each Participating Insurance Company shall be responsible for assuring that each of their separate accounts participating in the Trust calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Trust shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Trust.

7. The Trust will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Trust shall disclose in its Prospectus that: (a) Its shares are offered to insurance company separate accounts which fund both annuity and life insurance contracts; (b) because of differences of tax treatment or other considerations, the interests of various contractowners participating in the Trust might at some time be in conflict; and (c) the Board will monitor the Trust for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board regarding potential or existing conflicts, and all Board action with respect to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent rule 6e-2 and rule 6e-3(T) are amended, or rule 6e-3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to

mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Trust and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with rule 6e-2 and rule 6e-3(T), as amended, and rule 6e-3, as adopted, to the extent such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Trust), and in particular the Trust either will provide for annual meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) (although the Trust is not one of the trusts described in this section) as well as with sections 16(a) and, if and when applicable, section 16(b). Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Insurance Companies and/or Forum, at least annually, shall submit to the Board such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in each Fund.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8283 Filed 4–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20183; 812–8738]

Regis Fund, Inc., et al.; Application

March 31, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Regis Fund, Inc. (the "Fund"); United Asset Management Corporation ("UAM"); Acadian Asset Management, Inc., Cooke & Bieler, Inc., Dewey Square Investors Corp., Fiduciary Management Associates, Inc., Investment Counselors of Maryland, Inc., Sirach Capital Management, Inc., Spectrum Asset Management, Inc., Sterling Capital Management Company, Thompson, Siegel & Walmsley, Inc., any future investment adviser or subadviser to the Fund or a future Fund (as defined below) which is directly or indirectly controlling, controlled by or under common control with UAM (the "Investment Advisers"); Regis Retirement Plan Services, Inc., any future distributor of the Fund or a future Fund (as defined below) which is directly or indirectly controlling, controlled by or under common control with UAM (the "Distributor"); and any other future investment company advised by the Investment Advisers, or whose principal underwriter is the Distributor, and that are in the same "group of investment companies" as defined in rule 11a–3 under the Act ("future Funds").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue and sell multiple classes of securities representing interests in the same investment portfolio.

FILING DATE: The application was filed on December 21, 1993. By letters dated February 8, 1994 and March 28, 1994, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on April 25, 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, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One International Place, 44th Floor, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 504–2406, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a Maryland corporation registered as an open-end management investment company. The Fund currently consists of twenty-five series of shares (each, together with any series subsequently established or otherwise acquired is referred to as the "Portfolio"). Each of the existing Investment Advisers is a wholly-owned subsidiary of UAM, which is a holding company incorporated in Delaware for the purpose of acquiring and owning firms engaged primarily in institutional investment management. The Fund's shares are distributed through the RFI Distributors division of the Distributor. The Distributor of the Fund is a wholly-owned subsidiary of UAM.

2. Existing shares of each Portfolio ("Existing Shares") are no load, are not offered in connection with a rule 12b–1 distribution plan, and are designed primarily for investment by high net worth individuals and tax-exempt fiduciary investors who are entrusted with the responsibility of investing assets held for the benefit of others.

3. Applicants propose that the Fund issue additional, separate classes of shares ("New Shares") designed for a particular market. Each class of New Shares would be identical in all respects to the Existing Shares except for its class designation, the allocation of certain expenses, voting rights, and exchange privileges. [1]

[1] The Fund may institute a sales charge or a contingent deferred sales charge in the future with respect to the New Shares. Prior to the implementation of any CDSL, applicants will obtain a Commission order allowing the imposition of the CDSL, unless the Commission has adopted a rule allowing its imposition.

4. In addition to the current class of Existing Shares, the Fund may offer several classes of New Shares: (1) In connection with a distribution plan adopted pursuant to rule 12b–1 (a "Distribution Plan") and/or (2) in connection with a non-rule 12b–1 shareholder services plan ("Shareholder Services Plan"). Shares offered subject to the Distribution Plan are referred to as the "Distribution Shares." The Distribution Plan and the Shareholder Services Plan are collectively referred to herein as "Plans." The Fund may offer an unlimited number of classes of shares, either in connection with a Plan, with more than one Plan, or without any of the Plans. All classes of shares issued by the Fund in connection with any order granted in response to the application will comply with all representations and conditions contained herein.

5. Under each of the Distribution Plan and the Shareholder Services Plan, either the Fund or the Distributor enters into servicing agreements ("Service Agreements") with banks, broker-dealers, or other institutions, including the Distributor if the Fund so elects ("Service Organizations"), concerning the provision of certain account administration services to the customers ("Customers") of the Service Organizations. Service Agreements under the Distribution Plan also contemplate an asset-based sales charge to compensate Service Organizations for the distribution of Distribution Shares and the provision of certain additional shareholder liaison services to Customers, which services arguably could be considered to be distribution-related. The Shareholder Services Plan would be used with respect to Service Organizations authorized to provide only personal and account maintenance services under a Shareholder Services Plan, and the Distribution Plan would be used with respect to the Service Organizations authorized to provide the distribution and distribution-related and liaison services under the Distribution Plan.

6. Under each Plan, depending on whether either the Fund or the Distributor was a party to a Service Agreement with a Service Organization, the Fund or the Distributor (which would be reimbursed by the Fund) would pay a Service Organization for its services and assistance in accordance with the terms of the relevant Plan and the particular Service Agreement ("Service Payments"). Service Payments with respect to a Shareholder Services Plan are "service fees," and Service Payments with respect to a Distribution Plan are "service fees" or "asset-based sales charges" or both, as defined in Article III, section 26 of the National Association of Securities Dealers, Inc. Rules of Fair Practice.[2]

7. In the event that a Distribution Plan and a Shareholder Services Plan are adopted with respect to a single class of shares, the Directors will apply the analysis required under rule 12b–1(d) to the aggregate amount paid under such Plans in order to assure that, to the extent that the Plans may be deemed to overlap in some respects, compensation shall not be duplicative as a result of the use of both Plans.

8. Under the proposed arrangement, each New Share or Existing Share in a particular Portfolio, regardless of class, would represent an interest in the same portfolio of investments and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (a) Each class of New Shares would have a different class designation; (b) each class of New Shares offered in connection with a Plan (or Plans) would bear the expense of the Service Payments that would be made under the Service Agreements that are entered into with respect to such class; (c) each class of shares could also bear certain expenses described in condition 1 below (the "Class Expenses") that are directly attributable only to the class; (d) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to a Plan and any related agreements relating to such class or classes (for example, the adoption, amendment or termination of a Plan in accordance with the provisions of rule 12b–1 or the terms of the Plan); and (e) each class would have different exchange privileges.

9. Certain expenses may be attributable to a particular Portfolio, but not a particular class. All such expenses will be allocated to each class of shares in a Portfolio on the basis of the relative net asset values of the classes of that Portfolio.

10. Except as noted below, each class of shares may be exchanged only for shares of the same class in another Portfolio and in all events will be limited to within the same "group of investment companies" as that term is defined in rule 11a–3 of the Act. Exchanges will be permitted among classes should a shareholder cease to be eligible to purchase shares of the original class by reason of a change in the shareholder's status. Exchanges among classes may be made when a shareholder of a class becomes eligible to purchase shares of another class and ineligible to purchase shares of the class originally held. This situation might occur, for example, when an investor who beneficially owned shares held by an institution becomes the holder of legal title by reason of a distribution from the institutional account. Such distributions may be occasioned by a termination of a trust and distribution of the corpus of the trust to beneficiaries. An individual would become the holder of shares designed for institutions, and the individual may desire the services offered by Service Organizations in substitution of the services formerly provided by the trustee of such trust. In such a case, an exchange may occur upon the request of the shareholder.

Applicants' Legal Analysis

1. The proposed issuance and sale of certain classes of securities representing interests in the Fund's or future Funds' investment portfolios, including the allocation of voting rights thereto and the payment of dividends thereon in the manner described below, might be deemed to result in a "senior security" within the meaning of Section 18(g) and to be prohibited by section 18(f)(1) and also to violate the requirement in Section 18(i) that every share of stock issued by a registered management investment company shall have equal voting rights with every other share of outstanding voting stock.

2. Applicants believe that the proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a Plan would bear the costs associated with the related services, they would also enjoy the benefits of those services and, in the case of Distribution Shares, exclusive shareholder voting rights with respect to matters affecting such Plans. Conversely, investors purchasing shares that are not covered by a Plan would not be burdened with such expenses or enjoy such voting rights. Moreover, because with respect to any Portfolio the rights and privileges of shares would be substantially identical, the possibility that the interests of the various classes of shareholders would ever conflict would be remote. The interests of each class of shareholders would be adequately protected since the Plan, the Service Agreements and the Service Payments would conform to the

[2] Any front-end load, asset-based sales charge, service fee, or contingent deferred sales load will comply with section 26(d), Article III of the Rules of Fair Practice of the NASD.

requirements of rule 12b–1 or the protection described in the application, including the requirement that they be approved by the Board of Directors of the Fund.

3. The abuses that section 18 of the Act are intended to redress are set forth in section 1(b) of the Act which declares that the interests of investors are adversely affected when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase the speculative character of the other securities, or when investment companies operate without adequate reserves. The proposed arrangement does not involve borrowings and does not affect the Fund's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Portfolio, since each class of shares in a Portfolio will participate in all of such Portfolio's appreciation (if any), income and expenses (with the exception of the proposed Service Payments and Class Expenses) on the basis of the applicable net assets of such class.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions.

1. Each class of shares of a Portfolio will represent interests in the same portfolio of investments and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Portfolio will relate solely to one or more of the following: (a) The differences in certain Class Expenses, which are limited to any or all of the following: (i) Transfer agent fees identified by applicants as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxy statements to current shareholders of a specific class; (iii) Commission and Blue Sky registration fees incurred by a class of shares; (iv) the expense of administrative personnel and services as required to support the shareholders of a specific class; (v) Directors' fees or expenses incurred as a result of issues relating to one class of shares; (vi) accounting expenses relating solely to one class of shares; and (vii) legal expenses relating to a specific class of shares; (b) expenses assessed to a class pursuant to a Shareholder Services Plan and/or 12b–1 Plan with respect to such class; (c) the fact that the classes will vote separately with respect to the Fund's Shareholder Services Plan and/or any 12b–1 Plan; (d) the different exchange privileges of the classes of shares; and (e) the designation of each class of shares of the Fund. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated unless and until approved by the Commission pursuant to an amended order.

2. The Directors of the Fund, including a majority of the independent Directors, who are not interested persons as defined in section 2(a)(19) of the Act ("Independent Directors"), will approve the offering of additional classes of New Shares (the "Multi-Class System"). The minutes of the meetings of the Directors regarding the deliberations of the directors with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Directors' determination that the proposed Multi-Class System is in the best interest of both the Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Directors including a majority of the Independent Directors. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Directors, and the Directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Directors of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the classes of shares. The Directors, including a majority of the Independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The distributor and the investment advisers will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the distributor and the investment advisers, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. The Distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

6. The Shareholder Services Plans will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The Directors will receive quarterly and annual statements concerning the amounts expended under the Shareholder Services Plans and any Distribution Plans complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors in the exercise of their fiduciary duties.

8. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount per outstanding share, except that Service Payments made by a class under a Plan and any Class Expenses will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for

inspection by the Commission staff upon written request to the Fund for such work papers by a senior member of the Division of Investment Management or a regional officer of the Commission. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrators. The initial report of the Expert is a report on policies and procedures placed in operation, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (9) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectuses of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive different compensation for selling or servicing Fund Shares may receive different compensation with respect to one particular class of shares over another in the Fund.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the Directors.

13. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Portfolio. The information provided by Applicants for publication in any newspaper or similar listing of the Fund's net asset value or public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization of or acquiescence in any particular level of payments that the Fund may make pursuant to its Distribution Plan or Shareholder Services Plan in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8286 filed 4–6–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0550]

KOCO Capital Company, L.P.; Notice of Issuance of a Small Business Investment Company License

On September 17, 1993, a notice was published in the **Federal Register** (58 FR 29020) stating that an application has been filed by KOCO Capital Company, L.P., 116 Radio Circle, Mount Kisco, New York 10549, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business October 18, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0550 to KOCO Capital Company, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–8349 Filed 4–6–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice 1980]

Reinstatement of Export/Retransfer Privileges Pursuant to Section 38(g)(4) of the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of a person who has had its export/retransfer privileges reinstated pursuant to section 38(g)(4) of the Arms Export Control Act, (the AECA), (22 U.S.C. 2778(g)(4)) and § 127.11(b) (formerly § 127.10(b)) of the International Traffic in Arms Regulations, (the ITAR), (22 CFR parts 120–130).

EFFECTIVE DATE: March 25, 1994.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Enforcement Branch, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38(g)(4)(A) of the AECA and § 127.11(a) of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and § 120.27 of the ITAR. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported.

The statute permits export/retransfer privileges to be reinstated on a case-by-case basis after consultation with the Secretary of the Treasury and after a thorough review of the circumstances surrounding the conviction or

ineligibility to export and finding that appropriate steps have been taken to mitigate any law enforcement concerns.

In accordance with these authorities Japan Aviation Electronics Industry, Ltd., Japan, (JAE), effective March 25, 1994, has had export/retransfer privileges reinstated pursuant to section 38(g)(4) of the AECA and § 127.11 of the ITAR.

The effect of this notice is that JAE may once again participate in the export or retransfer of defense articles or defense services subject to section 38 of the AECA and the ITAR.

Dated: March 28, 1994.

William B. Robinson,

Director, Office of Defense Trade Controls, Department of State.

[FR Doc. 94–8332 Filed 4–6–94; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 1982]

Union Pacific Railroad Co. Proposal for New International Railroad Bridge at Laredo, TX

AGENCY: Department of State.

ACTION: Notice of receipt of application to construct an international bridge.

SUMMARY: The Department of State is announcing the receipt from the Union Pacific Railroad Company of Omaha, Nebraska of an application for a Presidential Permit to construct a new international railroad bridge at Laredo, Texas. The Department of State issues Presidential Permits for international bridges under authority of the International Bridge Act of 1972 (33 U.S.C. 535, 86 Stat. 731) and Executive Order No. 11423 (33 FR 11741), as amended by Executive Order No. 12847 (58 FR 29511).

ADDRESSES: The Application and Environmental Assessment are available for inspection at the office of Stephen R. Gibson, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, room 4258, Department of State, Washington, DC 20520 (Telephone 202–647–8529).

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order No. 11423, the Department of State will coordinate review of the application by concerned federal agencies, including the Immigration and Naturalization Service, General Services Administration, Department of the Interior, Department of Agriculture, Department of Commerce, U.S. Customs Service, Federal Highway Administration, Food and Drug Administration, International Boundary and Water Commission-U.S. Section, Department of Defense, and the Department of State. Interested persons may submit their views regarding the application in writing by May 6, 1994 to the Coordinator for U.S.-Mexico Border Affairs at the above address.

Dated: March 30, 1994.

Stephen R. Gibson,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 94–8335 Filed 4–6–94; 8:45 am]

BILLING CODE 4710–29–M

[Public Notice 1979]

Determination Under Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 1994 (Pub. L. 103–187)

Pursuant to Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 1994 (Pub. L. 103–187), I hereby determine that Israel is not being denied its right to participate in the activities of the International Atomic Energy Agency.

This determination shall be provided to Congress and published in the **Federal Register**.

Dated: March 25, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–8290 Filed 4–6–94; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1978]

United States International Telecommunications Advisory Committee (ITAC); Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector Study Group A will meet on April 27, 1994, in room 1207 from 9:30 am to 3 pm and Study Group C, April 28, 1994 from 9:30 am to 4:30 pm in room 1207, at the U.S. Department of State, 2201 "C" Street NW., Washington, DC 20520.

The agenda for Study Group A will include a debrief of the recent ITU–T Study Group 2 meeting and finalize preparations for the May 31–June 9, Geneva ITU–T Study Group 3 meeting.

The agenda for the Study Group C meeting will include consideration of delayed documents for ITU Study Groups 4 and 15. Agenda items for ITU Study Group 5, 6, and 12 will also be considered. Please submit proposed contributions to the chairman of SG–C on or before April 4, 1994 to allow time for distribution and review prior to the meeting. Contributions should be mailed to: D. Thovson, AT&T Rm 5A256, P.O. Box 752, 900 Route 202/206, Bedminster, NJ 07921–0752. Contributions endorsed by a U.S. Standards body may be brought into the meeting for consideration and approval. The person presenting the contribution should bring 40 copies of each to the meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of the Telecommunications Sector C Group, and wish to attend please call 202–647–0201 no later than 5 days before the meeting. Enter from the C Street Main Lobby. A picture ID will be required for admittance.

Dated: March 29, 1994.

Earl S. Barbely,

Chairman, U.S. ITAC for ITU-Telecommunication, Standardization Sector.

[FR Doc. 94–8331 Filed 4–6–94; 8:45 am]

BILLING CODE 4710–45–M

Office of Defense Trade Controls

[Public Notice 1981]

Munitions Exports Involving Rexon Technology Corp., et al.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all existing licenses and other approvals, granted pursuant to section 38 of the Arms Export Control Act, that authorize the export or transfer by, for or to, Rexon Technology Corporation, Gary D. Kauf, Jerome S. Shafir, James A. Bittel, Ronald L. Laib, Ordnance Technologies, Ltd., John Paul Grecian, and Bryan Mason, and any of their subsidiaries, associated companies, or successor entities, of defense articles or defense services are suspended. In addition, it shall be the policy of the Department of State to deny all export license applications and other requests for approval involving, directly or indirectly, the above cited entities. This action also precludes the use in connection with such entities of any exemptions from license or other approval included in the International Traffic in Arms Regulations (22 CFR parts 120–130) (ITAR).

EFFECTIVE DATE: February 24, 1994.

FOR FURTHER INFORMATION CONTACT:

Clyde G. Bryant, Jr., Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Two indictments were returned on December 13, 1993, in the U.S. District Court, District of New Jersey. The first, a five (5) count indictment, charging Rexon Technology Corporation, Gary D. Kauf, Jerome S. Shafir, James A. Bittel, and Ronald L. Laib, with conspiracy (18 U.S.C. 371) to violate and violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA) and its implementing regulations, the ITAR. Second, a four (4) count indictment, charging Ordnance Technologies, Ltd., John Paul Grecian, and Bryan Mason with conspiracy (18 U.S.C. 371) to violate and violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA) and its implementing regulations, the ITAR. The indictment charges that the defendants conspired to export illegally 300,000 sets of United States-origin fuze components to Iraq, while stating that the fuzes in question were for use by the Jordanian Armed Forces, without having first obtained the U.S. Department of State requisite authorization. Also, the defendant was charged with causing a false statement to be made in applications to the Department of State for licenses to export those defense articles to Iraq by supplying a cover story that stated the fuzes were going to be assembled in Jordan and used by the Jordanian Armed Forces. (*United States* v. *Rexon Technology Corporation*, U.S. District Court, District of New Jersey, Criminal Docket No. CR–93–610).

On February 24, 1994, the Department of State suspended all licenses and other written approvals (including all activities under manufacturing license and technical assistance agreements) concerning exports of defense articles and provision of defense services by, for or to Rexon Technology Corporation, Gary D. Kauf, Jerome S. Shafir, James A. Bittel, Ronald L. Laib, Ordnance Technologies, Ltd., John Paul Grecian, and Bryan Mason and any of their subsidiaries, associated companies or successor entities. Furthermore, the Department of State precluded the use, in connection with the named persons, of any exemptions from licenses or other approvals included in the ITAR.

This action has been taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 & 2791) and 22 CFR 126.7(a)(2) and 126.7(a)(3) of the ITAR. It will remain in force until rescinded.

Exceptions may be made to this policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns; and, whether other compelling circumstances exist which are consistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

A person named in an indictment for an AECA-related violation may submit a written request for reconsideration of the suspension/denial decision to the Office of Defense Trade Controls. Such request for reconsideration should be supported by evidence of remedial measures taken to prevent future violations of the AECA and/or the ITAR and other pertinent documented information showing that the person would not be a risk for future violations of the AECA and/or the ITAR. The Office of Defense Trade Controls will evaluate the submission in consultation with, *inter alia*, the Departments of Treasury, Justice, and other necessary agencies. After a decision on the request for reconsideration has been rendered by the Assistant Secretary for Political-Military Affairs, the requester will be notified whether the exception has been granted.

Dated: February 24, 1994.

Robert L. Gallucci,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 94–8334 Filed 4–6–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–94–004]

Eighth Coast Guard District Industry Day Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Commander, Eighth Coast Guard District, is sponsoring a Marine Safety Industry Day to discuss various topics of interest to the marine community. The meeting will be open to the public.

DATES: The meeting will be held on May 26, 1994, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Fairmont Hotel, 123 Baronne Street (at University Place), New Orleans, LA. The telephone number for the hotel is (504) 529–7111.

FOR FURTHER INFORMATION CONTACT: LCDR S. P. Glenn, U.S. Coast Guard, c/o Commander (mep), Eighth Coast Guard District, Hale Boggs Federal Bldg., room 1341, 501 Magazine Street, New Orleans, LA 70130–3396; telephone number (504) 589–6271; fax number (504) 589–499.

SUPPLEMENTARY INFORMATION: Over the past several years, the marine industry has undergone significant change. A much more competitive marketplace, an emphasis on quality, regulatory initiatives in response to several marine casualties, and significant legislation such as OPA 90 have influenced and changed the way virtually all segments of the industry currently conduct business. The Coast Guard also has taken a new approach as a regulatory agency and embarked on several major initiatives to improve quality and customer service.

In view of these changes, for this year's industry day, we plan to present a series of speakers representing all segments of the industry in lieu of the traditional panel sessions. These presentations, among other topics, will include the Coast Guard marine safety program's new "business plan," discussions on the Coast Guard's Maritime Regulatory Reform Program, the status of several joint industry-Coast Guard initiatives to streamline and improve the vessel inspection process, the latest on marine licensing, an update on several industry "quality" programs, and new initiatives in pollution response. The presenters will be from both the Coast Guard and industry. The theme for this year will be "A Partnership in Quality." The agenda is:

May 26, 1994—Fairmont Hotel

8 a.m.—Registration
9 a.m.—Welcome and Introductions
—Speaker presentations
9:45 a.m.—Coffee break
10 a.m.—Plenary session continues
11:30 a.m.—Luncheon with keynote speaker
1:30 p.m.—Plenary session continues
4:30 p.m.—Industry Day concludes
4:45 p.m.—No host reception

Attendance is open to the public. Preregistration for the program is required to assure adequate space. The conference and luncheon fee will be $30.00. Contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section to obtain registration forms and luncheon menu. Reservations must be received no later than April 30, 1994.

Dated: March 24, 1994.

J.C. Card,

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

[FR Doc. 94–8377 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and Hold Scoping Meetings for Kahului Airport, Kahului, Maui, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement and to hold two (2) public scoping meetings for Kahului Airport, Kahului, Maui, Hawaii.

SUMMARY: The Federal Aviation Administration, in cooperation with the State of Hawaii, Department of Transportation, Airports Division is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed improvements at Kahului Airport. To ensure that all significant issues related to the proposed action are identified, two (2) public scoping meetings will be held on May 18, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, HNL–621, Federal Aviation Administration, Honolulu Airports District Office, P.O. Box 50244, Honolulu, Hawaii, 96850–0001, Telephone: 808/541–1243.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA), in cooperation with the State of Hawaii, Department of Transportation, Airports Division, will prepare a joint Environmental Impact Statement (EIS) for proposed improvements at Kahului Airport in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and Chapter 343, Hawaii Revised Statutes, as revised.

The Joint Lead Agencies for the preparation of the EIS will be the Federal Aviation Administration and the State of Hawaii, Department of Transportation, Airports Division.

The proposed improvements at Kahului Airport include, but are not limited to:

1. Extend and Strengthen Runway 2/20 from 7,000 feet to 9,600 feet.
2. Construct a new airport access road.
3. Relocate the Instrument Landing System (ILS) and Approach Lighting System (ALS) on Runway 2.
4. Acquire land for Runway 2 approach protection, and approach lighting system.
5. Other development items recommended in the June 1993 Master Plan.
6. Potential long range projects not currently planned in the Master Plan or shown on the Airport Layout Plan including:
   A. Construct Phase II of the passenger terminal building.
   B. International flight operations and facilities.
   C. Long term helicopter facility.

Alternatives

The alternatives to the proposed development that will be examined in the EIS include the following:

1. The proposed alternative.
2. Alternative expansion at Kahului Airport such as a parallel runway or different runway lengths.
3. Alternative modes of travel.
4. Utilization of other existing State airports.
5. Reactivation of the abandoned Puunene Airfield.
6. Consideration of potential other general aviation airport sites.
7. No Action.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Comments and suggestions may be mailed to the FAA informational contact listed above.

Public Scoping Meeting

To facilitate receipt of comments, Two (2) public scoping meetings will be held on Wednesday, May 18, 1994. The first meeting will be held in the Kahului Airport Terminal at 10 a.m. Hawaii Standard Time. The second meeting will also be held in the Kahului Airport Terminal at 7 p.m. Hawaii Standard Time. Public comments on the scope of the EIS will be accepted through Friday, June 17, 1994.

Issued in Hawthorne, California on March 30, 1994.

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600.

[FR Doc. 94–8323 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting; correction.

SUMMARY: The FAA is issuing this notice to advise the public of a correction to a Notice of meeting published on March 29, 1994 (59 FR 14707). This notice amends the agenda previously presented, to include items pursuant to Concept Briefings that will be presented to 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.
  Parts Working Group presentation of Concept.
  Production Certification Working Group presentation of Concept.
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 April 1, 1994.

Elizabeth Yoest,

Acting Assistant Executive Director, Aviation Rulemaking Advisory Committee on Aircraft Certification Procedures.

[FR Doc. 94–8324 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–19; Notice 1]

First Brands Corporation, Receipt of Petition for Determination of Inconsequential Noncompliance

First Brands Corporation (FBC) of Danbury, Connecticut has determined that some of its brake fluid fails to comply with 49 CFR 571.116, Federal Motor Vehicle Safety Standard No. 116, "Motor Vehicle Brake Fluids," and has filed an appropriate report pursuant to 49 CFR part 573. FBC has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Section S5.1.7, Fluidity and Appearance at Low Temperature, of Standard No. 116 states:

When brake fluid is tested according to S6.7, at the storage temperature and for the storage times given in Table II—

(a) The fluid shall show no sludging, sedimentation, crystallization, or stratification;

(b) Upon inversion of the sample bottle, the time required for the air bubble to travel to the top of the fluid shall not exceed the bubble flow times shown in Table II; and

(c) On warming to room temperature, the fluid shall resume the appearance and fluidity that it had before chilling.

Table II of S5.1.7 states that when the brake fluid is stored at $-40° \pm 2°$ C. for 144 hours T1± 4.0 hours the maximum bubble flow time is 10 seconds. When stored at $-50° \pm 2°$ C. for 6 hours ± 0.2 hours the maximum bubble flow time is 35 seconds.

NHTSA notified FBC that a sample of Prestone Brake Fluid, AS–400, failed to meet the requirements of S5.1.7 (NHTSA file NCI 3293). FBC's initial investigation determined that the brake fluid was packaged on May 4, 1993, at its subsidiary, Paulsboro, Packaging, Inc., and that the fluid was manufactured by Union Carbide Corporation (UCC) and identified as UCC's PM6060, lot #0319083. FBC further stated:

All [of the] product in FBC's distribution system packaged from the specific lot # 0319083 was placed on hold and all packaging of Brake Fluid PM6060 was ceased pending a full investigation and implementation of corrective measures.

FBC produced 202,704 units (12.0 fl.oz.) from lot #0319083, and currently has 61,752 units on hold at various warehouses.

Based on review of all data and consultation with USC, it is FBC's opinion that the noncompliance will not affect product performance in a motor vehicle or create a safety concern.

FBC is recommending that no recall of [the] product outside of FBC's distribution system be made. It is further recommended that the product in inventory (61,752 units) also be released for sale.

FBC also stated that it has elected to convert to an alternative UCC brake fluid identified as PM6340, which has a freeze point of $-65°$ C., and will provide an added margin to meet the requirements of S5.1.7., Standard No. 116.

In support of its petition FBC attached a letter from UCC, dated January 17, 1994. The UCC letter describes the results of tests it performed on samples of the subject brake fluid:

Specifically with regard to the DOT "Fluidity and Appearance at Low Temperature" test (FMVSS 116, Section 5.1.7), Union Carbide Corporation, using the DOT FMVSS 116 procedure, performed the test at -40 C° for 6 days [144 hours] and -50°C for 6 hours. Following completion of the tests:

—At -40°C for 6 days, the sample passed all requirements. The sample met the requirements for appearance at low temperature, bubble travel time and room temperature appearance-fluidity properties.

—At -50°C for 6 hours, the sample passed the requirements of bubble travel time and room temperature appearance-fluidity properties. Upon completion of the 6 hours at -50°C, some crystallization was noted in the sample.

—Attempts were made to isolate the crystallized material. It was soft, non-abrasive gel that was difficult to isolate as it flowed with the brake fluid.

Union Carbide Corporation also conducted the test of FMVSS 116, § 5.1.7 on the sample with rigorous temperature control at -49°C ±2°C to more closely realize the -48°C limit of the test's specified temperature range § 5.1.7 test parameter: -50°C ±2°C). The sample was clear, showed no crystals, had a bubble travel time of approximately 5 seconds and regained its appearance and fluidity at room temperature. These results were confirmed by a second run at the same conditions.

The Pour Point of the sample was measured according to the method of ASTM D97. [The] lowest temperature at which movement in the liquid could be observed was determined to be -62°C.

From the results obtained and observations made, we are confident that this brake fluid will perform and provide braking under the low temperature conditions of the FMVSS 116 standard, § 5.1.7 and offer the following reasons in support of this:

—The fluid passed the -40°C/6 day fluidity and appearance test.

—The fluid showed appropriate viscosity at low temperature (-40°C).

—The fluid showed appropriate viscosity at -50°C (bubble travel time of [approximately 5 seconds against a requirement of 35 seconds [maximum]).

—Any crystallization observed was a soft, non-abrasive gel that flowed with the brake fluid. Further, the phenomenon is fully reversible.

—The Pour Point of the sample was measured as -62°C.

Interested persons are invited to submit written data, views, and arguments on the petition of FBC, 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 six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 9, 1994.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: April 1, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–8317 Filed 4–6–94; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 67
Thursday, April 7, 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).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice of Public Meeting

The Subcommittee on the Environment of the Blackstone River Valley National Heritage Corridor Commission will HOLD A PUBLIC MEETING TO GATHER INFORMATION indicating what, if any, substantial Corridor Commission objectives may be affected by quarrying activity along the Blackstone River in Woonsocket/Cumberland, RI. Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that this meeting will be held. The Commission was established pursuant to Public Law 99–647, in order to establish a management framework to protect, enhance and interpret the nationally significant resources in the Blackstone Valley.

The meeting will be held at Harris Hall, 169 Main Street, Woonsocket, RI on April 12, 1994, at 7:00 p.m.–9:00 p.m., or earlier if concluded.

The Subcommittee is providing opportunity for individuals to submit information relating to the effect of the quarrying and relative activities on the Commission's objectives and authorities as approved in the *Cultural Heritage and Land Management Plan of the Blackstone River Valley National Heritage Corridor.*

Corridor Plans are available upon request from the Commission by calling 401–762–0250 or writing to the address below.

Request from the public *to address the subcommittee* at the meeting shall be considered when submitted in writing, and accompanied by a written statement addressing the above 2 points, and received in the Commission office not later than April 5, 1994. Include the proposed spokesperson's name, mailing address, and telephone number with the request. The subcommittee will use the written statements to select spokespersons providing relevant information, or representing relevant concerns. All written statements received by April 22 will be included in the record for the subcommittee's consideration.

Requests to address the subcommittee including a written statement should be mailed to: Blackstone River Valley National Heritage Corridor, One Depot Square, Woonsocket, RI 02895.

James R. Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor.

[FR Doc. 94–8496 Filed 4–5–94; 2:46 pm]

BILLING CODE 4310–70–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, April 12, 1994 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, April 14, 1994 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–3: M. Joel Bolstein on behalf of EnviroSource, Inc. PAC
Advisory Opinion 1994–5: William D. White
New Confidential Filers (continued from meeting of April 5, 1994)
Convention Regulations: Final Rules and Explanation and Justification
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–8498 Filed 4–5–94; 2:44 pm]

BILLING CODE 6715–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Tuesday, April 12, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS Open.

BOARD BRIEFINGS:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Advance Notice of Proposed Rulemaking: Amendment to Section 704.12, NCUA's Rules and Regulations, Corporate Credit Union Representation.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, April 12, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Request by a Corporate Federal Credit Union for a Field of Membership Amendment. Closed pursuant to Exemption (8).
3. Appeal of Insurance Determination under Section 201 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–8486 Filed 4–5–94; 1:41 pm]

BILLING CODE 7535–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–11]

TIME AND DATE: April 11, 1994 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 701–TA–360–361 (Preliminary) (India and Israel Only) and Inv. No. 731–TA–688–695 (Preliminary) (Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela)—briefing and vote
5. Outstanding action jackets:
   1. GC–94–023; **Federal Register** advanced notice of proposed parts 201 and 207 rulemaking
   2. GC–94–024; Determination on the issues of remedy, the public interest, and

bonding in Inv. No. 337–TA–354 (Certain Tape Dispensers)

3. GC–94–028; Request to set aside determination in Inv. No. 731–TA–571 (F) (Professional Electric Cutting and Sanding and Grinding Tools)

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary (202) 205–2000.

Issued: April 4, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8475 Filed 4–5–94; 1:29 pm]

BILLING CODE 7020–02–P

UNITED STATES ENRICHMENT CORPORATION

Board of Directors

TIME AND DATE: 8:00 a.m., Monday, April 11, 1994.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, financial and internal personnel issues of the Corporation

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold 301–564–3354.

Dated: April 4, 1994.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 94–8411 Filed 4–4–94; 4:27 pm]

BILLING CODE 8720–01–M

federal register

Thursday
April 7, 1994

Part II

Environmental Protection Agency

40 CFR Part 51

Economic Incentive Program Rules; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–4853–8]

RIN 2060–AD58

Economic Incentive Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and guidance.

SUMMARY: This action promulgates rules for economic incentive programs (EIP's) which either may or must be adopted by States for certain ozone (O_3) and carbon monoxide (CO) nonattainment areas upon the failure of a State to submit an adequate showing that an applicable reasonable further progress (RFP) or a specific emissions reductions milestone has been met (in serious, severe, and extreme O_3 and serious CO nonattainment areas) or upon the failure of a serious CO nonattainment area to attain the national ambient air quality standards (NAAQS) for CO. Under the Clean Air Act as amended in 1990 (Act), the EPA was required to promulgate final EIP rules for stationary, area, and mobile sources by November 15, 1992; this action is that rulemaking.

The provisions of today's rules are also guidance for discretionary EIP's that any State may choose to adopt for any criteria pollutant, as explicitly allowed for in the Act. The Agency views this action as an opportunity to encourage the development and early implementation of appropriate EIP's. In so doing, the Agency hopes these rules and guidance will stimulate the adoption of incentive-based, innovative programs, where appropriate, that will assist States in meeting air quality management goals through flexible approaches which benefit both the environment and the regulated entities, allow for less costly control strategies, and provide stronger incentives for the development and implementation of pollution prevention measures and innovative emissions reductions technology.

The EPA intends that the portion of the preamble and rules published today that concern discretionary EIP's constitute guidance, not final action. Final action with respect to discretionary EIP's will occur when the EPA approves or disapproves State implementation plan (SIP) revisions containing discretionary EIP's.

EFFECTIVE DATE: The regulations in this rulemaking go into effect on April 7, 1994.

ADDRESSES: The public docket for this action, A–91–56, including copies of the public comments on the EPA's February 23, 1993 proposed rulemaking, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the address listed below. A reasonable fee for copying may be charged. The address of the EPA Air Docket is EPA Central Docket Section, South Conference Center, room 4, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Willis P. Beal, U.S. EPA, MD–12, Research Triangle Park, North Carolina 27711, telephone (919) 541–5667.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background and Purpose
- A. Introduction
- B. Overview
- C. Principles and Regulatory Elements

II. Summary of Rules and Guidance
- A. Applicability
- B. Definitions
- C. State Program Election and Submittal
- D. State Program Requirements
- E. Use of Program Revenues

III. Discussion of Rules and Guidance
- A. Applicability
- B. Definitions
- C. State Program Election and Submittal
- D. State Program Requirements
- E. Use of Program Revenues

IV. Discussion of Comments and Regulatory Changes
- A. Program Goals
- B. Interface With Reasonably Available Control Technology (RACT) and Other Statutory Requirements
- C. Program Baseline
- D. Emission Quantification
- E. Monitoring, Recordkeeping, Reporting (MRR)
- F. State Implementation Plan (SIP) Creditability
- G. Audit/Reconciliation Procedures
- H. Penalties for Noncompliance
- I. Interface With Existing Emission Trading Policies
- J. General Issues

V. Administrative Requirements
- A. Executive Order 12866
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act

I. Background and Purpose

A. Introduction

The Act, as amended in 1990, broadly encourages the use of incentive-based approaches to control air pollution. This encouragement is reflected not only in the title IV acid rain program, but also in the title I general provisions for State and Federal implementation plans for achieving the NAAQS for criteria pollutants, as well as in the provisions for certain Federal O_3 measures. In title I, incentive-based approaches are encouraged, and, in certain cases, mandated, through the use of what has been termed an "economic incentive program." Today's notice promulgates rules and guidance for EIP's adopted by the States pursuant to title I of the Act.

The Agency views this action as an opportunity to encourage and provide guidance on the early implementation of appropriate discretionary EIP's, as well as to provide mandated rules for use by States after certain specific failures occur. The Agency hopes that this guidance will stimulate the early adoption of innovative, incentive-based approaches, where appropriate, that will assist the States in avoiding such failures, reaching attainment of the NAAQS faster than might otherwise occur solely through the use of traditional regulatory strategies, and lowering the cost of attaining and maintaining the NAAQS. Through this action, the Agency intends to encourage the development of EIP's which benefit both the environment and the regulated entities by increasing flexibility and stimulating the use of less costly strategies, as well as by providing stronger incentives for development and implementation of pollution prevention measures, innovative emissions reductions technology, and strategies beyond those specifically mandated through State and Federal standards and regulations. The Agency believes that these goals can be met by EIP's that also meet the standards of accountability and enforceability currently found in traditional regulatory programs.

B. Overview

Today's notice promulgates rules for EIP's which may be adopted by an authorized governing body, including States, local governments, and Indian governing bodies (henceforth State), for certain O_3 and CO nonattainment areas pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act. These sections mandate for certain areas, and identify as one of three options for certain other areas, the use of EIP's in certain cases. An EIP is mandated upon the failure of a State to submit an adequate demonstration showing that the area has met applicable milestones for RFP in extreme O_3 nonattainment areas (section 182(g)(5)). An EIP is identified as one of three options upon such failure in serious and severe O_3 nonattainment areas (section 182(g)(3)).[1] Further, an EIP is also mandated upon the failure of a State to submit a

[1] The other two options are to have the area reclassified to the next higher classification and to implement specific additional measures adequate to meet the next milestone as provided in the applicable contingency plan.

milestone demonstration showing adequately that the area has met a required specific emissions reductions milestone or to attain the CO NAAQS in serious CO nonattainment areas (section 187(d)(3), 187(g)).

Section 182(g)(4)(A) of the Act requires that EIP's adopted by States pursuant to the sections of the Act cited above, characterized in today's notice as statutory EIP's, be consistent with the Agency's final rules for EIP's. This section also requires that such EIP's be nondiscriminatory with regard to applicable laws regarding interstate commerce. In addition, section 182(g)(4)(B) imposes constraints on how any revenues generated by such programs shall be used. The scope of the EIP rules includes programs which may be adopted for "reducing emissions from permitted stationary sources, area sources, and mobile sources."

Other sections of title I also explicitly allow for EIP's to be included as provisions in SIP's in general (section 110(a)(2)(A)), as well as specifically in nonattainment area SIP's (section 172(c)(6)). Economic incentives are allowable in Federal implementation plans (FIP's) by definition (section 302(y)), and in Federal O_3 measures through the system of regulations for control of emissions from consumer or commercial products (section 183(e)(4)). Today's notice serves as the Agency's final guidance for EIP's adopted by States pursuant to the sections of the Act relating to general SIP provisions, characterized in today's notice as discretionary EIP's. Discretionary EIP's may be adopted for any criteria pollutant in both nonattainment and attainment areas.

C. Principles and Regulatory Elements

The rules and guidance in today's notice are broadly applicable to any type of statutory or discretionary EIP, respectively. This notice requires that EIP's submitted for approval to the EPA as part of a SIP for a nonattainment area contain design features that will ensure that the program will not interfere with other requirements of the Act and that emissions reductions credited to the program will be quantifiable; consistent with SIP attainment and RFP demonstrations; surplus to reductions required by, and credited to, other implementation plan provisions to avoid double counting of reductions; enforceable at both the State and Federal levels; and permanent over the entire duration of the program.[2] The Agency does not intend to limit flexibility and innovation beyond those constraints that are necessary to meet these requirements.

This notice identifies key program provisions which must generally be included to ensure that the above requirements will be met. Adequate program designs will generally include the following elements: Clearly defined goals and an incentive mechanism that can be rationally related to accomplishing the goals; a clearly defined scope, which identifies affected sources and assures that the program will not interfere with any other applicable Federal regulatory requirements; a program baseline from which projected program results (e.g., quantifiable emissions reductions) can be determined; credible, workable, replicable procedures for quantifying emissions and/or emission-related parameters, as appropriate; source requirements, including those for MRR, that are consistent with specified quantification procedures and allow for compliance certification and enforcement; requirements for projecting program results and dealing with uncertainty; and an implementation schedule, administrative system, and enforcement provisions adequate for ensuring Federal and State enforceability of the program. All EIP's for which SIP credit is taken in attainment and RFP demonstrations must include additional elements, such as audit procedures to evaluate program implementation and track results, and, in certain cases, reconciliation procedures to trigger corrective or contingency measures to make up any shortfall between projected emissions reductions and emissions reductions actually achieved in practice.

The rules are, of necessity, general in nature with regard to criteria for designing adequate program elements. This generality arises due to the large variety of EIP types and designs which may be submitted, and the Agency's goal of encouraging creativity and innovation on the part of the States developing such programs. There are three broad, interrelated aspects of any program design that significantly affect the approvability of an EIP: How the EIP relates to other SIP provisions, the level of certainty in quantifying emissions and projecting EIP results, and the nature and extent of MRR requirements for enabling determinations of compliance. For example, today's notice reflects the Agency's view that the scope and nature of MRR requirements, including the extent to which an EIP exceeds the minimum requirements for such, would be among the factors to be considered in assessing the adequacy of any demonstration of projected EIP program results. The Agency anticipates preparing additional guidance on specific aspects of program design as it gains experience with EIP's, partly through participation in feasibility and demonstration projects.

Descriptions of a broad range of general types of incentive strategies which exemplify potential EIP's are appended to the final rules. These descriptions identify key provisions which distinguish the different model program types. These examples are general in nature so as to avoid limiting innovation on the part of the States in developing programs tailored to individual State needs. The EPA has placed in the docket support documents which survey a wide range of EIP's that have actually been implemented, as well as programs in the design stage. The EPA has also issued information and guidance, as required by section 108(f)(1)(A) of the Act, regarding the formulation and emissions reductions potential of various transportation control measures (TCM's).[3]

The EPA also published interim guidance on the generation of emissions reductions credits (ERC's) from mobile source control programs at the same time the EIP rule was proposed.[4] The EPA intends to respond to comments received on this interim guidance and publish final guidance in conjunction with other EIP-related guidance on ERC banking currently being developed.

The EPA intends that today's notice be consistent with other related rules and policies, either in place or under development, such as the title V operating permits rules, the title VII rules for enhanced monitoring, general

[2] The program need not continue forever to generate permanent emissions reductions. Such reductions can be discrete or continuous, depending on the nature of the program. Discrete (i.e., temporary) reductions can be used to defer but not solely to satisfy continuous emission reduction requirements (e.g., RACT).

[3] Further information on potential TCM's and other mobile source measures is also contained in a staff memorandum, "Preliminary Mobile Source Economic Incentive Program Strategies," from P. Okurowski to P. Lorang, March 30, 1992, which is available in the docket.

[4] Interim Guidance on the Generation of Mobile Source Emission Reduction Credits, 58 FR 11134, February 23, 1993. For information and copies of the associated technical addendum entitled Guidance for the Implementation of Accelerated Retirement of Vehicles Programs, please contact: Mr. Mark Simons, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4417. For information and copies of the associated technical addenda entitled (1) Guidance for Emission Reduction Credit Generation by Clean Fuel Fleets and Vehicles or (2) Guidance for Mobile Emission Credit Generation by Urban Buses, please contact: Mr. Glenn Passavant, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4408.

guidance on the implementation of title I, and policies on emission trading.

II. Summary of Rules and Guidance

A. Applicability

The rules promulgated in today's notice apply to any statutory EIP submitted to the EPA as a SIP revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act, which either may or must be adopted by States upon the failure of a State either to meet or to submit an adequate showing that an applicable RFP or a specific emissions reductions milestone has been met (in serious, severe, and extreme O_3 nonattainment areas, and serious CO nonattainment areas), or upon the failure of a serious CO nonattainment area to attain the NAAQS for CO. The provisions contained in these rules, except as explicitly exempted, also serve as the Agency's policy guidance on any discretionary EIP's submitted as SIP revisions.

B. Definitions

The term "EIP" is defined to include State established emission fees, marketable permits, State fees on the sale or manufacture of products the use of which contributes to O_3 formation, TCM's, or any combination of such measures.

C. State Program Election and Submittal

Under today's rules, statutory EIP's submitted as SIP revisions, when applicable, must be sufficient, in combination with other elements of the plan, to achieve the next applicable milestone (for serious, severe, and extreme O_3 nonattainment areas), or to reduce the total tonnage of emissions of CO in the area by at least 5 percent per year until attainment is achieved (for serious CO nonattainment areas). Discretionary EIP's must not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the Act (section 110(l)).

D. State Program Requirements

Today's rules and guidance establish as a goal for all EIP's that they be designed to benefit both the environment and the regulated entities. In addition, EIP's must be State and federally enforceable, nondiscriminatory (with respect to interstate commerce), and consistent with the timely attainment and maintenance of NAAQS, all applicable RFP and visibility requirements, applicable prevention of significant deterioration (PSD) increments, and all other applicable requirements of the Act. Programs in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable, and that the credit taken is limited to that which is surplus to other SIP-credited requirements. Statutory EIP's must be designed to result in quantifiable, significant reductions in actual emissions.

A number of program elements are outlined in the rules which must be included, as applicable, as part of any EIP design. These elements are required to delineate program scope, to specify credible, workable, replicable emission quantification procedures and all affected source requirements, to project program results, to specify audit and, if appropriate, reconciliation procedures (to evaluate program implementation, track results, and, as appropriate, trigger corrective or contingency measures), and to define an implementation schedule, administrative procedures, and effective enforcement mechanisms.

E. Use of Program Revenues

The rules incorporate statutory restrictions on the use of revenues generated by statutory EIP's. Specifically, any such revenues may be used by a State for providing incentives for achieving emissions reductions, providing assistance (up to 75 percent of the costs) for the development of innovative technologies for the control of O_3 air pollution and for the development of lower-polluting solvents and surface coatings, and funding (with up to 50 percent of the revenues) administrative costs of State programs under this Act. These restrictions on the use of revenues do not apply to discretionary EIP's.

III. Discussion of Rules and Guidance

This portion of the notice provides more detail on the provisions of the final rules and guidance.

A. Applicability

The rules published in today's notice apply to any statutory EIP submitted to the EPA as a SIP revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act, which either may or must be adopted by States upon the failure of a State either to meet or to submit an adequate showing that an applicable RFP or a specific emissions reductions milestone has been met (in serious, severe, and extreme O_3 nonattainment areas, and serious CO nonattainment areas), or upon the failure of a serious CO nonattainment area to attain the NAAQS for CO. The provisions contained in these rules, except as explicitly exempted, also serve as the Agency's policy guidance on any discretionary EIP's submitted as SIP revisions. Further, the EPA will use the provisions contained in these rules as guidance in preparing EIP's, when appropriate, for FIP's necessitated by State failures and for other Federal measures.

The EPA intends to review EIP's submitted as plan revisions based on the general SIP review requirements contained in sections 110(k), 110(l), 182, and 187 of the Act, as applicable, and associated Agency policies. For statutory programs, the Agency intends to review the plan revision and either approve or disapprove all or part of the revision within 9 months after the date of the State's submission of the plan revision, consistent with section 182(g)(3) and 182(g)(5) of the Act. For discretionary EIP's, Agency action on plan revisions submitted for review will be taken according to the same schedule as is applicable to any other type of plan revision. An EIP submitted as a plan revision will be deemed to be approved only upon an affirmative decision by the Agency.

B. Definitions

The definitions in today's notice include many terms drawn from the Act or other regulations or guidance documents, as well as new terms relating to EIP's. Key new terms are discussed below.

1. Economic Incentive Program

Consistent with section 182(g)(4)(A) of the Act, for purposes of today's rulemaking, "EIP" is defined to mean a program which may include "State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products, the use of which contributes to O_3 formation, or any combination of the foregoing or other similar measures." In addition, the Act expands this definition to include "incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f)."

For purposes of this rulemaking, this notice classifies EIP's into three broad categories: emission limiting, market response, and directionally-sound. This categorization is based on whether a quantifiable emission-related requirement is directly specified as an integral element of the program or whether the program depends upon marketplace decisions, in response to a program's incentive, to produce the intended emission-related objective of the program. Further, the categorization

is a function of whether the results of the program are quantifiable.

Emission-limiting strategies directly specify limits on total mass emissions, emission-related parameters (e.g., emission rates per unit of production, product content limits), or levels of emissions reductions relative to a program baseline that are required to be met by affected sources, while providing flexibility to sources to reduce the cost of meeting such limits. A marketable permits program (i.e., emission trading with source-specific mass emissions limitations, or caps) is a primary example of such a program. If every affected source in such a program complies with its emissions cap (taking into account both emissions generated by the source as well as any emissions trading), the program will necessarily achieve the specified emissions limits.

A market-response strategy creates one or more incentives for affected sources to reduce emissions, without directly mandating emission-related requirements for individual sources or even for all sources in the aggregate. An emission fee program may be an example of a market-response strategy. In such a program, each source might be required to pay a fee on each unit of emissions. The response to the incentive, in terms of actions which affect emissions levels, will be determined by each source according to its abatement opportunities, costs, and other factors. Thus, each source has flexibility in determining its ultimate level of emissions (within any constraints imposed by other regulatory requirements).

A consequence of programs based on market-response strategies is that actual emissions from affected sources may differ from the pre-implementation projected emissions level even if every affected source is in full compliance with the EIP requirements. This added degree of uncertainty in program results must be accounted for in designing such a strategy (see paragraph III.D.6.).

Directionally-sound strategies do not yield quantifiable emissions reductions creditable towards RFP or attainment demonstrations. Such strategies may be included in an area's attainment plan, without credit, or in a maintenance plan if the strategy contributes to the area coming into or maintaining attainment. Emissions reductions from such programs are not creditable towards RFP or attainment demonstrations because the program lacks one or more of the basic program elements, such as a quantifiable program baseline or adequate emissions quantification procedures. However, a State may want to pursue such a strategy as a part of their overall program to attain and maintain the NAAQS. Directionally-sound strategies must not be used as the primary basis for any statutory EIP submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act.

A number of different types of incentive strategies have been identified upon which EIP's could be based. Appendix X contains descriptions of different types of strategies, together with a listing of the TCM's included in section 108(f) of the Act. There is not, however, in all cases a direct correspondence between a type of strategy and the regulatory categories described above, since program design details can in some cases make a difference in the extent to which program results are quantifiable or dependent on market response.

2. Program Baseline

The determination of a program baseline is the first step in projecting program results. Results from EIP's can be projected in terms of quantifiable emissions reductions, or, in the case of directionally-sound programs, in terms of other emission-related parameters. Further, some types of incentive strategies depend upon the establishment of a program baseline, in terms of a level of mass emissions or emission-related parameter(s), for each affected source or aggregated overall affected sources, as a starting point for the incentive program mechanism. For example, a marketable emissions permit program could be initialized by a program baseline that allocates to each source a cap on mass emissions that serves as its starting point for any emissions trading transactions or future emissions reductions requirements. For other types of programs, this program baseline could be defined in terms of emission-related parameters, such as average emission rates, solvent content, or vehicle ridership factors.

3. Nondiscriminatory

Section 182(g)(4) provides that statutory EIP's must be "nondiscriminatory" and must be "consistent with applicable law regarding interstate commerce." The EPA interprets these requirements to mean that a statutory EIP must not discriminate in favor of intrastate commerce and against interstate commerce. In addition, an EIP must meet any other applicable limitations under the Commerce Clause of the U.S. Constitution. For example, State taxes must meet the requirements, to the extent applicable to the tax, set out by the U.S. Supreme Court in *Complete Auto Transit, Inc.* v. *Brady*, 430 U.S. 274 (1977). There, the Court stated that a State tax will pass scrutiny under the Commerce Clause only if "the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Id.* at 279. Under the EPA's interpretation, Congress did not intend, by the provisions authorizing EIP's, either statutory or discretionary, to delegate its authority under the Commerce Clause to the States, and thereby release State EIP's from the limitations that would apply under the Commerce Clause had Congress not specifically authorized the EIP; rather, Congress intended to maintain those limitations.

C. State Program Election and Submittal

The mandated schedules for the development, submittal, review/approval, and implementation of statutory EIP's, submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act, may leave as little as 6 months for the EIP to be operational prior to the next milestone requirement. Thus, in these cases, the time available to develop, implement, and achieve emissions reductions from an EIP will be extremely limited if a State waits until a milestone failure occurs to initiate the selection and development of a statutory EIP. As a result, the EPA encourages States to initiate development of an EIP as soon as they determine that a milestone failure is likely, or even sooner, as part of their SIP.

States are encouraged to consider inclusion of discretionary EIP's, where appropriate, in the SIP's (or SIP revisions) due within the first 4 years after enactment of the amended Act (e.g., sections 182 (b)(1) and (c)(2), 187(a)(1)). Submittal at that time would more likely allow sufficient time to develop, implement, and evaluate the effectiveness of the program. If such an early EIP submittal is made, States must account for the effects of the EIP in any subsequent required SIP submittals. Nothing in today's notice precludes a State from revisiting and amending its original EIP, or any other pre-existing rules, as necessary, to ensure consistency with any subsequent required SIP submittals.

The requirements of section 182(g)(3) and 182(g)(5) of the Act apply any time that a State fails to submit an adequate milestone compliance showing, or when the EPA determines that a milestone has been missed by an area covered by these provisions. For example, if such a

milestone is not met by a serious or severe O_3 nonattainment area, the area may elect among three options, including an EIP. The Act does not provide any additional or different requirements that would apply when a State that missed one milestone, and makes a proper election, misses a subsequent milestone. Accordingly, if a subsequent milestone is missed, the same choices are available, including the election of an EIP. Thus, the imposed requirements or specified options apply not only the first time that a milestone is missed, but also if subsequent milestones are missed even if an EIP had previously been implemented. Similarly, the EPA interprets section 187(g) (requiring serious CO nonattainment areas that fail to attain to adopt an EIP) as applying even if the area previously missed a milestone and adopted an EIP pursuant to section 187(d)(3). A second missed-milestone program must provide reductions beyond the reductions from a first statutory program. The second EIP may either be a new program or a substantive revision of the first program.

D. State Program Requirements

Under today's rules, EIP's must be State and federally enforceable; nondiscriminatory (with respect to interstate commerce); and consistent with the timely attainment and maintenance of NAAQS, all applicable RFP and visibility requirements, applicable PSD increments, and all other applicable requirements of the Act. Programs in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable and that the credit taken is limited to that which is surplus to other SIP-credited requirements. Statutory EIP's must be designed to result in quantifiable, significant reductions in actual emissions.

Each of the program elements that must be included, as applicable, in an EIP submitted to the EPA as a plan revision are described below. For EIP's that allow trading to meet existing source requirements, the EPA will consider a two-step process for State submittal and EPA review of the program elements outlined below. Under such a step-wise process, the initial submittal shall include both a framework for all the general elements of program design, as well as all the specific regulatory details for a source-specific trade or for an entire source category, which trade or source category is representative, with respect to all program elements, of the types of trading to be allowed under the general framework. For example, for an EIP designed to directly implement trading within source categories, the initial submittal shall include the full details of all program elements for at least one source category. Alternatively, for an EIP designed to implement trading on a source-by-source basis, with EPA review of each trade, the initial submittal shall include the full details of all program elements for at least one source-specific trade. Thus, required specific aspects of the emission quantification procedures and MRR requirements for additional sources and/or source categories could be submitted at a later time to allow the State to phase-in the application of the program to other individual sources or source categories. Because adequate enforceability elements—including emissions quantification procedures, test methods, and MRR requirements—are integral to any SIP program, approval by the EPA of a framework for trading would constitute approval only of the framework elements included as part of the initial submission and of trading for those sources or within those source categories submitted with the framework and approved for trading by the EPA. Trading involving other sources or source categories could not occur until all elements, including enforceability elements, were approved by the EPA through a subsequent step in the process. The EPA will apply the same criteria in reviewing step-wise submittals of emission quantification and MRR requirements as in reviewing such requirements submitted together with the other program elements. Thus, a subsequent submittal must be fully compatible with all the elements in the initial submittal, and, taken together, both submittals must meet all the requirements of the EIP rules and guidance. The EPA does not intend to consider use of this step-wise process for EIP's that mandate new requirements for affected sources (e.g., requiring mass emission caps on sources previously required to meet emission rate limits).

1. Program Goals and Rationale

An acceptable EIP must clearly define the goals of the program and provide a rationale relating how the program design will accomplish the goals. These final rules and guidance establish as a goal for all EIP's that they be designed to benefit both the environment and the regulated entities. The final rules and guidance require States to design programs that will meaningfully meet this goal, while providing flexibility to the States to determine how best to accomplish such "benefits sharing" in the context of each specific program.

The term "benefits" is broadly defined to include not only economic benefits, such as cost savings and compliance flexibility for the regulated sources, but also environmental benefits that will result in States reaching attainment of the NAAQS faster than might otherwise occur solely through the use of traditional strategies. Environmental benefits can be created most directly by EIP's that require increased or more rapid emissions reductions beyond those that would be achieved through a traditional regulatory program. Specifically, a 10 percent increase in emissions reductions would presumptively meet this benefits sharing goal. Alternatively, environmental benefits can also be achieved by programs that incorporate, for example, improved administrative mechanisms (e.g., that achieve emissions reductions from sources not readily controllable through traditional regulation), reduced administrative burdens on regulatory agencies that result in increased environmental benefits through other regulatory programs, improved emissions inventories that enhance and lend increased certainty to State planning efforts, and the adoption of emission caps which over time constrain or reduce growth-related emissions beyond traditional regulatory approaches.

Statutory EIP's will benefit the environment as a result of the requirement that they be designed to result in significant reductions in actual emissions. For discretionary EIP's, no standard formula for benefit sharing is specified, although the EPA encourages States, to the extent practicable, to design such programs so as to create most directly increased or more rapid emissions reductions (see paragraph IV.A.2).

The EPA notes that any incentive-based program has the potential to create incentives for pollution prevention and technological innovation. Such an inherent potential benefit can only meaningfully meet the goal of providing benefits to the environment if the program is specifically designed to allocate some of the effects of such innovation to enhancing environmental progress. Likewise, for the other ways listed above in which environmental benefits can be accomplished, the EPA intends that these approaches be meaningfully implemented so as to produce real environmental benefits.

A well-designed EIP will achieve a number of different kinds of environmental benefits. For instance, a marketable emissions permit program, with mass emissions caps declining

over time, may achieve several results. The declining cap aspect of the program can result in real emissions reductions creditable towards RFP milestones and attainment (to the extent that actual emissions are reduced). The marketable aspect of the program allows emission sources facing differing costs of further emission control to trade, lowering overall control costs. Such programs also encourage sources already able to meet their mass emissions caps to find ways of further reducing emissions beyond what would otherwise be required by traditional regulatory programs (e.g., through pollution prevention, technological innovation, or changes in operational procedures).

Statutory EIP's, submitted because of failures in achieving required emissions reductions, must make a significant contribution to the required reductions, while not necessarily bearing the full burden of achieving all the required reductions or mandating any specific percentage reduction. A program producing no additional emissions reductions or one based solely on a directionally-sound strategy, without quantifiable benefits, would not satisfy these criteria for an acceptable statutory EIP. For discretionary EIP's, the final guidance relies upon the new State planning, quantitative progress, and attainment requirements in the Act to ensure expeditious attainment of the NAAQS, regardless of the type of programs that States may choose to include in their SIP's.

Any EIP should include a rationale for how the incentive mechanism(s) will achieve the stated goal(s). A State can create a better overall program design by carefully examining and explaining the linkage between a program's provisions and the desired outcome. The provisions of a program must be sufficient to ensure the program goals are successfully achieved without creating unintended detrimental side effects.

2. Program Scope

As with any regulatory program, an EIP must identify the affected sources covered by the program. The affected sources may be defined on the basis of source type (e.g., manufacturing operations), activity type (e.g., fuel storage tanks), location, firm size, quantity of emissions, or other such characteristics. In addition, a State may choose to grant exemptions from program requirements to sources meeting specified criteria. For example, States may consider exempting zero-emitting vehicles from a new parking price program. In establishing the affected source criteria, a State must assure that the resultant program is nondiscriminatory within the meaning given that term in these rules.

The program must establish procedures for dealing with sources entering or exiting affected source categories. In order to promote economic growth consistent with achieving environmental goals, a regulatory program should not create unwarranted barriers to entry for new or expanding business entities.

In addition, the program must establish criteria and procedures for sources voluntarily choosing to opt-in to or to be exempted from the program, to the extent that the program design allows for such movement into or out of the universe of affected sources. For example, the title IV acid rain allowance trading program includes provisions for sources not originally in the program to opt-in to the program in order to sell sulfur dioxide (SO_2) emission allowances to sources already in the program. Certain EIP's may also provide criteria for exempting sources such that they can leave the program; such criteria must be described and the procedures for leaving the program must be included in the EIP. Any such procedures must ensure that movement into or out of the program will not interfere with other statutory requirements nor result in an increase in area-wide emissions that is not reflected in the plan's attainment or RFP demonstrations. Finally, the opt-in program language must specify that it will not allow sources to opt-in if the net result of the opt-in program as a whole is to increase area emissions, unless such increase has been accounted for in the development of the EIP, and is consistent with attainment and maintenance of the NAAQS, RFP, and all other SIP requirements.

Affected sources in an EIP may also be covered by other Federal regulatory requirements. An EIP may not interfere with applicable requirements concerning attainment and RFP, or any other applicable requirements of the Act. Thus, the program scope must be defined so as not to interfere with any other Federal regulatory requirements which apply to the affected sources. Such requirements for stationary sources may include, but are not limited to, reasonably available control technology (RACT), PSD and new source review (NSR) offset requirements, lowest achievable emission rate (LAER), best available control technology (BACT), new source performance standards (NSPS), national emissions standards for hazardous air pollutants (NESHAP's), acid deposition program requirements, reasonably available control measures (RACM), and best available control measures (BACM). Such requirements for mobile sources may include, but are not limited to, programs integral to vehicle inspection and maintenance (I/M), clean-fueled fleets, reformulated gasoline, oxygenated fuels, employee commute options (ECO), TCM's, and Federal motor vehicle controls.

In general, sources subject to these statutory requirements may participate in emissions trades pursuant to an EIP as long as, apart from their participation in such trades, they continue to meet the statutory requirements. Thus, if these sources reduce their emissions below what the applicable statutory requirements call for, the reductions beyond the requirements may furnish credits for the EIP.[5] Following is a more specific discussion of the interplay of the EIP rules with several of the statutory provisions listed above.

RFP Requirements. Credits for emissions reductions from stationary, mobile, or area sources may generally be used to meet the "progress" requirements of the nonattainment provisions of the Act. The SIP's for O_3 nonattainment areas classified as moderate or higher under section 181(a)(1) are required to provide for reductions in volatile organic compounds (VOC) of at least 15 percent from baseline emissions by 1996, and areas classified as serious or higher are required to provide for reductions of at least 3 percent each year (averaged over a 3-year period) thereafter until the attainment date (section 182(b)(1), 182(c)(2)(B)). Emissions reductions from all sources may be used to meet these progress requirements, except for those reductions attributable to Federal motor vehicle programs and RACT and NSR corrections (section 182(b)(1) (C)–(D)).

RACT. An EIP may allow sources subject to the RACT requirement to attain RACT-level emissions reductions in the aggregate, and thereby trade among themselves. In designing such RACT trading programs (to implement new and/or previously existing RACT requirements), as with any EIP, States are encouraged, to the extent practicable, to meet the benefits sharing goal directly, by requiring increased emissions reductions beyond those that would be achieved through a traditional RACT program.

[5] For example, since VOC reductions that occur as a result of controls put in place to meet NESHAP's are creditable to RFP, such VOC reductions cannot be considered as surplus to supply VOC credits through an EIP. However, if in such a case greater than required reductions are made, the incremental VOC reductions could furnish credits through an EIP.

In addition, today's rules and guidance authorize emissions trading between the stationary sources subject to the RACT requirement ("RACT sources") and any sources (i.e., stationary, mobile, and area sources) not subject to the RACT requirement ("non-RACT sources") when such trading results in an exceptional environmental benefit, e.g., a level of reductions that is significantly greater than RACT-level amounts. With respect to the level of emissions reductions required from the non-RACT sources, the appropriate amount of emissions reductions generally should be set at a level that takes into account the severity of the nonattainment status in a given area.

Today's rules establish the statutory offset ratios for nonattainment areas as the determinant of the amount of emissions reductions that would be required from non-RACT sources generating credits for RACT sources. The offset ratios are lower for lower-classified areas (e.g., compare section 182(a)(4), with a 1.1 to 1 offset ratio for marginal areas, and section 182(d)(2), with a 1.3 to 1 offset ratio for severe areas). Looking to offset ratios is instructive because offsets are an aspect of emissions trading that is directly addressed in the Act. The offset ratios provide a suitable analogy because they represent the most substantial benefit to the environment for a given area that is required in this statutory context of emissions trading.

However, today's rules authorize emissions trading between RACT and non-RACT sources at less than the offset ratios if exceptional environmental benefits are otherwise demonstrated, such as, for example, an emissions trade that promoted the market penetration of emissions reduction measures for non-RACT sources, such that future emissions reductions from the universe of non-RACT sources would be expected to increase over time. Such measures could include new vehicle technologies that utilize alternative fuels, provided that such technologies meet all relevant EPA standards and guidelines. Where a lower trading ratio is authorized in order to promote the market penetration of an environmentally-beneficial, new control measure, a lower bound for the trading ratio of 1.1 to 1 will assure that in all events some additional benefit will accrue to the environment. In setting the appropriate ratio for trades between RACT and non-RACT sources, States may also take into account additional State and federally-enforceable emissions reductions that are achieved as a result of other exceptional environmental features of an EIP (such as a separate "environmental bonus" provision, as discussed in EPA's Interim Guidance on the Generation of Mobile Source Emissions Reduction Credits). In no case, however, can a trading ratio be lower than 1 to 1, and in no case can the effective trading ratio be less than the appropriate offset ratio (or such ratio, as low as 1.1 to 1.0, as may be authorized to promote the market penetration of environmentally-beneficial, new control measures).

Offsets. Credits for emissions reductions generated by stationary, mobile, or area sources may be used for purposes of meeting the offset requirement for major new and modified sources in nonattainment areas so long as they meet the restrictions imposed on offsets by section 173 of the Act and the EPA's new source review regulations (40 CFR 51.165 and part 51, appendix S). Under the nonattainment provisions, new or modified major stationary sources may not receive permits for construction and operation in a nonattainment area unless, among other things, their new emissions are offset by reductions from other sources in the area (section 172(c)(5), 173(a)(1)(A)). For O_3 nonattainment areas, minimum offset ratios range from 1.1 to 1 for marginal areas to 1.5 to 1 for extreme areas (section 182(a)(4), 182(b)(5), 182(c)(10), 182(d)(2), 182(e)(1)).

However, the Act does not require that offsets be secured by the new source. Rather, any portion of the necessary offsets may be generated by the local air quality district or by the State. In other words, a jurisdiction may set up an offset "bank" to supply new sources with sufficient emissions reductions to satisfy their offset obligations. To satisfy the requirements set forth in section 173, each time a new source commences operations, the jurisdiction must have already generated the necessary emissions reductions to offset the new emissions. This means that the jurisdiction must be able to demonstrate that the program has secured sufficient excess emissions reductions to offset all new emissions at the proper ratio. If the source itself is only held responsible for securing emissions reductions in an amount equal to its new emissions (i.e., a 1 to 1 ratio), the SIP must generate sufficient reductions to cover the extra reductions required (e.g., 1.2 to 1 in serious O_3 nonattainment areas).

The Act limits offsets to emission reductions not "otherwise required by this Act." As part of the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," the EPA described certain circumstances under which reductions would not be creditable for offset purposes because those reductions are required by other provisions of the Act (57 FR 13498, 13553 (April 16, 1992)). In addition, the EPA intends to provide additional guidance regarding offsets in the near future.

BACT and LAER. Both the PSD program and the nonattainment NSR program contain technology-based emission limitations that are source specific. The Act expressly requires that these emissions limitations (i.e., BACT in the case of PSD and LAER in the case of NSR) be met by the proposed major new source or major modification itself as a condition of permit issuance. Consequently, neither of these requirements can be met through emissions trading.

Regarding BACT, section 165(a) of the Act provides that no major new source or major modification may be constructed in a PSD area unless the requirements in section 165(a)(1)-(8) are met. Section 165(a)(1) specifies that among these requirements is "a permit * * * setting forth emission limitations for such facility which conform to the requirements of this part." Section 165(a)(3)(C) further specifies that the proposed facility must demonstrate that emissions from the facility will not exceed any applicable emission standard under the Act.[6] The applicable emissions limitations are those provided in section 165(a)(4), which provides that the proposed facility must "be subject to the best available control technology for each pollutant subject to regulation under this Act emitted from, or which results from, such facility."[7]

The Act sets forth a similar statutory scheme with respect to LAER. Section 173(a) provides that the permit program applicable to major new sources or major modifications, which is required to be included in part D SIP's under section 172(b)(5),[8] shall provide that permits to construct and operate may be issued only if the requirements set forth in section 173(a)(1)-(5) are met. Among these enumerated requirements is

[6] Section 302(k) of the Act defines the terms "emission limitation" and "emission standard" interchangeably.

[7] Section 169(3) in turn defines BACT as "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility."

[8] Section 173(a) incorrectly refers to the "permit program required by section 172(b)(6)." Section 172(b)(6) was renumbered as section 172(b)(5) by the 1990 Amendments. Apparently, this change was not picked up by the drafters of revised section 173.

section 173(a)(2), which specifies that "the proposed source is required to comply with the lowest achievable emission rate."[9]

The statutory provisions addressing both BACT and LAER clearly require the permitting authority to set, and the source owner to comply with, the applicable technology-based emission limitation. There is no provision in the statute for lawfully complying with BACT or LAER through obtaining emissions reductions at other sources that would result in an equivalent reduction of emissions or ambient concentrations.

Inspection and Maintenance Programs. The I/M provisions of the Act require a vehicle I/M program that meets specified performance standards. The requirements of the I/M provisions cannot be met by obtaining ERC's from sources other than vehicles, or from vehicles through means other than I/M of the vehicle. An EIP may not substitute entirely for an enhanced or basic periodic vehicle I/M program.

This view is based on the provisions of the Act that set forth requirements for a basic I/M program, as well as certain provisions relating to enhanced I/M programs. Sections 182(a)(2)(B)(i) (I/M "fix-ups" for O_3 nonattainment areas classified marginal and higher), 182(b)(4) (I/M "catch-ups" for O_3 nonattainment areas classified moderate and higher), and 187(a)(4) (I/M "fix-up" requirement for CO nonattainment areas classified moderate and higher) each require a SIP revision that includes provisions for a "vehicle inspection and maintenance program" that meets a specified performance standard.

The provision for an enhanced I/M program for CO nonattainment areas classified as moderate and with a design value higher than 12.7 ppm, or classified as serious, requires the SIP to include provisions for "an enhanced vehicle inspection and maintenance program as required in section 182(c)(3) (concerning serious O_3 nonattainment areas)" (section 187(a)(6)). This provision confirms that the required I/M program is in fact a vehicle I/M program. The primary provision for an enhanced I/M program for O_3 nonattainment areas classified as serious or higher does not include a comparable "inspection and maintenance" phrase (i.e., requires the SIP "to provide for an enhanced program to reduce hydrocarbon emissions and nitrogen oxides (NO_X) emissions from in-use motor vehicles"), but it further includes specific requirements for various types of testing, inspections, etc., that make clear that the program must obtain reductions from vehicle I/M (section 182(c)(3)).

Nevertheless, both the basic I/M program and the enhanced I/M program requirements authorize a substantial degree of flexibility in program design. The Act directs the EPA to require a specific amount of emissions reductions, but also authorizes the State to design the program in a manner that meets the EPA established performance standard through different means. The EPA's final rule on I/M programs describes the EPA's performance standards and the ways that States can meet those standards (57 FR 52950–53014). In so doing, the State can take advantage of economic efficiencies (e.g., have a better test on more older cars to get greater performance, in exchange for some relaxation in another element). In addition, States could address mal-maintenance in the vehicle fleet in part by including an old car scrappage program as an element of the overall package used to meet the performance standard. However, the SIP must include a program obtaining the required reductions through vehicle inspections.

3. Program Baseline

An EIP baseline must be fully defined within the EIP, and used as a basis for projecting program results and, if applicable, for initializing the incentive mechanism. States have flexibility in defining the program baseline for EIP's that implement new RACT requirements for previously unregulated source categories through trading programs, as long as the new RACT requirements reflect, to the extent practicable, increased emissions reductions beyond those that would be achieved through a traditional RACT program. States may also use a flexible baseline for EIP's that allow trading with respect to newly imposed RACT requirements on previously unregulated sources in a previously regulated source category (e.g., sources newly covered by lower applicability cut-offs), as long as the EIP, in the aggregate, yields reductions in actual emissions at least equivalent to those which would result from source-by-source compliance with the existing RACT limit for that source category. This requirement can be satisfied by using existing data on actual and allowable emissions from the previously regulated sources in the affected source category (see paragraph IV.C.).

A State also has flexibility in defining the program baseline for any EIP submitted in conjunction with, or subsequent to, the submission of any complete areawide progress plan due at the time of EIP submittal (e.g., the 15 percent RFP plan (section 182(b)(1)) and subsequent 3 percent plans (section 182(c)(2))), and/or an attainment demonstration.

In all such cases, the flexible program baseline may be based on actual, allowable, or some other intermediate[10] or lower level of emissions, provided the State demonstrates that the program baseline is consistent with and reflected in the associated RACT rule, progress plans, or attainment demonstration. Further, for EIP's submitted prior to the submittal of a required progress or attainment demonstration, the State must include with its EIP submittal a commitment that its subsequent attainment demonstration and all future progress plans will be consistent with the EIP baseline in effect at that time, as well as a discussion of how the baseline will be integrated into the State's attainment demonstration. Further, in this discussion, the State should take into account the potential that emission reduction credits issued prior to the attainment demonstration may no longer be surplus relative to the attainment demonstration.[11]

Conversely, for EIP's that do not meet the above conditions relating to RACT and progress requirements, the program baseline must be set no higher than the lower of actual or allowable emissions. Actual emissions are to be taken from the most appropriate inventory, such as the 1990 actual emission inventory (which was due for submission in November 1992), and allowable emissions are the lower of SIP allowable emissions or the level of emissions consistent with source compliance with all Federal requirements related to attainment and maintenance of the NAAQS.

In addition, following submission of an EIP that incorporates a flexible baseline, if the State fails to submit a complete attainment demonstration, or if the EPA disapproves the attainment demonstration on the grounds that it does not provide for attainment of the NAAQS, the EPA may require the State to incorporate in the EIP a program baseline set no higher than the lower of actual or allowable emissions.

[9] Section 171(3) defines LAER as "that rate of emissions which reflects" either "the most stringent emission limitation which is contained in (any SIP) for such class or category of source," or "the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent."

[10] A typical intermediate baseline may consist of a SIP-allowable emission rate and an actual level of production.

[11] For example, the State could establish an escrow account or a formula for pro rata reductions of credits to cover credits that subsequently are no longer surplus.

The baseline for an EIP submitted in conjunction with an attainment demonstration must be consistent with the assumptions employed in the attainment demonstration, including the location of emissions assumed in the photochemical grid modelling, if applicable.

In considering emissions trading, the EPA continues to focus on the aspect of trading that involves the relaxation of a control requirement on a particular emissions-producing unit (the credit-receiving unit). Under trading programs, this relaxation is offset by tightening the control requirements on another emissions-producing unit (the credit-generating unit). Under section 110(l), this relaxation is authorized only if it, taken in conjunction with the tighter control requirements, does not interfere with the ability of the SIP to meet the various requirements of the Act—most importantly, for present purposes, the RACT requirement and the requirements for progress (e.g., for RFP in O_3 nonattainment areas, 15 percent reductions in VOC emissions by 1996; and 3 percent-per-year over each 3-year period until the attainment date), as well as attainment requirements. It is understood that when the credit-generating unit's actual emissions are below the level mandated by the applicable control requirement, relaxing a control requirement on the credit-receiving unit in exchange for tightening the requirement on the credit-generating unit may result in an increase in aggregate actual emissions. Under these circumstances (i.e., trading from an allowables baseline), the relaxation and its resulting increase in actual emissions could, in some circumstances, jeopardize RFP and attainment.

As described above, notwithstanding the chance of actual emissions increases, EIP's may authorize trading from an allowables baseline when the EIP is submitted in conjunction with, or following, the submission of the applicable progress plans, and the allowables baseline is consistent with those plans. Under these circumstances, trading on the basis of allowables would not jeopardize the progress requirements. In some cases, the EPA will permit trading to occur on the basis of allowables prior to submission of the attainment demonstration SIP. However, once the State has submitted any applicable progress plans due at the time of EIP submission, the State has made significant progress towards attainment. This significant progress, coupled with the sanctions provisions that provide strong safeguards that the State will develop a SIP requiring any subsequent progress plans and an attainment demonstration, provide, in the EPA's judgment, sufficient evidence that an EIP authorizing an allowables baseline submitted in conjunction with an applicable progress plan will not jeopardize continued progress or attainment. In addition, States and sources should be aware that any emission limit relaxations approved through an EIP may be subject to ongoing scrutiny, and further tightening, if it is unexpectedly necessary to do so as part of an attainment demonstration.

In addition, as described above, the EPA will permit EIP's that authorize trading from an allowables baseline in the case of source categories, or portions of source categories, that are newly subjected to the RACT requirement under the RACT "catch-up" provisions of section 182(b)(2). Under these circumstances, the imposition of RACT-level controls meets the RACT requirement, as described above, and is expected to result in emissions reductions with respect to the affected source categories or sources taken as a whole, even if some of the affected sources conduct emissions trades based on allowables. The fact that overall emissions from these source categories or sources will be reduced indicates that with respect to these source categories, progress is being made towards attainment. This progress provides adequate assurance that any such trades on an allowables basis will not jeopardize progress or attainment requirements.

If a SIP does not include a required RACT emission limit for a source, that source may not participate in an EIP until an appropriate RACT limit is determined.

The provisions described above apply as well in the case of a statutory EIP. That is, under the circumstances described above, a statutory EIP may incorporate a flexible baseline as long as the EIP as a whole provides the required reductions.

A State may define a program baseline to address a variety of equity considerations, such as differing degrees of emission control among affected sources prior to the start of the EIP. While emissions reductions creditable towards a specific required demonstration will be calculated according to the requirements for that demonstration, the EIP may use a different baseline. For example, a declining value marketable permits program, submitted in conjunction with an areawide RFP or attainment plan, could initially allocate mass emissions caps on the basis of allowable emissions. However, to the extent that such a program baseline exceeds the aggregate actual emissions for the sources covered by the program, the EIP baseline allocation would be required to decline at a rate consistent with achieving the areawide RFP milestone as measured against the RFP baseline.

The EIP must clearly specify whether the program baseline applies to aggregate emissions from all affected sources (similar to the RFP baseline) or to individual sources (similar to source-specific LAER requirements, for example). If historic emissions are relevant in setting the program baseline, the time period must be specified in the program. Provisions must be made for determining baselines for sources not active during the specified baseline time period. Also, the averaging time associated with a program baseline for emissions must be specified.

4. Quantification Procedures

An EIP must describe how emissions and changes in emissions will be quantified for SIP credit. If other measurable factors are essential to an EIP, the quantification procedures for those must be specified in the program. For instance, if emissions reductions are generated by reducing total usage of a type of solvent, procedures for measuring solvent usage are critical. The program must specify the minimum required credible, workable, replicable procedures for quantifying emissions, which could include emission factor calculations, direct emission monitoring, calculation procedures which are a function of process parameters, production practices or volume, or inventory usage, or other procedures, as appropriate. Criteria for selecting quantification methods and time-averaging considerations are discussed below.

States must carefully consider matching their environmental goals with various aspects of the program when determining adequate quantification procedures. For example, a procedure wholly adequate for determining compliance with long-term mass emissions caps may be clearly inadequate for a program aimed at limiting peak daily emissions.

An EIP must establish procedures for quantifying emissions reductions arising from sources that shut down or curtail production. A State may not take credit for such emissions reductions as part of an EIP if the same reductions have already received credit in the SIP's attainment or RFP demonstrations. For example, SIP demonstrations may include assumptions about equipment turnover rates and normal operating levels which may already credit some assumed rate of source shutdowns and

curtailments. Credit also cannot be taken for shutdowns or curtailments that do not result in a decrease in an area's aggregate emissions. Changes in emissions at one source may merely increase emissions at another. For example, if one retail operation goes out of business, the total level of retail business will not necessarily change. Instead, customers may shift their business to other merchants in the area. The effect on aggregate emissions of such "demand shifting" will depend upon the nature of the business, and should be considered in the design of the EIP.

An EIP also must establish procedures for quantifying emissions from sources with uneven emission patterns due to batch, seasonal or cyclical operations. The appropriate procedure for handling these expected fluctuations in emissions will depend in part on the emissions averaging time upon which the EIP is based.

The EPA recognizes that the development of quantitative procedures for mobile sources can present significant challenges. Such procedures must consider, as appropriate, the factors which will affect or determine the level of participation in a transportation program, as well as how much and where vehicles are driven. Such procedures should clearly address how double-counting will be avoided across various mobile source programs (e.g., not double-counting I/M program reductions in quantifying credits from an accelerated vehicle scrappage program). Any assumptions or models which States may use to predict behavioral modifications as a result of the implementation of an economic incentive strategy must be presented as support information with the EIP submittal. The EPA views the development of sound incentive-based mobile source programs as an opportunity for the design of better, more rigorous tools for accounting for and encouraging mobile source emissions reductions beyond those required by traditional programs.

The final rules allow for long-term averaging, while requiring that States make statistical showings that any such averaging is consistent with applicable RACT, RFP, and short-term NAAQS. Any State that wishes to use long-term averaging must include, with the plan revision submittal, a statistical showing that the aggregate effect of the specified averaging time is consistent with attaining the O_3 NAAQS and satisfying applicable RFP requirements on the basis of typical summer day emissions; and, if applicable, a statistical showing that aggregate daily emissions from all affected sources covered by a Federal RACT requirement (net of any RACT/non-RACT trades) are no greater than the aggregate daily emissions from such sources that would result from the implementation of all applicable source-specific RACT requirements (see paragraph IV.D.2.).

5. Monitoring, Recordkeeping and Reporting

Each affected source in an EIP must comply with requirements imposed by the program, and must implement the MRR procedures necessary to assure compliance with such requirements and to provide State and Federal enforceability. Requirements imposed by an EIP could include meeting mass emissions limits (either directly or through trading marketable permits), paying an emission fee, using specified products or procedures, providing product content labeling, or other measures specified by the program. Thus, the final rules allow for a wide range of alternative MRR procedures that provide sufficiently reliable and timely information for determining compliance. Criteria to be considered in the development of such procedures include representativeness, accuracy, precision, reliability, frequency, and timeliness.

All source-specific program requirements must be structured in such a way that both inspectors and facility owners can judge the compliance status of a facility at any time, or, in the case of long-term emissions limits, at the end of the compliance period. This will require an authoritative, reliable repository of all relevant information at each facility.

6. SIP Creditability and Audit/Reconciliation Procedures

A SIP revision that contains an EIP must include projections of the emissions reductions the State expects to achieve through the implementation of the program. The projections may be based on federally-enforceable limits on mass emissions or on other emission-related parameters, estimates of market response, economic modelling, or other relevant information. The State does not have to project emission changes for each source, unless that is how the State chooses to estimate the emissions reduction from the program. All EIP submittals must include documentation which clearly states how sources in an EIP are or will be addressed in the emissions inventory, RFP plan, and attainment or maintenance plan, as applicable. This documentation should include a description of the assumptions used in measuring emissions and emissions reductions from affected sources.

Credit in a nonattainment SIP may be taken for emission limiting programs (e.g., emissions trading) and market-response programs (e.g., emissions fees). Credit may not be taken for directionally-sound programs until experience with such programs makes quantification possible, at which time the program could be reclassified into one of the other categories for which credit may be taken.

For determining SIP credit, the projected emissions reductions must be adjusted to reflect the uncertainties inherent in EIP's. This adjustment is currently done for traditional stationary source control measures through the use of a rule effectiveness factor, developed from experience with traditional regulatory control programs. For EIP's, the State must use two uncertainty adjustment factors, as appropriate, to calculate creditable emissions reductions. The sources of uncertainty that must be separately addressed are compliance uncertainty (i.e., the extent to which sources will actually comply with program requirements) and programmatic uncertainties (e.g., the extent to which voluntary market responses to incentives actually occur and/or the use of various quantification methods with differing confidence levels). These sources of uncertainty must be accounted for through the use of a rule compliance factor and a program uncertainty factor, respectively.

The State must specify values for rule compliance and program uncertainty factors, based on program elements such as the quantification and enforcement procedures, and on the predictive quality of the information used by the State to develop the projected emissions reductions. Inherent in the way in which these factors are defined, the value of either factor must be less than or equal to one. The State must include with its EIP submittal a justification for the values assigned to these factors. The State must use these factors in determining the SIP credit for the program as a whole, or for each source-specific trade, if appropriate, to ensure that quantification uncertainties not lessen a source's emissions reductions requirements. The uncertainty factors should be developed and justified by the State by taking into account various aspects of the design of the EIP, including but not limited to, the type of incentive mechanism upon which the program is based; the variability in emissions from affected sources and the nature and extent of uncertainty in the emissions quantification procedures required by the program; the frequency

and type of MRR required by the program; sanctions for noncompliance; the frequency, scope and committed responses to program audits; and the nature of administrative procedures to be used by the State in implementing and enforcing the program (see paragraph IV.F.).

Unless otherwise provided in program-specific guidance issued by the EPA, EIP's for which SIP credit is taken must also contain program audit procedures designed to evaluate program implementation and track program results in terms of both actual emissions reductions and, to the extent practicable, cost savings realized during program implementation. The auditing methods and the timing of the audits must be specified in the EIP. The maximum time interval for conducting such audits is 3 years, although States are encouraged to consider more frequent audits. Further, the State must provide timely post-audit reports to the EPA. For emission-limiting EIP's, program audit provisions must include a State commitment to ensure timely implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program (see paragraph IV.G.).

Program audit provisions for market-response EIP's must be accompanied by reconciliation procedures, designed to compare credited emissions (i.e., adjusted projected emissions) with actual emissions achieved through the implementation of the program. The reconciliation procedures must specify a range of appropriate actions (e.g., invoke part of a general SIP contingency plan or a program-specific contingency), revisions to the program requirements (e.g., increase the fee, include more sources) that will make up for any shortfall between credited and actual emissions revealed by the audit, or reductions in the credit taken for the EIP in the SIP (provided that RFP and attainment requirements continue to be satisfied area-wide based on such reduced EIP credits in combination with the effects of all other SIP programs). Such measures must be automatically executing to the extent necessary to make up the shortfall, with State action required only to identify which of the specified actions are necessary to make up the shortfall. Such measures must not require a revision to the implementation plan to be effectuated once identified by the State; rather, the measures must be built into the original EIP design (or incorporated by reference).

Greater burdens should not necessarily be imposed on EIP's, compared to traditional regulatory programs, by virtue of the audit and reconciliation requirements. These audit and reconciliation procedures are consistent with the general approach to implementing the Act being taken by the EPA, as illustrated in the Agency's rules for vehicle I/M [12] and for reformulated gasoline,[13] and in the Agency's general guidance on the implementation of title I dealing with the rule effectiveness of stationary source control measures.[14] Further, in appropriate cases, routine ongoing air program management procedures may be sufficient to fulfill the audit and reconciliation requirements. In designing audit procedures, the State should consider the relative uncertainty associated with the EIP and specify the scope and extent of the audit procedures to be commensurate with that level of uncertainty.

7. Implementation Schedule

An EIP must contain a schedule for implementing the program. The schedule must include dates for notifying potentially affected sources, as early as possible, about the impending EIP; program initialization and start-up procedures; compliance and submittal requirements for affected sources; and audit and reconciliation processes, including subsequent actions required to make up for any shortfall that occurs.

8. Administrative Procedures

As part of any EIP design, the State must establish appropriate administrative procedures, specific to the type of incentive strategy, necessary to implement all of the elements of the EIP. For example, in a fee program a State must assure the proper administration of the fee collection process, and if rebate provisions are included, the administration of the rebate distribution process.

Administrative procedures specific to marketable emissions permit programs which the State must address in a program design are the mechanisms required for conducting, approving, verifying, recording, and tracking trades. The EIP must clearly describe the administrative system, and any State commitments to implement and maintain the system, that enables market participants to conduct valid and legally protected transactions. The State must design the program to ensure that all program requirements are met by sources involved in trades, such that the trades result in enforceable changes in allowable emissions levels. A well-designed EIP will include the minimum amount of transactional oversight, approval, recording, and tracking provisions necessary to create a verifiable and enforceable system. Unnecessary or excessive administrative requirements in a trading system increase the cost of the program and inhibit trading. An active trading market increases the opportunities for cost-savings. However, a State must establish sufficient administrative procedures to ensure that the environmental goals of the EIP are met, and that the program is adequately enforceable (see paragraph IV.J.2. and the discussion of emissions trading markets in Appendix X).

9. Enforcement Mechanisms

An EIP must include adequate enforcement consequences for noncompliance with any source requirements, including MRR requirements. Each program must include provisions ensuring that State/local and Federal statutory maximum penalties preserve the deterrent effect of traditional regulatory programs. Enforcement provisions should preserve the criminal sanctions (for knowing violations) authorized in the Act for violations of SIP requirements per se.

Traditional regulatory programs provide for enforcement against noncompliance with emissions limits at both the Federal and State/local levels. The statutory maximum Federal penalties under the Act are $25,000 per day, per source in violation. To preserve the existing level of deterrence under the Act, an EIP that imposes multiday and/or multisource emission limits must define violations of those limits in such a way that the violations will translate into some combination of sufficient numbers of violations, sources in violation, and days of violation. One possible approach would be for the EIP to authorize predetermined penalties based on the amount of an exceedance of such a cap, provided the predetermined amounts are sufficiently large (see paragraph IV.H.).

The EIP's that impose multisource emissions limits must require facilities to develop enforceable plans for remedying noncompliance in those cases where facilities have exceeded emissions limits for the specified averaging period. Such plans must identify appropriate and enforceable control measures or other procedures or strategies sufficient to achieve and maintain compliance with applicable

[12] Inspection/Maintenance Program Requirements, 57 FR 52950, November 5, 1992.

[13] Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline, 59 FR 7716, February 16, 1994.

[14] Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications, EPA–452/4–94–001, January 1994.

emissions limits. Further, for sources subject to title V requirements, the elements of such plans must, at a minimum, be consistent with any applicable title V permit requirements concerning compliance plans.

Compliance with MRR requirements is critical to the integrity and success of EIP's. Thus, an EIP must include enforcement provisions that establish a regulatory structure which clearly and effectively deters inadequate or improper MRR, providing for both State/local and Federal penalties. Further, the enforcement provisions must include methods for determining required data when MRR violations result in missing, inadequate, or erroneous monitoring and recordkeeping data. These methods must ensure that sources have a sufficiently strong incentive to properly perform monitoring and recordkeeping in the first place.

E. Use of Program Revenues

Today's rules incorporate statutory restrictions on the use of revenues generated by statutory EIP's. These restrictions are mandated by section 182(g)(4)(B) of the Act on the use of revenues generated by statutory EIP's submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act. Revenues may be generated by an EIP from a wide variety of fees or charges, including emission or permit fees, fees associated with approving and recording trades, application fees associated with labelling or sources opting into an EIP, and fees or charges associated with TCM's. Specifically, any such revenues may be used by a State for providing incentives for achieving emissions reductions, providing assistance (up to 75 percent of costs) for the development of innovative technologies for the control of O_3 air pollution and for the development of lower-polluting solvents and surface coatings, and funding (with up to 50 percent of the revenues) administrative costs of State programs under the Act. These restrictions on the use of revenues do not apply to discretionary EIP's.

Because the use of revenues from discretionary programs is not constrained, some or all of the revenues generated by discretionary EIP's may be rebated in order to create a revenue-neutral program, or one with less revenue retained by the State. Rebate provisions of revenue-generating EIP's can be designed to reduce the total cost to the affected sources without diminishing the incentive to reduce emissions created by the EIP. For example, an emission fee program could place a fee on total emissions from affected sources, and rebate an amount based on average emissions or percentage emissions reductions of the affected sources. In a program with a large number of sources, each source would only have a minor influence on the average emissions. Thus, the rebate is not dependent on a source's own actions, and would not distort the incentive of the fee on every unit of emissions created by the source.

IV. Discussion of Comments and Regulatory Changes

This portion of the preamble is organized according to the "Discussion of Issues" section in the proposal, with additional discussion of general issues raised in public comments. The following discussion highlights the changes and clarifications made in the final rules in response to the public comments on these issues.

A. Program Goals

1. Statutory Programs

Statutory EIP's are those programs submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act, generally because of failures in achieving required emissions reductions. The Act does not specify the extent to which the EIP must, in and of itself, make up for the specific failure in achieving the emissions reductions necessary to meet the next milestone requirement. Rather, the provisions specify only that the EIP "shall be sufficient, in combination with other elements" of the plan, or together with a "transportation control plan," to achieve the necessary reductions.

In the proposal, the EPA solicited comments on whether to require that some specified minimum percentage of the required reductions be met by a statutory EIP. Most commenters, including State and local agencies, industry, and an environmental group, felt that EIP's should not be required to meet a specified minimum percentage of emission reductions. These comments were generally based on the premise that opportunities for such reductions will vary because of potential differences between nonattainment areas that may implement EIP's. A specified minimum percentage would not provide recognition of these differences nor the flexibility that needs to be an inherent part of EIP's. On the other hand, an environmental group commented that a specified minimum percentage of required reductions should be met by a statutory EIP, equivalent to the percentage difference between what the SIP is achieving and what the next milestone requires.

The final rules retain the requirement that a statutory EIP make a significant contribution to the required emissions reductions, without mandating any percentage reduction requirement or that the EIP assume the entire burden of making up for the shortfall. This position is most consistent with statutory intent that the States have flexibility in determining how best to combine an EIP with other emission reduction programs to achieve the necessary emissions reductions. Further, this position is consistent with meeting the benefits sharing goal established for all EIP's.

2. Discretionary Programs

In explicitly allowing for discretionary (i.e., nonstatutory) EIP's to be included as SIP provisions, the Act does not impose any specific emissions reductions requirements on such programs (sections 110(a)(2)(A) and 172(c)(6)). Thus, the proposed rules imposed no specific emissions reductions requirements on discretionary EIP's. The proposal relied upon the new State planning, quantitative progress, and attainment requirements in the Act to ensure expeditious attainment of the NAAQS, regardless of the type of emissions reductions programs that States may choose to include in their SIP's.

Comments were received from an environmental group in support of an alternative view outlined in the proposal. The alternative view is that any savings in compliance costs resulting from discretionary EIP's (relative to nonincentive-based programs) should be shared between two accounts: the regulated sources should retain only as much savings as is sufficient to maintain the incentive to participate in the EIP, with the remainder of the savings being used by the State to reach attainment more quickly than would be practicable under a nonincentive-based plan. This alternative view is based on the statutory requirement that States should attain the NAAQS as expeditiously as practicable.

In contrast, other commenters from State and local agencies, industry, and a joint environmental/industry work group agreed with the proposal that the EPA should not require discretionary EIP's to achieve more rapid progress than other regulations. A joint environmental/industry work group emphasized that EIP's should be designed to increase flexibility and cost effectiveness, and should not be held to any stricter standard than traditional

programs. Several industry commenters felt that requiring more rapid progress towards attainment in exchange for a more flexible program appears to be a penalty provision. These commenters felt that, while EIP's should be structured to produce reductions equivalent to traditional SIP rules that the EIP's replace, the addition of further reductions as the price for entry into an EIP will discourage participation and reduce benefits that might otherwise result from broad participation. A State agency disagreed with requiring greater emission reductions from discretionary EIP's since different types of environmental benefits can be achieved by EIP's, such as technological innovation, more available capital for other control measures, conservation of natural resources, and increased commitment from the regulated sources. Another State agency believes that EIP's which replace traditional SIP requirements should be equally effective, equitable, and enforceable as the program it replaces.

The final rules take into account the broad array of benefits that can result from the use of discretionary EIP's, the statutory requirement for expeditious attainment, and the fact that EIP's are relatively new and controversial in principle as well as in practice. Further, current experience with EIP's makes clear that successful adoption and implementation of EIP's requires some degree of consensus among the interested groups that both the regulated entities and the environment will benefit from such programs. Thus, the final rules and guidance establish as a goal for all EIP's that they be designed to benefit both the environment and the regulated entities. In so doing, the final rules and guidance require States to meet this benefits sharing goal, while providing flexibility to the States to determine how best to do so. As a result, EIP's will increase flexibility, lower the cost of attaining and maintaining the NAAQS, and provide stronger incentives for the development and implementation of pollution prevention measures and innovative technologies.

Benefits from discretionary EIP's can be defined in various terms, as discussed in paragraph III.D.1. While the EPA encourages that discretionary EIP's be designed to produce environmental benefits directly, through increased or more rapid emissions reductions, States should consider these and other benefits in designing a program to meet the goal of sharing benefits between the regulated entities and the environment. In many cases, benefits in terms of cost savings will not be quantifiable prior to program implementation, due to the complex market decisions that sources participating in an EIP will need to make and changes in market conditions during the course of the program. Thus, the final rules and guidance include analysis of control cost savings, to the extent practicable, as a part of the required program audit.

However, the difficulty of quantifying cost savings and the extent to which those cost savings constitute an incentive to trade leads the EPA to conclude that it is not practicable to require that all EIP's discount trades or otherwise require increased or more rapid emissions reductions that directly benefit the environment. The authorization for discretionary EIP's in sections 110(a)(2)(A) and 172(c)(6) may be interpreted to indicate Congress' view that such programs may help achieve emissions reductions more effectively or efficiently, but not necessarily more expeditiously, than traditional regulatory requirements.

The final rules reflect that it most appropriately falls to the States to determine the type and extent of benefits sharing that is practicable and appropriate, given the unique circumstances that any particular discretionary EIP is designed to address. Therefore, the final rules do not require any specific formula for benefit sharing. However, the final rules do recognize that the issue of benefits sharing will be part of the political consensus building process associated with designing a discretionary EIP. In assessing this issue, States should not confuse this sharing with accounting for uncertainty in an EIP. Since uncertainty is to be accounted for through compliance and programmatic uncertainty factors (see paragraph III.F.), determining a degree of sharing based on weighing the uncertainty in an EIP would in essence be accounting twice for the same uncertainty.

One commenter also argued that the requirements for attainment as expeditiously as practicable [section 181(a)(1)] and for imposition of reasonably available control measures [section 172(c)(1)] mandate the inclusion of emission fees in EIP's. The EPA encourages States to consider emissions fees, but does not believe that, at present, their impacts are sufficiently well understood in all cases to conclude that, for all EIP's, they are either practicable or reasonably available.

B. Interface With Reasonably Available Control Technology (RACT) and Other Statutory Requirements

1. RACT

The proposal was based on an interpretation of the statutory RACT requirements that authorizes sources subject to the statutory RACT requirements (RACT sources) to meet their RACT obligations in the aggregate (i.e., through trading among themselves), and, when such trading results in an exceptional environmental benefit, by acquiring emissions reductions from non-RACT sources (as discussed in paragraph II.D.2.). Further, the proposal defined exceptional environmental benefits in terms of the statutory offset ratios for nonattainment areas and other demonstrations of exceptional long-term environmental benefits.

With regard to meeting RACT in the aggregate, all but one commenter agreed with the proposed position that trading be allowed among all RACT sources. Further, these commenters generally felt that such RACT trading should produce emissions reductions that are equivalent to those that would be obtained if each source met its source category-specific RACT limit. On the other hand, one environmental group disagreed with the proposed position allowing all sources covered by RACT requirements to trade among themselves. This commenter stated that nothing in the Act specifically authorizes substituting any trading regime for source-specific RACT requirements. However, if the EPA allows trading to meet RACT requirements, only trading within a given RACT source category should be allowed since section 182(b)(2) addresses RACT by source categories. Further, this commenter stated that since RACT limits have historically been set based on source-specific economic and technical constraints, "tradeable" RACT limits must be based on an analysis of the cost savings achievable by meeting RACT through whatever trading approach is permitted in the RACT rule. Since trading approaches provide increased compliance flexibility and cost savings, the commenter believes that any "tradeable" RACT limits should be lower than source-specific RACT limits.

With regard to RACT/non-RACT trading in general, most commenters, including industry, State and local agencies, and an environmental group, supported such trading. Some stated that any regulation which requires certain reductions to be obtained at specified sources, and nowhere else, contradicts a "market-based" approach.

They felt that the broadest possible participation in a trading market should be encouraged so as to achieve the most benefits from the program. Some commenters felt that allowing RACT/non-RACT trading encourages the development of new technologies and facilitates obtaining controls on previously unregulated sources and source categories. Limiting trades to particular source categories was thought by some to substantially reduce both the incentives and savings available. Such comments were premised on the belief that trading between different source categories (involving both RACT and non-RACT categories) can have sufficient controls and safeguards built in to ensure compliance.

On the other hand, other environmental groups opposed RACT/non-RACT trading. One such commenter asserted that statutory language regarding RACT "sources" only refers to stationary sources, such that trading between RACT sources and mobile sources would violate the Act. Further, this commenter asserted that such trading would make it impossible for States to manage mobile source and stationary source budgets properly for purposes of demonstrating RFP and attainment. The other environmental group commended the EPA's objectives, and approved its means in theory, of allowing trades between mobile and stationary sources, but concluded that the time for trading between stationary and mobile sources has not arrived. This conclusion was premised in part on the belief that trading between RACT sources and mobile sources violates the Act, because it is impossible to determine whether a given mobile source emission reduction is truly surplus. Further, both commenters felt that mobile source emissions reductions could not be reliably quantified.

As to the conditions under which RACT/non-RACT trading may occur, many commenters from industry expressed the view that such trading should be allowed at a 1-to-1 ratio, i.e., that no exceptional environmental benefit was required to justify RACT/non-RACT trading. These commenters felt that any trading ratio greater than 1 to 1 would limit the economic, technological, and environmental benefits that could be derived from innovations brought about by RACT/non-RACT trading. Other commenters, including State and local agencies and some industries and environmental groups, supported the concept of requiring RACT/non-RACT trades to achieve an exceptional environmental benefit in general, and the use of the proposed statutory offset ratios in particular. However, some of these commenters expressed concern that the offset ratios may have a chilling effect on such trading, and encouraged the EPA to identify justifiable circumstances under which trading ratios could be lower than the offset ratios.

The final rules continue to allow RACT to be met in the aggregate. In addition, the final rules continue to allow RACT/non-RACT trading, provided that an exceptional environmental benefit is achieved.

Under the 1977 Act, the requirements specific to nonattainment SIP's were found in part D of title I of the Act. Section 172 specified the attainment date and the required SIP measures. Subsection (a) of section 172 required that nonattainment SIP's provide for attainment by specified dates; subsection (b)(2) required that those SIP's "provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable." Subsection (b)(3) required that the SIP's provide for RFP, including RACT:

> (Nonattainment SIP's must) require, in the interim (prior to the attainment date) reasonable further progress * * * including such reduction in emissions from existing sources as may be obtained through the adoption, at a minimum, of reasonably available control technology.

The EPA took the position that RACT requirements do not require each affected emissions unit to achieve a prescribed amount of reductions in emissions from its own processes, but rather require the affected sources to achieve in the aggregate the reductions that would be achieved if each applied RACT controls to itself. Under the EPA's interpretation, the application of the requirement to impose RACT upon "existing sources" meant that RACT applied in the aggregate, as opposed to source by source. This interpretation, which is reflected in the Emissions Trading Policy Statement (51 FR 43814 (December 4, 1986), the "Bubble Policy"), was upheld in *NRDC* v. *EPA*, 33 ERC 1657 (4th Cir. 1991), an unpublished decision. There, the Court of Appeals for the Fourth Circuit upheld as reasonable EPA's approval of a Maryland SIP revision for the American Cyanamid Company relaxing the SIP limit on several lines in exchange for tighter limits on other lines. The EPA reasoned that the RACT requirement was met by the subject lines in the aggregate.

The Act revamped part D of title I by updating the general requirements applicable to all nonattainment SIP's, placing those requirements in subpart 1 of part D, and adding subparts 2–5 to cover pollutant-specific nonattainment SIP's. Subpart 2 concerns ozone SIP's.

Under the 1990 Amendments, the 1977 Act's requirements for nonattainment SIP's were generally retained in subpart 1, but were combined differently—the RACM and attainment date requirements were consolidated into one provision and the RACT requirement was shifted to the RACM provision. Those provisions (section 172(c)(1)–(2)) now read:

> (1) In General—Such (nonattainment SIP) provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.
>
> (2) RFP—Such plan provisions shall require reasonable further progress.

In addition, subpart 2 contains several RACT provisions. Most importantly, section 182(b)(2) sets out the RACT requirement for areas classified moderate or higher, as follows:

> The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 172(c)(1) with respect to each of the following:
>
> (A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of enactment of the Clean Air Act Amendments of 1990 and the date of attainment.
>
> (B) All VOC sources in the area covered by any CTG issued before the date of the enactment of the Clean Air Act Amendments of 1990.
>
> (C) All other major stationary sources of VOC's that are located in the area.
>
> Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after the date of the enactment of the Act, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

Under the 1990 Act, the EPA continues to take the position established under the 1977 Act that RACT applies in the aggregate because the RACT requirement of section 172(c)(1) of the Act is phrased identically to the RACT requirement of the 1977 Act (vis., "existing sources"). EPA does not read section 182(b)(2) to indicate to the contrary. Rather, the cross-reference to section 172(c)(1) contained in section 182(b)(2) indicates

that RACT is to be interpreted in the same manner under section 182(b)(2) as under section 172(c)(1).

In addition, the EPA interprets the RACT requirement to authorize emissions trading among the stationary sources subject to the RACT requirement ("RACT sources") and those not subject ("non-RACT sources") when emissions reductions result in an amount that provides an exceptional environmental benefit, e.g., a level of reductions that is significantly greater than RACT-level amounts. This interpretation entails viewing the RACT requirement as generally requiring a specified level of reduction of emissions from stationary sources subject to RACT, but as authorizing those sources to substitute significantly greater emissions reductions credits from non-RACT sources in lieu of putting controls on themselves.

The EPA acknowledges that the statute permits different interpretations, including the interpretation that the universe of sources subject to RACT must themselves implement RACT-level controls, and therefore may not trade with non-RACT sources. However, the EPA believes that its interpretation allowing such trading is permissible, based on the language of section 172(c)(1). The EPA's interpretation emphasizes that the RACT requirement is an emissions reduction requirement for stationary sources that is designed to yield reductions to facilitate the ultimate attainment of the NAAQS and, in the interim, RFP towards attainment (sections 172(c)(1)-(2)).

Section 172(c)(1), as quoted above, requires SIP provisions to provide "such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology. This provision requires an amount of emissions reductions that equates to the amount that would result from the imposition of "RACT", but does not require the imposition of any particular set of controls or technologies. Further, the term "RACT" is not defined in the statute. In light of the function of this term—to identify the level of required emissions reductions—the EPA believes the term may be defined either as a specified level of emissions to be reduced from the RACT source itself, or as little as a zero level of reductions from the RACT source, coupled with the acquisition by the RACT source of emissions reductions from sources other than RACT sources in an amount that will yield an exceptional environmental benefit.

With respect to the level of emissions reductions required from the RACT source itself, the EPA believes that if the RACT source acquires an appropriate amount of emissions reductions "credits" from non-RACT sources, it is not reasonable to require additional reductions from the source itself. Under these circumstances, control technology needed to produce such reductions from the source itself is not "reasonably available".

With respect to the level of emissions reductions required from the non-RACT sources, the final rules retain the proposed approach to define such a benefit in terms of the statutory offset ratios in general, although flexibility is provided if exceptional environmental benefits are otherwise demonstrated, with a lower bound for the trading ratio of 1.1 to 1 in such cases. EPA believes that these additional amounts of reductions are required because it is "reasonable"—within the meaning of the amount of reductions required through "RACT"—to forego reductions that could be obtained at the RACT source itself only when the trading program will result in an exceptionally strong benefit to the environment. In addition, requiring substantial additional emissions reductions credits from non-RACT sources is consistent with the underlying purpose of the RACT requirement—to assure reductions that result in an important step towards fulfilling the RFP and attainment requirements.

The EPA incorporated statutory offset ratios because offsets are an aspect of emissions trading, and thus provide an indication of Congress' view of benefits to the environment to be required in this context of emissions trading.

Section 182(b)(2), quoted above, does not alter EPA's analysis. Section 182(b)(2) mandates "the implementation of reasonably available control technology under section 172(c)(1) with respect to (three categories of stationary sources)." The EPA interprets the cross-reference to section 172(c)(1) to incorporate into section 182(b)(2) the definition of the phrase "reasonably available control technology" and the RACT requirement generally under section 172(c)(1). In addition, the EPA interprets the phrase "with respect to" to authorize RACT sources to acquire emissions reductions credits in the manner described above, and not to mandate the imposition of controls directly on the RACT sources. The EPA believes that this provision may be interpreted to identify the source categories responsible for securing RACT-level reductions, and to mandate the time-frame for them to do so; but does not mandate that those sources themselves implement the emissions reductions measures.

The EPA believes that its interpretation is permissible under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), because the relevant statutory provisions are not defined in the statute in a manner that makes clear whether sources subject to RACT may acquire the necessary emissions reductions from other sources in lieu of imposing the controls themselves. As a result, the EPA may proceed to interpret the provision in a manner that is reasonable and consistent with the purpose of the statute. (See generally sections 110(a)(2)(A) and 172(c)(6) (authorizing SIP measures to include "economic incentives such as * * * marketable permits").)

As discussed above in paragraph IV.A.2., the final rules and guidance require that EIP's be designed to meet the goal of sharing benefits between the environment and the regulated entities. For EIP's that allow trading or other types of compliance flexibility to meet RACT requirements, as with any EIP, the EPA encourages States, to the extent practicable, to meet this benefits sharing goal most directly by requiring increased emissions reductions beyond those that would be achieved through a traditional RACT program. Increased reductions could be created in a number of ways, such as by including more sources in the program or requiring a greater than 1-to-1 trading ratio. Depending on the scope and nature of an EIP, compliance flexibility might include not only emissions trading between sources, but also alternative compliance methods such as pollution prevention, energy conservation, and fuel switching.

RACT/non-RACT trading programs must, of course, also meet the other requirements in the final rules, such as those that relate to credible, workable, and replicable quantification methods and to monitoring, recordkeeping, and reporting that allow for compliance determinations and State and Federal enforceability. The EPA recognizes that several commenters raised concerns about the technical workability of emissions trades involving mobile sources. Congress arguably contemplated that EIP's could incorporate trades involving mobile sources, as indicated by the definition of an EIP in section 182(g)(4)(A) to include "incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f)." The EPA will address technical concerns raised

by commenters when it finalizes guidance on the generation of ERC's from mobile source control programs.

Beyond the requirements in the final rules, the EPA is developing more specific guidance on the use of emissions trading to implement new NO_X RACT requirements. This guidance will address issues such as setting tradeable NO_X RACT limits and baselines, and is consistent with the general RACT trading principles set out in paragraphs III.D.2. and III.D.3. The EPA intends to work with States who want to develop trading-based RACT programs to incorporate the requirements of the EIP rules and related guidance into EIP's that are environmentally sound and administratively efficient.

2. Offsets

The EPA received a number of comments specifically dealing with NSR offset issues. These covered a range of issues, but focused primarily on offsets banking. Such issues are beyond the scope of this EIP rulemaking, but the EPA intends to address them in the near future in guidance on ERC banking currently being developed. In the interim, the EPA intends to work with States who want to develop offset banking programs.

3. ECO Programs

The EPA received a number of comments dealing with ECO programs which are beyond the scope of this EIP rulemaking. The EPA has previously issued guidance on ECO programs and anticipates the development of additional guidance. Final action with respect to ECO programs will occur when the EPA acts on SIP revisions concerning ECO programs.

C. Program Baseline

The proposed rules were based on the premise that a State can only take credit in attainment and RFP demonstrations for emissions reductions from EIP's that are surplus to what is otherwise required and credited to other elements of a federally-approved SIP. This restriction is necessary to ensure that a State does not double count emissions reductions in SIP demonstrations. The general requirements for program baselines are intended to ensure that such double counting does not occur, while still providing as much flexibility as possible.

The proposal solicited comments on the conditions under which States should have the flexibility to use an "allowable" baseline. In particular, comments were solicited on the proposed approach to accept an "allowable" baseline in an EIP submitted in conjunction with the submission of an applicable progress plan (e.g., 15 percent RFP plan and/or subsequent 3 percent-per-year plans), prior to the submission of an attainment demonstration. Further, comments were solicited on approaches for achieving consistency between EIP's with "allowable" program baselines and statutory RACT, RFP, and attainment requirements.

There were many comments from industry and State and local agencies in support of the proposed flexibility in setting baselines. These comments generally supported the concept of considering the use of allowable emissions in setting EIP baselines, provided the EIP is consistent with RFP and attainment demonstrations. The commenters did not, however, address how such consistency could be achieved or demonstrated. Some State agencies commented that if allowable emissions baselines are used, they should not lead to more actual emissions, in the aggregate area-wide, than allowed under a traditional plan. The commenters felt that this flexibility would allow States to select baselines that were the most practicable and equitable to all sources involved.

An alternative view was expressed by an environmental group which advocated that the final rules should require an actual emissions baseline for all EIP's until the attainment demonstration is approved. This comment was premised on the belief that an allowable emissions baseline would violate the requirements for attainment as expeditiously as possible and for noninterference with attainment. The commenter asserted that relying only on a RFP demonstration and a commitment by the State that a future attainment demonstration would be consistent with the EIP baseline was a wholly inadequate constraint to ensure expeditious as practicable attainment. Further, this commenter expressed the view that "surplus" reductions should be defined relative to those reductions which are necessary to achieve attainment. As a result, the commenter concluded that the EPA should not approve any EIP's based on emissions trading prior to approval of an attainment demonstration.

The final rules and guidance focus on consistency between progress plans and EIP baselines. The rules recognize that RFP requirements are defined in terms of actual areawide emissions reductions and annual progress. Although such consistency and requirements may be made more difficult by the use of an EIP baseline which incorporates allowable emissions, the final rules provide States flexibility in designing an EIP to achieve these requirements. Further, the final rules encourage the development of EIP's as part of an overall attainment strategy that lowers the cost of attainment. The final rules recognize that attainment strategies that incorporate EIP's can reflect both environmentally and economically sound policy choices. Therefore, the final rules retain the proposed baseline flexibility and definition of surplus, while requiring States to demonstrate in their EIP submittal that the EIP baseline is consistent with their progress plans [15] and RACT requirements, when applicable, and to commit that such consistency will be reflected in any subsequent progress plans and attainment demonstrations. The State should describe how the EIP baseline will be integrated into a subsequent attainment demonstration. The EPA takes the position that an allowables baseline, when consistent with a submitted, complete, and potentially approvable RFP plan generally is permissible. It is true, as one commenter emphasized, that consistency with RFP does not automatically assure consistency with attainment when additional reductions are needed for attainment. However, the EPA takes the position that an allowables baseline that is consistent with an RFP submittal does not specifically interfere with attainment under section 110(l). The State's commitment that the attainment demonstration, when submitted, will be consistent with the allowables baseline lends additional support to the EPA's position. The inducement to States to complete the attainment demonstration that is presented by the sanctions/FIP requirement, as well as the fact that emissions limits allowed under the EIP may be tightened if they unexpectedly develop into impediments to attainment, further support the EPA's positions.

As stated above in paragraph IV.B.1., the EPA is developing guidance that addresses baselines for EIP's implementing new NO_X RACT requirements. Further, the EPA intends to work with States who want to develop trading-based RACT programs to incorporate the requirements of the EIP rules and related guidance into EIP's that are environmentally sound and administratively efficient.

[15] EPA has concluded that it is not necessary in this notice to define RFP with any greater specificity than found in the statute; that is, it is not necessary to identify the extent, if any, of annual emissions reductions needed to comply with the statutory RFP requirements.

D. Emission Quantification

1. Criteria for Adequacy of Approach

The proposed rules and guidance were based on the premise that the development and use of credible, workable, and replicable methods to quantify emissions are necessary elements of any quantifiable EIP. The proposed rules require EIP quantification methods to have a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development. The proposal explicitly allowed States to develop alternative approaches to meet these emissions quantification requirements. The proposal solicited comments on adequacy criteria for various types of source categories, recognizing that no one approach is the most appropriate, or even technically feasible, for all source categories.

Most comments received on this issue were supportive of the general requirements in the proposal. Of those supporting the general requirements, no commenters offered any specific criteria for levels of certainty or accuracy by which quantification approaches should be evaluated. On the other hand, an environmental group commented that, for trading programs, the EPA should require the use of the most accurate available continuous emissions monitors (CEM's) on every source in an emissions trading program, and, where such direct emissions quantification is not possible, no emissions trading should be allowed.

The final rules reflect the importance of both ensuring environmental protection with an adequate degree of accountability and fostering the development of innovative and flexible programs. Innovation and flexibility would be unduly restricted if the use of the most accurate available CEM's were a prerequisite for all sources to be included in any emissions trading program. The final rules recognize that other approaches may be more appropriate for various source categories. The final rules reflect that credible approaches necessarily entail levels of accuracy and precision sufficient to determine compliance and allow for effective enforcement of all emission limits in any EIP. Subject to these enforceability considerations, the final rules address uncertainty in emission quantification in determining SIP credit through the use of a programmatic uncertainty factor.

A commenter stressed that the need to assure accuracy in trading would further burden State agencies, and argued that EPA could not approve an EIP absent a demonstration that the State agency has adequate resources to handle the additional workload. Many of the additional requirements Congress imposed on States through the Clean Air Act Amendments of 1990 would place additional burdens on State agencies—EPA intends to implement the Act's requirements that States have sufficient resources (e.g., section 110(a)(2)(E)) in the context of EIP submissions in the same manner as EPA implements these requirements in the context of other SIP submissions.

2. Extended Averaging Times

The proposed rules recognize that long-term averaging by individual sources can significantly relax standards that require compliance on a short-term basis and jeopardize RFP and attainment demonstrations that are based on "typical summer day" emissions. The proposal also recognized that EIP's which require a number of sources to comply with total emissions caps or average emission rate limits could potentially mitigate this type of rule relaxation. In such programs, random daily positive fluctuations in emissions that are likely to occur from any given source (i.e., emission "spikes" that could jeopardize attainment) may tend to be compensated for by random daily negative fluctuations from other sources. Thus, the proposal allowed long-term averaging, provided a statistical showing is made that the long-term caps or limits are consistent with applicable demonstrations of RFP on the basis of typical summer day emissions, demonstrations of attainment of short-term NAAQS, and RACT requirements. The proposed approach provided increased flexibility to sources and to States in their plan development without undermining the EPA's traditional control programs or the validity of RFP or attainment demonstrations.

The proposal recognized the need for additional guidance on such statistical "equivalency" showings. The proposal also solicited comments on specific approaches for RACT equivalency showings, including the use of a presumptive norm discount factor of 70 percent to be applied to a RACT limit averaged over 30 days, other rule-specific discount factors determined by States to represent RACT equivalency, and the use of short-term caps in conjunction with long-term caps or limits.

Many commenters supported the proposed flexibility to allow for long-term averaging. One State commenter strongly supported the provision to allow States to relate long-term averaging to daily emissions by statistical analysis. Another State agreed that the use of long-term averaging should not come at the expense of attaining short-term standards or demonstrations of compliance. Other States noted the need for consistency in the EPA's RACT guidance on averaging times. Industry commenters endorsed the allowance of long-term averaging, although they expressed differing views about the need for statistical showings to demonstrate consistency with RACT and short-term standards. Some felt that any such showing should not be burdensome, while others disagreed that any such showing was necessary. An environmental group agreed that increasing averaging periods can significantly relax standards and threaten RFP and attainment. This group commented, however, that the proposal understated the difficulties which would flow from such a relaxation, and felt that discount factors would not provide adequate protection against spikes in emissions which could prevent attainment of short-term NAAQS.

With regard to long-term averaging and RACT equivalency, many commenters disagreed with the use of a presumptive 30-day RACT equivalency factor, such as the 70 percent factor mentioned in the proposal. One commenter felt that a RACT equivalency showing should not be required if some statistical information was provided showing that long-term averaging would not interfere with RFP or the attainment demonstration. Many regulatory agency and industry commenters supported allowing States flexibility in determining RACT equivalency factors.

The final rules retain the proposed allowance for long-term emissions averaging, as well as requirements that States make statistical showings that any such emissions averaging is consistent with applicable RACT, RFP, and short-term NAAQS. These statistical showings are necessary to show equivalency to, or noninterference with, each of these statutory requirements, although as a practical matter the same showing may suffice to assure consistency with more than one of the requirements. The statistical showings should take into account the extent to which emissions variations from an individual source or from all sources are random or systematic and, thus, the extent to which the variations can be considered to be independent. The showings must demonstrate that the pattern of emissions resulting from relaxed averaging periods would approximate the pattern of emissions that would occur without relaxed

averaging periods to an extent sufficient to reasonably conclude that the relaxed averaging periods would not interfere with the statutory requirements.

The final rules do not include any presumptive RACT discount factor, on the basis that no one factor can adequately account for the variations that may occur across different programs. However, the EPA remains open-minded to discount factors, especially for specific industries, that are substantiated by State analyses. The EPA will work with States that want to develop EIP's that incorporate long-term averaging requirements to ensure that such a program does not interfere with RFP and the attainment of short-term standards. The EPA anticipates that more general guidance will be developed in the course of working with States on statistical approaches for such equivalency demonstrations. In the case of EIP's implementing RACT requirements, the guidance referenced above in paragraph IV.B.1. addresses long-term averaging for NO_X RACT.

E. Monitoring, Recordkeeping, Reporting (MRR)

The proposed rules were based on the premise that EIP's depend more strongly than traditional control programs on MRR to ensure compliance and to allow for adequate enforcement because they are inherently more flexible and less prescriptive than traditional technology or performance standards. The proposal recognized that while a wide range of MRR approaches are available that can be used to show compliance for different types of sources, no one approach is necessarily the most appropriate, or even technically feasible, for all types of sources that may be included in an EIP. Thus, the proposal explicitly allowed for alternative monitoring methods, while soliciting comments on criteria for adequate MRR requirements for EIP's.

Public comments focused on whether EIP's do depend more strongly on MRR and on whether CEM's should be required for any or all sources covered by an EIP. Several industry commenters disagreed with the premise that EIP's depend more strongly on MRR to ensure compliance, and, therefore, felt that no more stringent MRR requirements should be required in EIP's than those required in traditional programs. These commenters supported the provision allowing a range of MRR requirements to be used in EIP's.

One State commented that EIP's should be limited to source categories for which emission quantification and compliance methods are available and reasonably accurate. This State felt that the use of CEM's was the optimal monitoring method, although it recognized that other unit-specific field monitoring methods could be acceptable. An environmental group commented that the rules should require use of the most accurate available CEM's on every source involved in any emissions trading program. Further, this group felt that the maximum amount of CEM measurement inaccuracy should be reflected in a program discount factor. On the other hand, some industry commenters urged that EIP's not require the use of CEM's for any sources.

The final rules retain the proposed flexibility for alternative monitoring approaches that allow for adequate compliance determinations and provide for effective State and Federal enforcement. As discussed above (see paragraph IV.D.1.), innovation and flexibility would be unduly restricted if CEM's were a prerequisite for all sources in any emissions trading program. In the development of adequate MRR requirements, criteria should be considered to assure that quality-assured, representative monitoring data will be obtained that can be used to determine compliance.

The EPA recognizes that special consideration should be given to developing MRR requirements for small sources to avoid undue burdens, consistent with assuring that all EIP sources are required to comply with adequate and effective MRR requirements. For mobile source programs, the State should refer to program-specific guidance from EPA, if applicable.

F. State Implementation Plan (SIP) Creditability

The proposed rules identify various types of uncertainties associated with different categories of EIP's, and required that States apply discount factors in calculating SIP credit based on the uncertainties inherent in the design of any given EIP. The proposal separately addressed compliance-related uncertainty, through a rule compliance factor, and programmatic uncertainties associated with quantification methods and projected market responses, through a program uncertainty factor. The proposal compared the need for a rule compliance factor to the historical use of a rule effectiveness factor, generally set at 80 percent for traditional stationary source SIP programs. The proposal identified an option of setting presumptive norms for these factors in lieu of the requirement that the State develop and justify program-specific factors. The proposal solicited comments on criteria for the development of such factors.

Many commenters expressed different concerns with the proposed approach to dealing with uncertainty. Some commenters interpreted the proposal as allowing credit only for emission-limiting programs (e.g., emission trading), and argued that credit should be allowed for market-response programs (e.g., emission fees) and even directionally-sound programs (e.g., those that benefit the environment but cannot be quantified). One such commenter, an environmental group, urged not only that credit be given for emission fee programs, but that they must be encouraged since they offer the most attractive opportunity for environmental progress. In fact, the proposed and final rules allow credit for market-response as well as emission limiting programs, and encourage States to consider all such types of programs. The proposed and final rules also encourage the use of directionally-sound programs, but specify that SIP credit cannot be taken until sufficient experience with the program results in the ability to adequately quantify the results.

Some State commenters expressed general concern with the use of any up-front discounting of SIP credit, urging instead that alternative approaches be allowed to account for uncertainty. In particular, some State commenters recommended that the program audit procedures be used to provide information on actual emissions reductions resulting from program implementation. Such audit results would feed back into updated emissions inventories, be compared to initially projected program results, and if appropriate, result in additional credit or the need for additional reductions if the audited results differ from those credited to the EIP in the SIP. One State commenter recommended that the State be allowed to adopt various back-up provisions in an EIP instead of applying up-front discount factors.

Some industry commenters disagreed with the use of two discount factors, on the basis that such an approach would double count uncertainty. These commenters also expressed the view that a presumptive norm of 80 percent for a rule compliance factor is too low. On the other hand, an environmental group commented that a presumptive norm of 80 percent was too high. This commenter also urged that credit not be given for prior reductions or for plant shutdowns and slowdowns which would have occurred in the absence of a control program.

The final rules generally retain the proposed approach of requiring the State to develop and apply discount factors to account for compliance-related and programmatic design uncertainties. In addition, however, the final rules also include further guidance and criteria for developing and justifying such factors. In particular, various aspects of program design should be considered in developing such factors, including but not limited to the type of incentive mechanism upon which the program is based; the variability in emissions from affected sources and the nature and extent of uncertainty in the emissions quantification procedures required by the program; the type and frequency of MRR required by the program; sanctions for noncompliance; the frequency, scope, and committed responses to program audits; and the nature of administrative procedures to be used by the State in implementing and enforcing the program.

G. Audit/Reconciliation Procedures

The proposed rules specify that program audits be made at least every 3 years, consistent with intervals associated with RFP milestones and emission inventory requirements. Alternatively, the State could specify a shorter period, so as to allow time to make programmatic corrections or adjustments (in either direction) to SIP credited emissions reductions, before an RFP milestone is reached. The proposal solicited comments on the appropriate audit frequency.

Several comments were received on the general issue of programs audits. Most such comments were generally supportive of a requirement for ongoing program tracking and feedback, although the commenters differed on the role that the audit should have relative to other EIP requirements. Some State commenters felt that ongoing audits should serve as an alternative to many of the proposed regulatory requirements for up-front technical analyses. Another State supported the use of audits to assess EIP adequacy and the need to take corrective actions. An environmental group recommended that the EPA require for all EIP's contingency measures to compensate for shortfalls revealed through the audits. Other State, environmental, and industry commenters felt that requiring audits was reasonable, but expressed varying degrees of concern that audits not become so burdensome as to serve as a disincentive for developing an EIP. On the other hand, one industry commenter felt that EIP's ought not be subject to any special audit requirements different from those applicable to traditional programs.

On the issue of audit frequency, most commenters generally agreed with the proposed 3-year interval. One State commenter felt that annual audits should be conducted to assess progress, with a summary of such audits to be incorporated in triennial SIP RFP reports.

The final rules and guidance retain the proposed requirements for program audit and reconciliation procedures, and establish 3 years as the maximum time interval for conducting such audits. The final rules recognize that the State has flexibility in establishing the frequency (within the 3-year constraint) and scope of audit provisions. Further, the final rules recognize that there is an interplay between the frequency, scope, and other design features of the audit provisions and the nature and scope of other program design elements (such as the justification for uncertainty factors). In addition, to better define the benefits from EIP's, the final rules include analysis of control cost savings, to the extent practicable, as a part of the required program audit.

H. Penalties for Noncompliance

The proposed rules recognize that determination of statutory maximum penalties for noncompliance is significantly complicated in the case of EIP's that incorporate multisource emissions caps and/or long-term averaging times, since Federal statutory maximum penalty authority is specified on a per-day, per-source basis. While establishing the principle that such penalty provisions must create a deterrent effect comparable to that of traditional programs, the proposal solicited comment on criteria for the development of such penalty provisions.

Commenters generally agreed with the principle of equivalent deterrence. Several industry commenters opposed any criteria that would suggest that any multisource emissions cap violation should be considered to have occurred at each source. Some commenters recommended that penalty provisions be based on the amount of the exceedence of a cap, and one commenter suggested that the final rules should recommend predetermined minimum penalties. Another commenter recommended that penalty provisions differentiate between violations that are willful or negligent and those that are determined not to be willful or negligent.

The final rules and guidance continue to allow for a variety of approaches to specifying statutory maximum penalties, although exceedance-based approaches are encouraged. Thus, for example, where emission limits are specified in units of mass emissions, statutory maximum penalties can be specified as a function of the degree to which the limits are exceeded, as measured in terms of some increment of mass emissions. Alternatively, statutory maximum penalties could be specified as a function of the cost of credits or allowances in trading programs. The final rules and guidance require that EIP's be structured in conjunction with applicable enforcement authorities, in such a way that violations of multisource and/or multiday emission limits translate into sufficient numbers of some combination of violations, sources in violation, and days of violation. There are no criteria that suggest that this requirement should necessarily be met by considering that the violation occurred at each such source. The final rules further identify supplemental provisions that may enhance deterrence, such as mandatory minimum penalties, or address uncertainties inherent in the design of a program, such as penalty triggers linked to measures of compliance tracked through the program audit.

The following criteria have been established for assessing the adequacy of the deterrent effect of EIP penalty provisions. The primary focus is on an assessment of the adequacy of the statutory maximum penalties in the EIP, through an evaluation of deterrence ratios (i.e., the ratio of the maximum penalty per violation to the cost of compliance). In a program with tradeable emission allowances or ERC's, the cost of compliance will be related to the market value of allowances or credits. Under a range of foreseeable noncompliance circumstances, this deterrence ratio must be high enough to deter noncompliance to a degree comparable to traditional programs.

Other aspects of deterrence should also be considered in evaluating the adequacy of penalty provisions. These aspects include the likelihood that noncompliance will be detected and the credibility and predictability of responses to noncompliance. These aspects should be considered in light of administrative procedures and resources established within the EIP, as well as other program design elements related to emission quantification and monitoring, recordkeeping, and reporting.

I. Interface With Existing Emission Trading Policies

The EIP rules and guidance, being broadly applicable to any kind of EIP,

generally cover the same type of emission trading programs that have historically been addressed by the EPA's previously released guidance on emission trading, primarily contained in the Emissions Trading Policy Statement (ETPS) and its appendices (51 FR 43831, Dec. 4, 1986). Although based upon the same general principles, the EIP rules and guidance provide both greater flexibility and more comprehensive programmatic requirements for such programs. The proposal defined the relationship between the EIP rules and the ETPS such that the provisions of the ETPS which apply to trading between existing sources (i.e., the bubble and generic bubble provisions) would represent one particular model for how States could choose to design such a program that would be approvable under the EIP rules. The proposal, however, in no way constrained EIP's involving emission trading to the specific provisions of the ETPS. The proposal solicited comments on this proposed relationship.

Only a few commenters addressed this issue. Two commenters agreed with the proposed approach. Another commenter disagreed with retaining the elements of the ETPS that are now addressed by the EIP rules, on the basis that such ETPS provisions are rendered obsolete by the new rules, and the EPA should not encourage the use of less flexible policies. Another commenter recommended that the ETPS should be updated to include the flexibility contained in the EIP rules and that it should then continue to be applied to trading done for the purpose of meeting other statutory requirements (e.g., RACT/non-RACT trading).

The final rules retain the proposed relationship between the ETPS and the EIP rules. The final rules do not encourage States to limit their design of EIP's to meet the specific provisions in the ETPS. However, the final rules recognize that States may want to implement emission trading without embarking on the design of new approaches to emission trading. Retaining the ETPS provides a known regulatory option for those States that want to apply it.

J. General Issues

1. Detailed vs. General Guidance

Some commenters felt that the EIP proposal was overly specific and limited flexibility. These commenters contended that it would be difficult for EPA guidance to anticipate and identify all of the specific elements of proposed programs that might be approvable until actual programs are developed and adopted. They felt that the final EIP rules should be limited to a detailed policy statement and discussion of principles and criteria to which EIP's must adhere rather than specific guidance on how EIP programs should be designed and administered.

Other commenters, including a State and an environmental group, felt that the final rules should include more detailed guidance. One such commenter felt that without more detailed guidance, technical questions such as how to calculate emissions reductions or to establish baselines might be so daunting as to discourage attempts to develop EIP's. This commenter felt that the need for such guidance is particularly great for EIP's relying on area and mobile source emissions reductions. Another such commenter felt that without more detailed guidance spelling out appropriate design criteria and policy and legal limitations, States will succumb to pressures to develop EIP's that do not effectively implement the requirements of the Act.

Some commenters on both sides of this issue recommended that the EPA provide examples of successful, appropriate EIP's. Such commenters recommended that such information be provided through supplemental documentation or through an EPA-established EIP information clearinghouse.

Just as an individual State EIP rule should balance flexibility with specificity, the EPA's final EIP rules should do the same. Thus, the final rules retain the balance between general statements of principles and criteria and specific detailed guidance on technical requirements that was reflected in the proposal. The final rules provide sufficient detail to allow States to design and implement EIP's that will effectively implement the requirements of the Act without defeating the purpose of capturing the benefits of market-based regulatory approaches.

Although the final rules do not include specific examples of EIP's that have been successfully implemented, the EPA agrees that such information is a useful and important aspect of encouraging the development of such programs. For the last 3 years, the EPA has funded grants to support market-based initiatives by State, regional and local agencies.[16] All such initiatives have included strong involvement from the State, affected local interests, and the relevant EPA Regional Office(s). Final reports from these projects are available from the States to further the EPA's goal of disseminating information about the design and implementation of EIP's.

Beyond this grant program, the EPA is committed to working with individual States as they develop EIP's. In addition to the program survey documents which have been placed in the docket, the EPA is developing plans for future outreach activities to make information about successful EIP initiatives as broadly available as possible.

2. Administrative Simplicity

Several commenters agreed that administrative complexity can be one of the greatest impediments to a regulation and urged the EPA to simplify the terms and processes of these rules. Such commenters felt that undue administrative complexity would stifle the development of EIP's and provide a significant disincentive for participation in trading programs. These commenters generally felt that the EIP rules should minimize regulatory barriers because they interfere with the functioning of desirable market mechanisms which are necessary for the success of the EIP.

One type of complexity cited by two State commenters related to excessive government process, and the associated lack of timeliness, in the review of individual emissions trades. These commenters recommended that individual emissions trading transactions not be required to be submitted to the EPA for review once a State's generic trading rule has been approved by the EPA. Further, one such commenter recommended more focus on the audit and evaluation of an EIP program, rather than on administrative burdens upfront in implementing emissions trades. This commenter felt that the EPA should have the authority to conduct periodic audits of emissions trading transactions approved by the States to assure the integrity of the program.

In seeking to provide States with the flexibility to implement emissions trading programs effectively, the final EIP rules retain the proposed requirement for the State to establish appropriate administrative procedures for conducting, approving, verifying, recording, and tracking trades. As part of an EIP program, these procedures would then be reviewed by the EPA in the course of EPA review of the SIP revision incorporating the EIP into the SIP. Thus, the EIP does not necessarily envision single-source SIP revisions for each trade conducted in the context of an EPA-approved generic emissions trading program. Of course, EPA approval of such programs is predicated on the program containing all the

[16] The docket contains summaries of such programs and contacts for information.

appropriate environmental safeguards that are required by the EIP rules. One such safeguard is the inclusion of program audits, to be conducted by the State, to evaluate program implementation and track program results. The EIP rules require that the State provide post-audit reports to the EPA, and that the State commits to implement timely programmatic revisions or other measures necessary for the successful operation of the program. Additionally, the rules require that State and Federal enforceability must be preserved, such that when ERC's generated within an emissions trading program are used to offset increases in emissions from other sources, the EIP must contain a mechanism for ensuring State and Federal enforceability of the measures taken to generate the credits.

The EPA is currently developing additional guidance on such issues associated with banking of ERC's. The EPA intends to complete this additional guidance as quickly as possible, and, in the interim, to work with States developing EIP's involving banking of ERC's.

3. Regional and Interstate Trading

Neither the proposal nor final rules specifically address the issue of regional and interstate emissions trading. Several commenters raised this issue, however, particularly in the context of trading of emissions offsets. Most such commenters felt that the EPA should encourage interstate trading by establishing consistent rules and prohibiting States from creating interstate barriers. One State group felt that the final rules should provide for the fullest possible implementation of trading strategies on a regional basis within the Northeast Ozone Transport Region. One environmental group urged that the final rules remind States of the statutory geographical constraints on trading.

The EPA has developed some preliminary guidance on this issue as it relates to NO_x offsets in the Northeast Ozone Transport Region.[17] Additional guidance on interstate or regional trading will be developed in the context of the EPA's working with interested States in program development activities.

[17] This guidance is contained in a March 31, 1993 letter from Mr. John Seitz, Director of the EPA's Office of Air Quality Planning and Standards, to Mr. Bruce Carhart, Executive Director of the Ozone Transport Commission, which includes all or portions of the northeastern States from Washington, DC, to the New England States. This letter is available in the docket for this rule.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

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

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

It has been determined that these rules are not a "significant regulatory action" under the terms of Executive Order 12866. This action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

These rules do not contain any information collection requirements subject to review by the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 and applicable EPA guidelines revised in 1992 require Federal agencies to identify potentially adverse impacts of Federal rules upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

This rule does not of itself impose any requirements on small entities, nor require or exclude small entities from any EIP's which may be implemented in the future. As a result, the EPA has determined that these rules will not have a significant impact on a substantial number of small entities.

Therefore, as required under section 605 of the RFA, 5 U.S.C. 601 *et seq.*, I certify that these rules do not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 15, 1994.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, 40 CFR part 51 is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Part 51 is amended by adding a new subpart U, consisting of §§ 51.490 through 51.494, to read as follows:

Subpart U—Economic Incentive Programs

Sec.
51.490 Applicability.
51.491 Definitions.
51.492 State program election and submittal.
51.493 State program requirements.
51.494 Use of program revenues.

Subpart U—Economic Incentive Programs

§ 51.490 Applicability.

(a) The rules in this subpart apply to any statutory economic incentive program (EIP) submitted to the EPA as an implementation plan revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act. Such programs may be submitted by any authorized governmental organization, including States, local governments, and Indian governing bodies.

(b) The provisions contained in these rules, except as explicitly exempted, shall also serve as the EPA's policy guidance on discretionary EIP's submitted as implementation plan revisions for any purpose other than to comply with the statutory requirements specified in paragraph (a) of this section.

§ 51.491 Definitions.

Act means the Clean Air Act as amended November 15, 1990.

Actual emissions means the emissions of a pollutant from an affected source

determined by taking into account actual emission rates associated with normal source operation and actual or representative production rates (i.e., capacity utilization and hours of operation).

Affected source means any stationary, area, or mobile source of a criteria pollutant(s) to which an EIP applies. This term applies to sources explicitly included at the start of a program, as well as sources that voluntarily enter (i.e., opt into) the program.

Allowable emissions means the emissions of a pollutant from an affected source determined by taking into account the most stringent of all applicable SIP emissions limits and the level of emissions consistent with source compliance with all Federal requirements related to attainment and maintenance of the NAAQS and the production rate associated with the maximum rated capacity and hours of operation (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both).

Area sources means stationary and nonroad sources that are too small and/or too numerous to be individually included in a stationary source emissions inventory.

Attainment area means any area of the country designated or redesignated by the EPA at 40 CFR part 81 in accordance with section 107(d) as having attained the relevant NAAQS for a given criteria pollutant. An area can be an attainment area for some pollutants and a nonattainment area for other pollutants.

Attainment demonstration means the requirement in section 182(b)(1)(A) of the Act to demonstrate that the specific annual emissions reductions included in a SIP are sufficient to attain the primary NAAQS by the date applicable to the area.

Directionally-sound strategies are strategies for which adequate procedures to quantify emissions reductions or specify a program baseline are not defined as part of the EIP.

Discretionary economic incentive program means any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.

Economic incentive program (EIP) means a program which may include State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to O_3 formation, or any combination of the foregoing or other similar measures, as well as incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f). Such programs may be directed toward stationary, area, and/or mobile sources, to achieve emissions reductions milestones, to attain and maintain ambient air quality standards, and/or to provide more flexible, lower-cost approaches to meeting environmental goals. Such programs are categorized into the following three categories: Emission-limiting, market-response, and directionally-sound strategies.

Emission-limiting strategies are strategies that directly specify limits on total mass emissions, emission-related parameters (e.g., emission rates per unit of production, product content limits), or levels of emissions reductions relative to a program baseline that are required to be met by affected sources, while providing flexibility to sources to reduce the cost of meeting program requirements.

Indian governing body means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the U.S. and recognized by the U.S. as possessing power of self-government.

Maintenance plan means an implementation plan for an area for which the State is currently seeking designation or has previously sought redesignation to attainment, under section 107(d) of the Act, which provides for the continued attainment of the NAAQS.

Market-response strategies are strategies that create one or more incentives for affected sources to reduce emissions, without directly specifying limits on emissions or emission-related parameters that individual sources or even all sources in the aggregate are required to meet.

Milestones means the reductions in emissions required to be achieved pursuant to section 182(b)(1) and the corresponding requirements in section 182(c)(2) (B) and (C), 182(d), and 182(e) of the Act for O_3 nonattainment areas, as well as the reduction in emissions of CO equivalent to the total of the specified annual emissions reductions required by December 31, 1995, pursuant to section 187(d)(1).

Mobile sources means on-road (highway) vehicles (e.g., automobiles, trucks and motorcycles) and nonroad vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).

National ambient air quality standard (NAAQS) means a standard set by the EPA at 40 CFR part 50 under section 109 of the Act.

Nonattainment area means any area of the country designated by the EPA at 40 CFR part 81 in accordance with section 107(d) of the Act as nonattainment for one or more criteria pollutants. An area could be a nonattainment area for some pollutants and an attainment area for other pollutants.

Nondiscriminatory means that a program in one State does not result in discriminatory effects on other States or sources outside the State with regard to interstate commerce.

Program baseline means the level of emissions, or emission-related parameter(s), for each affected source or group of affected sources, from which program results (e.g., quantifiable emissions reductions) shall be determined.

Program uncertainty factor means a factor applied to discount the amount of emissions reductions credited in an implementation plan demonstration to account for any strategy-specific uncertainties in an EIP.

Reasonable further progress (RFP) plan means any incremental emissions reductions required by the CAA (e.g., section 182(b)) and approved by the EPA as meeting these requirements.

RFP baseline means the total of actual volatile organic compounds or nitrogen oxides emissions from all anthropogenic sources in an O_3 nonattainment area during the calendar year 1990 (net of growth and adjusted pursuant to section 182(b)(1)(B) of the Act), expressed as typical O_3 season, weekday emissions.

Replicable refers to methods which are sufficiently unambiguous such that the same or equivalent results would be obtained by the application of the methods by different users.

Rule compliance factor means a factor applied to discount the amount of emissions reductions credited in an implementation plan demonstration to account for less-than-complete compliance by the affected sources in an EIP.

Shortfall means the difference between the amount of emissions reductions credited in an implementation plan for a particular EIP and those that are actually achieved by that EIP, as determined through an approved reconciliation process.

State means State, local government, or Indian-governing body.

State implementation plan (SIP) means a plan developed by an authorized governing body, including States, local governments, and Indian-

governing bodies, in a nonattainment area, as required under titles I & II of the Clean Air Act, and approved by the EPA as meeting these same requirements.

Stationary source means any building, structure, facility or installation, other than an area or mobile source, which emits or may emit any criteria air pollutant or precursor subject to regulation under the Act.

Statutory economic incentive program means any EIP submitted to the EPA as an implementation plan revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.

Surplus means, at a minimum, emissions reductions in excess of an established program baseline which are not required by SIP requirements or State regulations, relied upon in any applicable attainment plan or demonstration, or credited in any RFP or milestone demonstration, so as to prevent the double-counting of emissions reductions.

Transportation control measure (TCM) is any measure of the types listed in section 108(F) of the Act, or any measure in an applicable implementation plan directed toward reducing emissions of air pollutants from transportation sources by a reduction in vehicle use or changes in traffic conditions.

§ 51.492 State program election and submittal.

(a) *Extreme O_3* nonattainment areas. (1) A State or authorized governing body for any extreme O_3 nonattainment area shall submit a plan revision to implement an EIP, in accordance with the requirements of this part, pursuant to section 182(g)(5) of the Act, if:

(i) A required milestone compliance demonstration is not submitted within the required period.

(ii) The Administrator determines that the area has not met any applicable milestone.

(2) The plan revision in paragraph (a)(1) of this section shall be submitted within 9 months after such failure or determination, and shall be sufficient, in combination with other elements of the SIP, to achieve the next milestone.

(b) *Serious CO nonattainment areas.* (1) A State or authorized governing body for any serious CO nonattainment area shall submit a plan revision to implement an EIP, in accordance with the requirements of this part, if:

(i) A milestone demonstration is not submitted within the required period, pursuant to section 187(d) of the Act.

(ii) The Administrator notifies the State, pursuant to section 187(d) of the Act, that a milestone has not been met.

(iii) The Administrator determines, pursuant to section 186(b)(2) of the Act that the NAAQS for CO has not been attained by the applicable date for that area. Such revision shall be submitted within 9 months after such failure or determination.

(2) Submittals made pursuant to paragraphs (b)(1) (i) and (ii) of this section shall be sufficient, together with a transportation control program, to achieve the specific annual reductions in CO emissions set forth in the implementation plan by the attainment date. Submittals made pursuant to paragraph (b)(1)(iii) of this section shall be adequate, in combination with other elements of the revised plan, to reduce the total tonnage of emissions of CO in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the NAAQS for CO.

(c) *Serious and severe O_3 nonattainment areas.* If a State, for any serious or severe O_3 nonattainment area, elects to implement an EIP in the circumstances set out in section 182(g)(3) of the Act, the State shall submit a plan revision to implement the program in accordance with the requirements of this part. If the option to implement an EIP is elected, a plan revision shall be submitted within 12 months after the date required for election, and shall be sufficient, in combination with other elements of the SIP, to achieve the next milestone.

(d) *Any nonattainment or attainment area.* Any State may at any time submit a plan or plan revision to implement a discretionary EIP, in accordance with the requirements of this part, pursuant to sections 110(a)(2)(A) and 172(c)(6) and other applicable provisions of the Act concerning SIP submittals. The plan revision shall not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirements of the Act.

§ 51.493 State program requirements.

Economic incentive programs shall be State and federally enforceable, nondiscriminatory, and consistent with the timely attainment of NAAQS, all applicable RFP and visibility requirements, applicable PSD increments, and all other applicable requirements of the Act. Programs in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable and permanent over the entire duration of the program, and that the credit taken is limited to that which is surplus. Statutory programs shall be designed to result in quantifiable, significant reductions in actual emissions. The EIP's shall include the following elements, as applicable:

(a) *Statement of goals and rationale.* This element shall include a clear statement as to the environmental problem being addressed, the intended environmental and economic goals of the program, and the rationale relating the incentive-based strategy to the program goals.

(1) The statement of goals must include the goal that the program will benefit both the environment and the regulated entities. The program shall be designed so as to meaningfully meet this goal either directly, through increased or more rapid emissions reductions beyond those that would be achieved through a traditional regulatory program, or, alternatively, through other approaches that will result in real environmental benefits. Such alternative approaches include, but are not limited to, improved administrative mechanisms, reduced administrative burdens on regulatory agencies, improved emissions inventories, and the adoption of emission caps which over time constrain or reduce growth-related emissions beyond traditional regulatory approaches.

(2) The incentive-based strategy shall be described in terms of one of the following three strategies:

(i) Emission-limiting strategies, which directly specify limits on total mass emissions, emission-related parameters (e.g., emission rates per unit of production, product content limits), or levels of emissions reductions relative to a program baseline that affected sources are required to meet, while providing flexibility to sources to reduce the cost of meeting program requirements.

(ii) Market-response strategies, which create one or more incentives for affected sources to reduce emissions, without directly specifying limits on emissions or emission-related parameters that individual sources or even all sources in the aggregate are required to meet.

(iii) Directionally-sound strategies, for which adequate procedures to quantify emissions reductions are not defined.

(b) *Program scope.* (1) This element shall contain a clear definition of the sources affected by the program. This definition shall address:

(i) The extent to which the program is mandatory or voluntary for the affected sources.

(ii) Provisions, if any, by which sources that are not required to be in the program may voluntarily enter the program.

(iii) Provisions, if any, by which sources covered by the program may voluntarily leave the program.

(2) Any opt-in or opt-out provisions in paragraph (b)(1) of this section shall be designed to provide mechanisms by which such program changes are reflected in an area's attainment and RFP demonstrations, thus ensuring that there will not be an increase in the emissions inventory for the area caused by voluntary entry or exit from the program.

(3) The program scope shall be defined so as not to interfere with any other Federal requirements which apply to the affected sources.

(c) *Program baseline.* A program baseline shall be defined as a basis for projecting program results and, if applicable, for initializing the incentive mechanism (e.g., for marketable permits programs). The program baseline shall be consistent with, and adequately reflected in, the assumptions and inputs used to develop an area's RFP plans and attainment and maintenance demonstrations, as applicable. The State shall provide sufficient supporting information from the areawide emissions inventory and other sources to justify the baseline used in the EIP.

(1) For EIP's submitted in conjunction with, or subsequent to, the submission of any areawide progress plan due at the time of EIP submission (e.g., the 15 percent RFP plan and/or subsequent 3 percent plans) or an attainment demonstration, a State may exercise flexibility in setting a program baseline provided the program baseline is consistent with and reflected in all relevant progress plans or attainment demonstration. A flexible program baseline may be based on the lower of actual, allowable, or some other intermediate or lower level of emissions. For any EIP submitted prior to the submittal of an attainment demonstration, the State shall include the following with its EIP submittal:

(i) A commitment that its subsequent attainment demonstration and all future progress plans, if applicable, will be consistent with the EIP baseline.

(ii) A discussion of how the baseline will be integrated into the subsequent attainment demonstration, taking into account the potential that credit issued prior to the attainment demonstration may no longer be surplus relative to the attainment demonstration.

(2) Except as provided for in paragraph (c)(4) of this section, for EIP's submitted during a time period when any progress plans are required but not yet submitted (e.g., the 15 percent RFP plan and/or the subsequent 3 percent plans), the program baseline shall be based on the lower-of-actual-or-allowable emissions. In such cases, actual emissions shall be taken from the most appropriate inventory, such as the 1990 actual emission inventory (due for submission in November 1992), and allowable emissions are the lower of SIP-allowable emissions or the level of emissions consistent with source compliance with all Federal requirements related to attainment and maintenance of the NAAQS.

(3) For EIP's that are designed to implement new and/or previously existing RACT requirements through emissions trading and are submitted in conjunction with, or subsequent to, the submission of an associated RACT rule, a State may exercise flexibility in setting a program baseline provided the program baseline is consistent with and reflected in the associated RACT rule, and any applicable progress plans and attainment demonstrations.

(4) For EIP's that are designed to implement new and/or previously existing RACT requirements through emissions trading and are submitted prior to the submission of a required RFP plan or attainment demonstration, States also have flexibility in determining the program baseline, provided the following conditions are met.

(i) For EIP's that implement new RACT requirements for previously unregulated source categories through emissions trading, the new RACT requirements must reflect, to the extent practicable, increased emissions reductions beyond those that would be achieved through a traditional RACT program.

(ii) For EIP's that impose new RACT requirements on previously unregulated sources in a previously regulated source category (e.g., RACT "catch-up" programs), the new incentive-based RACT rule shall, in the aggregate, yield reductions in actual emissions at least equivalent to that which would result from source-by-source compliance with the existing RACT limit for that source category.

(5) A program baseline for individual sources shall, as appropriate, be contained or incorporated by reference in federally-enforceable operating permits or a federally-enforceable SIP.

(6) An initial baseline for TCM's shall be calculated by establishing the preexisting conditions in the areas of interest. This may include establishing to what extent TCM's have already been implemented, what average vehicle occupancy (AVO) levels have been achieved during peak and off-peak periods, what types of trips occur in the region, and what mode choices have been made in making these trips. In addition, the extent to which travel options are currently available within the region of interest shall be determined. These travel options may include, but are not limited to, the degree of dispersion of transit services, the current ridership rates, and the availability and usage of parking facilities.

(7) Information used in setting a program baseline shall be of sufficient quality to provide for at least as high a degree of accountability as currently exists for traditional control requirements for the categories of sources affected by the program.

(d) *Replicable emission quantification methods.* This program element, for programs other than those which are categorized as directionally-sound, shall include credible, workable, and replicable methods for projecting program results from affected sources and, where necessary, for quantifying emissions from individual sources subject to the EIP. Such methods, if used to determine credit taken in attainment, RFP, and maintenance demonstrations, as applicable, shall yield results which can be shown to have a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development. Such methods include, as applicable, the following elements:

(1) Specification of quantification methods. This element shall specify the approach or the combination or range of approaches that are acceptable for each source category affected by the program. Acceptable approaches may include, but are not limited to:

(i) Test methods for the direct measurement of emissions, either continuously or periodically.

(ii) Calculation equations which are a function of process or control system parameters, ambient conditions, activity levels, and/or throughput or production rates.

(iii) Mass balance calculations which are a function of inventory, usage, and/or disposal records.

(iv) EPA-approved emission factors, where appropriate and adequate.

(v) Any combination of these approaches.

(2) Specification of averaging times.

(i) The averaging time for any specified mass emissions caps or emission rate limits shall be consistent with: attaining and maintaining all applicable NAAQS, meeting RFP requirements, and ensuring equivalency with all applicable RACT requirements.

(ii) If the averaging time for any specified VOC or NO_X mass emissions caps or emission rate limits for

stationary sources (and for other sources, as appropriate) is longer than 24 hours, the State shall provide, in support of the SIP submittal, a statistical showing that the specified averaging time is consistent with attaining the O_3 NAAQS and satisfying RFP requirements, as applicable, on the basis of typical summer day emissions; and, if applicable, a statistical showing that the longer averaging time will produce emissions reductions that are equivalent on a daily basis to source-specific RACT requirements.

(3) Accounting for shutdowns and production curtailments. This accounting shall include provisions which ensure that:

(i) Emissions reductions associated with shutdowns and production curtailments are not double-counted in attainment or RFP demonstrations.

(ii) Any resultant "shifting demand" which increases emissions from other sources is accounted for in such demonstrations.

(4) Accounting for batch, seasonal, and cyclical operations. This accounting shall include provisions which ensure that the approaches used to account for such variable operations are consistent with attainment and RFP plans.

(5) Accounting for travel mode choice options, as appropriate, for TCM's. This accounting shall consider the factors or attributes of the different forms of travel modes (e.g., bus, ridesharing) which determine which type of travel an individual will choose. Such factors include, but are not limited to, time, cost, reliability, and convenience of the mode.

(e) *Source requirements.* This program element shall include all source-specific requirements that constitute compliance with the program. Such requirements shall be appropriate, readily ascertainable, and State and federally enforceable, including, as applicable:

(1) Emission limits.

(i) For programs that impose limits on total mass emissions, emission rates, or other emission-related parameter(s), there must be an appropriate tracking system so that a facility's limits are readily ascertainable at all times.

(ii) For emission-limiting EIP's that authorize RACT sources to meet their RACT requirements through RACT/non-RACT trading, such trading shall result in an exceptional environmental benefit. Demonstration of an exceptional environmental benefit shall require either the use of the statutory offset ratios for nonattainment areas as the determinant of the amount of emissions reductions that would be required from non-RACT sources generating credits for RACT sources or, alternatively, a trading ratio of 1.1 to 1, at a minimum, may be authorized, provided exceptional environmental benefits are otherwise demonstrated.

(2) Monitoring, recordkeeping, and reporting requirements.

(i) An EIP (or the SIP as a whole) must contain test methods and, where necessary, emission quantification methodologies, appropriate to the emission limits established in the SIP. EIP sources must be subject to clearly specified MRR requirements appropriate to the test methods and any applicable quantification methodologies, and consistent with the EPA's title V rules, where applicable. Such MRR requirements shall provide sufficiently reliable and timely information to determine compliance with emission limits and other applicable strategy-specific requirements, and to provide for State and Federal enforceability of such limits and requirements. Methods for MRR may include, but are not limited to:

(A) The continuous monitoring of mass emissions, emission rates, or process or control parameters.

(B) In situ or portable measurement devices to verify control system operating conditions.

(C) Periodic measurement of mass emissions or emission rates using reference test methods.

(D) Operation and maintenance procedures and/or other work practices designed to prevent, identify, or remedy noncomplying conditions.

(E) Manual or automated recordkeeping of material usage, inventories, throughput, production, or levels of required activities.

(F) Any combination of these methods. EIP's shall require that responsible parties at each facility in the EIP program certify reported information.

(ii) Procedures for determining required data, including the emissions contribution from affected sources, for periods for which required data monitoring is not performed, data are otherwise missing, or data have been demonstrated to have been inaccurately determined.

(3) Any other applicable strategy-specific requirements.

(f) *Projected results and audit/reconciliation procedures.* (1) The SIP submittal shall include projections of the emissions reductions associated with the implementation of the program. These projected results shall be related to and consistent with the assumptions used to develop the area's attainment demonstration and maintenance plan, as applicable. For programs designed to produce emissions reductions creditable towards RFP milestones, projected emissions reductions shall be related to the RFP baseline and consistent with the area's RFP compliance demonstration. The State shall provide sufficient supporting information that shows how affected sources are or will be addressed in the emissions inventory, RFP plan, and attainment demonstration or maintenance plan, as applicable.

(i) For emission-limiting programs, the projected results shall be consistent with the reductions in mass emissions or emissions-related parameters specified in the program design.

(ii) For market-response programs, the projected results shall be based on market analyses relating levels of targeted emissions and/or emission-related activities to program design parameters.

(iii) For directionally-sound programs, the projected results may be descriptive and shall be consistent with the area's attainment demonstration or maintenance plan.

(2) Quantitative projected results shall be adjusted through the use of two uncertainty factors, as appropriate, to reflect uncertainties inherent in both the extent to which sources will comply with program requirements and the overall program design.

(i) Uncertainty resulting from incomplete compliance shall be addressed through the use of a rule compliance factor.

(ii) Programmatic uncertainty shall be addressed through the use of a program uncertainty factor. Any presumptive norms set by the EPA shall be used unless an adequate justification for an alternative factor is included in supporting information to be supplied with the SIP submittal. In the absence of any EPA-specified presumptive norms, the State shall provide an adequate justification for the selected factors as part of the supporting information to be supplied with the SIP submittal.

(3) Unless otherwise provided in program-specific guidance issued by the EPA, EIP's for which SIP credit is taken shall include audit procedures to evaluate program implementation and track program results in terms of both actual emissions reductions, and, to the extent practicable, cost savings relative to traditional regulatory program requirements realized during program implementation. Such audits shall be conducted at specified time intervals, not to exceed three years. The State shall provide timely post-audit reports to the EPA.

(i) For emission-limiting EIP's, the State shall commit to ensure the timely

implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program in the context of overall RFP and attainment requirements.

(ii) For market-response EIP's, reconciliation procedures that identify a range of appropriate actions or revisions to program requirements that will make up for any shortfall between credited results (i.e., projected results, as adjusted by the two uncertainty factors described above) and actual results obtained during program implementation shall be submitted together with the program audit provisions. Such measures must be federally enforceable, as appropriate, and automatically executing to the extent necessary to make up the shortfall within a specified period of time, consistent with relevant RFP and attainment requirements.

(g) *Implementation schedule.* The program shall contain a schedule for the adoption and implementation of all State commitments and source requirements included in the program design.

(h) *Administrative procedures.* The program shall contain a description of State commitments which are integral to the implementation of the program, and the administrative system to be used to implement the program, addressing the adequacy of the personnel, funding, and legislative authority.

(1) States shall furnish adequate documentation of existing legal authority and demonstrated administrative capacity to implement and enforce the provisions of the EIP.

(2) For programs which require private and/or public entities to establish emission-related economic incentives (e.g., programs requiring employers to exempt carpoolers/multiple occupancy vehicles from paying for parking), States shall furnish adequate documentation of State authority and administrative capacity to implement and enforce the underlying program.

(i) *Enforcement mechanisms.* The program shall contain a compliance instrument(s) for all program requirements, which is legally binding and State and federally enforceable. This program element shall also include a State enforcement program which defines violations, and specifies auditing and inspections plans and provisions for enforcement actions. The program shall contain effective penalties for noncompliance which preserve the level of deterrence in traditional programs. For all such programs, the manner of collection of penalties must be specified.

(1) Emission limit violations. (i) Programs imposing limits on mass emissions or emission rates that provide for extended averaging times and/or compliance on a multisource basis shall include procedures for determining the number of violations, the number of days of violation, and sources in violation, for statutory maximum penalty purposes, when the limits are exceeded. The State shall demonstrate that such procedures shall not lessen the incentive for source compliance as compared to a program applied on a source-by-source, daily basis.

(ii) Programs shall require plans for remedying noncompliance at any facility that exceeds a multisource emissions limit for a given averaging period. These plans shall be enforceable both federally and by the State.

(2) Violations of MRR requirements. The MRR requirements shall apply on a daily basis, as appropriate, and violations thereof shall be subject to State enforcement sanctions and to the Federal penalty of up to $25,000 for each day a violation occurs or continues. In addition, where the requisite scienter conditions are met, violations of such requirements shall be subject to the Act's criminal penalty sanctions of section 113(c)(2), which provides for fines and imprisonment of up to 2 years.

§ 51.494 Use of program revenues.

Any revenues generated from statutory EIP's shall be used by the State for any of the following:

(a) Providing incentives for achieving emissions reductions.

(b) Providing assistance for the development of innovative technologies for the control of O_3 air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(c) Funding the administrative costs of State programs under this Act. Not more than 50 percent of such revenues may be used for this purpose. The use of any revenues generated from discretionary EIP's shall not be constrained by the provisions of this part.

3. Part 51 is amended by adding a new appendix X to read as follows:

Appendix X to Part 51—Examples of Economic Incentive Programs

I. Introduction and Purpose

This appendix contains examples of EIP's which are covered by the EIP rules. Program descriptions identify key provisions which distinguish the different model program types. The examples provide additional information and guidance on various types of regulatory programs collectively referred to as EIP's. The examples include programs involving stationary, area, and mobile sources. The definition section at 40 CFR 51.491 defines an EIP as a program which may include State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to O_3 formation, or any combination of the foregoing or other similar measures, as well as incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f). Such programs span a wide spectrum of program designs.

The EIP's are comprised of several elements that, in combination with each other, must insure that the fundamental principles of any regulatory program (including accountability, enforceability and noninterference with other requirements of the Act) are met. There are many possible combinations of program elements that would be acceptable. Also, it is important to emphasize that the effectiveness of an EIP is dependent upon the particular area in which it is implemented. No two areas face the same air quality circumstances and, therefore, effective strategies and programs will differ among areas.

Because of these considerations, the EPA is not specifying one particular design or type of strategy as acceptable for any given EIP. Such specific guidance would potentially discourage States (or other entities with delegated authority to administer parts of an implementation plan) from utilizing other equally viable program designs that may be more appropriate for their situation. Thus, the examples given in this Appendix are general in nature so as to avoid limiting innovation on the part of the States in developing programs tailored to individual State needs.

Another important consideration in designing effective EIP's is the extent to which different strategies, or programs targeted at different types of sources, can complement one another when implemented together as an EIP "package." The EPA encourages States to consider packaging different measures together when such a strategy is likely to increase the overall benefits from the program as a whole. Furthermore, some activities, such as information distribution or public awareness programs, while not EIP's in and of themselves, are often critical to the success of other measures and, therefore, would be appropriate complementary components of a program package. All SIP emissions reductions credits should reflect a consideration of the effectiveness of the entire package.

II. Examples of Stationary and Mobile Source Economic Incentive Strategies

There is a wide variety of programs that fall under the general heading of EIP's. Further, within each general type of program are several different basic program designs. This section describes common types of EIP's that have been implemented, designed, or discussed in the literature for stationary and mobile sources. The program types discussed below do not include all of the possible types of EIP's. Innovative approaches incorporating new ideas in existing programs, different combinations of existing program elements, or wholly new incentive systems provide additional opportunities for States to find ways to meet environmental goals at lower total cost.

A. Emissions Trading Markets

One prominent class of EIP's is based upon the creation of a market in which trading of source-specific emissions requirements may occur. Such programs may include traditional rate-based emissions limits (generally referred to as emissions averaging) or overall limits on a source's total mass emissions per unit of time (generally referred to as an emissions cap). The emissions limits, which may be placed on individual emitting units or on facilities as a whole, may decline over time. The common feature of such programs is that sources have an ongoing incentive to reduce pollution and increased flexibility in meeting their regulatory requirements. A source may meet its own requirements either by directly preventing or controlling emissions or by trading or averaging with another source. Trading or averaging may occur within the same facility, within the same firm, or between different firms. Sources with lower cost abatement alternatives may provide the necessary emissions reductions to sources facing more expensive alternatives. These programs can lower the overall cost of meeting a given total level of abatement. All sources eligible to trade in an emissions market are faced with continuing incentives to find better ways of reducing emissions at the lowest possible cost, even if they are already meeting their own emissions requirements.

Stationary, area, and mobile sources could be allowed to participate in a common emissions trading market. Programs involving emissions trading markets are particularly effective at reducing overall costs when individual affected sources face significantly different emissions control costs. A wider range in control costs among affected sources creates greater opportunities for cost-reducing trades. Thus, for example, areas which face relatively high stationary source control costs relative to mobile source control costs benefit most by including both stationary and mobile sources in a single emissions trading market.

Programs involving emissions trading markets have generally been designated as either emission allowance or emission reduction credit (ERC) trading programs. The Federal Acid Rain Program is an example of an emission allowance trading program, while "bubbles" and "generic bubbles" created under the EPA's 1986 Emission Trading Policy Statement are examples of ERC trading. Allowance trading programs can establish emission allocations to be effective at the start of a program, at some specific time in the future, or at varying levels over time. An ERC trading program requires ERC's to be measured against a pre-established emission baseline. Allowance allocations or emission baselines can be established either directly by the EIP rules or by reference to traditional regulations (e.g., RACT requirements). In either type of program, sources can either meet their EIP requirements by maintaining their own emissions within the limits established by the program, or by buying surplus allowances or ERC's from other sources. In any case, the State will need to establish adequate enforceable procedures for certifying and tracking trades, and for monitoring and enforcing compliance with the EIP.

The definition of the commodity to be traded and the design of the administrative procedures the buyer and seller must follow to complete a trade are obvious elements that must be carefully selected to help ensure a successful trading market that achieves the desired environmental goal at the lowest cost. An emissions market is defined as efficient if it achieves the environmental goal at the lowest possible total cost. Any feature of a program that unnecessarily increases the total cost without helping achieve the environmental goals causes market inefficiency. Thus, the design of an emission trading program should be evaluated not only in terms of the likelihood that the program design will ensure that the environmental goals of the program will be met, but also in terms of the costs that the design imposes upon market transactions and the impact of those costs on market efficiency.

Transaction costs are the investment in time and resources to acquire information about the price and availability of allowances or ERC's, to negotiate a trade, and to assure the trade is properly recorded and legally enforceable. All trading markets impose some level of transaction costs. The level of transaction costs in an emissions trading market are affected by various aspects of the design of the market, such as the nature of the procedures for reviewing, approving, and recording trades, the timing of such procedures (i.e., before or after the trade is made), uncertainties in the value of the allowance or credit being traded, the legitimacy of the allowance or credit being offered for sale, and the long-term integrity of the market itself. Emissions trading programs in which every transaction is different, such as programs requiring significant consideration of the differences in the chemical properties or geographic location of the emissions, can result in higher transaction costs than programs with a standardized trading commodity and well-defined rules for acceptable trades. Transaction costs are also affected by the relative ease with which information can be obtained about the availability and price of allowances or credits.

While the market considerations discussed above are clearly important in designing an efficient market to minimize the transaction costs of such a program, other considerations, such as regulatory certainty, enforcement issues, and public acceptance, also clearly need to be factored into the design of any emissions trading program.

B. Fee Programs

A fee on each unit of emissions is a strategy that can provide a direct incentive for sources to reduce emissions. Ideally, fees should be set so as to result in emissions being reduced to the socially optimal level considering the costs of control and the benefits of the emissions reductions. In order to motivate a change in emissions, the fees must be high enough that sources will actively seek to reduce emissions. It is important to note that not all emission fee programs are designed to motivate sources to lower emissions. Fee programs using small fees are designed primarily to generate revenue, often to cover some of the administrative costs of a regulatory program.

There can be significant variations in emission fee programs. For example, potential emissions could be targeted by placing a fee on an input (e.g., a fee on the quantity and BTU content of fuel used in an industrial boiler) rather than on actual emissions. Sources paying a fee on potential emissions could be eligible for a fee waiver or rebate by demonstrating that potential emissions are not actually emitted, such as through a carbon absorber system on a coating operation.

Some fee program variations are designed to mitigate the potentially large amount of revenue that a fee program could generate. Although more complex than a simple fee program, programs that reduce or eliminate the total revenues may be more readily adopted in a SIP than a simple emission fee. Some programs lower the amount of total revenues generated by waiving the fee on some emissions. These programs reduce the total amount of revenue generated, while providing an incentive to decrease emissions. Alternatively, a program may impose higher per-unit fees on a portion of the emissions stream, providing a more powerful but targeted incentive at the same revenue levels. For example, fees could be collected on all emissions in excess of some fixed level. The level could be set as a percentage of a baseline (e.g., fees on emissions above some percentage of historical emissions), or as the lowest emissions possible (e.g., fees on emissions in excess of the lowest demonstrated emissions from the source category).

Other fee programs are "revenue neutral," meaning that the pollution control agency does not receive any net revenues. One way to design a revenue-neutral program is to have both a fee provision and a rebate provision. Rebates must be carefully designed to avoid lessening the incentive provided by the emission fee. For example, a rebate based on comparing a source's actual emissions and the average emissions for the source category can be designed to be revenue neutral and not diminish the incentive.

Other types of fee programs collect a fee in relation to particular activities or types of products to encourage the use of alternatives. While these fees are not necessarily directly linked to the total amount of emissions from the activity or product, the relative simplicity

of a usage fee may make such programs an effective way to lower emissions. An area source example is a construction permit fee for wood stoves. Such a permit fee is directly related to the potential to emit inherent in a wood stove, and not to the actual emissions from each wood stove in use. Fees on raw materials to a manufacturing process can encourage product reformulation (e.g., fees on solvent sold to makers of architectural coatings) or changes in work practices (e.g., fees on specialty solvents and degreasing compounds used in manufacturing).

Road pricing mechanisms are fee programs that are available to curtail low occupancy vehicle use, fund transportation system improvements and control measures, spatially and temporally shift driving patterns, and attempt to effect land usage changes. Primary examples include increased peak period roadway, bridge, or tunnel tolls (this could also be accomplished with automated vehicle identification systems as well), and toll discounts for pooling arrangements and zero-emitting/low-emitting vehicles.

C. Tax Code and Zoning Provisions

Modifications to existing State or local tax codes, zoning provisions, and land use planning can provide effective economic incentives. Possible modifications to encourage emissions reductions cover a broad span of programs, such as accelerated depreciation of capital equipment used for emissions reductions, corporate income tax deductions or credits for emission abatement costs, property tax waivers based on decreasing emissions, exempting low-emitting products from sales tax, and limitations on parking spaces for office facilities. Mobile source strategies include waiving or lowering any of the following for zero- or low-emitting vehicles: vehicle registration fees, vehicle property tax, sales tax, taxicab license fees, and parking taxes.

D. Subsidies

A State may create incentives for reducing emissions by offering direct subsidies, grants or low-interest loans to encourage the purchase of lower-emitting capital equipment, or a switch to less polluting operating practices. Examples of such programs include clean vehicle conversions, starting shuttle bus or van pool programs, and mass transit fare subsidies. Subsidy programs often suffer from a variety of "free rider" problems. For instance, subsidies for people or firms who were going to switch to the cleaner alternative anyway lower the effectiveness of the subsidy program, or drive up the cost of achieving a targeted level of emissions reductions.

E. Transportation Control Measures

The following measures are the TCM's listed in section 108(f):

(i) Programs for improved public transit;

(ii) Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) Employer-based transportation management plans, including incentives;

(iv) Trip-reduction ordinances;

(v) Traffic flow improvement programs that achieve emission reductions;

(vi) Fringe and transportation corridor parking facilities serving multiple-occupancy vehicle programs or transit service;

(vii) Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) Programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) Programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) Programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) Programs to control extended idling of vehicles;

(xii) Programs to reduce motor vehicle emissions, consistent with title II, which are caused by extreme cold start conditions;

(xiii) Employer-sponsored programs to permit flexible work schedules;

(xiv) Programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) Programs for new construction and major reconstruction of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) Programs to encourage the voluntary removal from use and the marketplace of pre-1980 model year light-duty vehicles and pre-1980 model light-duty trucks.

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Thursday
April 7, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 20
Financial Assistance and Social Services Programs; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

RIN 1076–AC13

Financial Assistance and Social Services Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA; Bureau) is proposing to amend the existing Financial Assistance and Social Services Program regulations to incorporate rules for adult care services and the work experience program. Additionally, a quality assurance section is being incorporated to enable the BIA to assess the quality of the social services it provides, measure compliance with regulations and adherence to internal control requirements, and provide specific guidelines for administering the programs. An amendment is also being incorporated to establish rules on the treatment of per capita payments when determining eligibility for participation in social services programs.

DATES: Comments must be received on or before June 6, 1994.

ADDRESSES: Written comments may be mailed to the Division of Social Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 310–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Hickman, Chief, Division of Social Services, or Nancy Evans, Principal General Assistance Specialist, at 202 208–2721.

SUPPLEMENTARY INFORMATION: Experience in program administration and outside audit findings have indicated that regulatory amendments are needed to define with greater clarity the programs provided under this part. A primary purpose of the amendments is to provide clear, concise guidelines that will effect a reduction in eligibility error rates.

Amendments are being made in 25 CFR 20.1, Definitions; 20.2, Purpose; 20.3, Policy; 20.20, General and 20.23 Miscellaneous Assistance.

The following new sections are added: 20.15, Reporting requirements for all social services programs; 20.16, Staffing requirements; 20.26, Adult care assistance program; 20.27, Work experience program; and 20.35, Quality assurance reviews.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) of Executive Order 12778. BIA has made every effort to ensure that the proposed rules specify their effect on existing regulations, and provide clear, certain language to promote burden reduction and avoid litigation.

The Department of the Interior has determined that this rule is not a significant regulatory action under Executive Order 12866, and therefore will not be reviewed at the Office of Management and Budget. The 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.). In accordance with Executive Order 12630, the Department has determined that the rules do not have "significant takings" implications. The rules do not pertain to "taking" of private property interests, nor do they impact private property.

The Department of the Interior has determined that this rule does not have significant federalism effects under Executive Order 12612 and will not interfere with the roles, rights and responsibilities of states.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in 25 CFR 20.4 will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The primary author of this document is David Hickman, Chief, Division of Social Services, Office of Tribal Services.

List of Subjects in 25 CFR Part 20

Administrative practice and procedure, Adult care, Child welfare, Indians, Public assistance programs, Reporting and recordkeeping requirements, Work experience programs and quality assurance.

For the reasons set out in the preamble, part 20 of title 25, subchapter D, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 20—[AMENDED]

1. The authority citation for 25 CFR part 20 continues to read as follows:

Authority: 25 U.S.C. 13; § 20.21 also issued under Pub. L. 98–473.

2. Under subpart A—§§ 20.1, 20.2 and 20.3 are revised to read as follows:

§ 20.1 Definitions.

Adult is a person over the age of eighteen or other age of majority as established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence. This includes persons emancipated by marriage.

Adult care assistance is a financial payment made on behalf of an eligible Indian person, age eighteen (18) or older, who, due to age, infirmity, or physical and/or mental impairment, requires and receives supervision or non-medical custodial care.

Appeal means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges as provided in part 2 of this chapter.

Applicant is a person who applies for assistance and/or services provided under this part, or a person on whose behalf an application for assistance and/or services has been made by another person.

Application is the process through which a request is made for assistance or services.

Area Director is the BIA official in charge of an Area Office.

Assistant Secretary is the Assistant Secretary—Indian Affairs.

Authorized representative is a parent or other caretaker, relative, conservator, legal guardian, foster parent, attorney (or paralegal acting under the supervision of an attorney), friend, or other spokesperson acting on behalf of or representing the applicant or recipient.

Basic needs are necessities to sustain daily life, and include food, clothing, shelter, utilities, household cleaning supplies, and items needed for personal hygiene.

BIA means the Bureau of Indian Affairs, U.S. Department of the Interior.

BIA general assistance is a secondary or residual source of financial aid payments made to or on behalf of eligible Indian individuals or households for assistance in meeting the cost of essential needs.

Burial assistance is a financial payment made on behalf of an indigent

Indian person to provide for basic burial expenses.

Case is an assistance unit, composed of an individual or group of individuals who are eligible and who receive assistance or services as a unit.

Caseplan is a written plan developed by a caseworker in consultation (when possible) with the service recipient(s). The caseplan incorporates strategies to assist individuals and families, either directly or through referrals, in resolving social, economic, psychological, interpersonal and/or environmental problems.

Child is a person under the age of eighteen or other age of majority as established for purposes of parental support by state or tribal law (if any) applicable to the person at his or her residence. This does not include persons emancipated by marriage.

Child welfare assistance is financial assistance provided on behalf of an Indian child, or an Indian under the age of 22 if assistance was initiated before age 18, who requires placement in a foster home or specialized non-medical care facility in accordance with standards of payment established by the state of residence pursuant to the foster care program under title IV of the Social Security Act, or who has need of specialized services not available under BIA general assistance, or adult care assistance.

Commissioner is the Commissioner of Indian Affairs.

Designated representative is an official of the BIA designated by a superintendent to conduct a hearing as prescribed in § 20.30 and who has had no prior involvement in the proposed decision, and whose hearing decision shall have the same force and effect as if rendered by the superintendent.

Disaster assistance is a financial payment made to provide basic and/or special need items when conditions caused by fire, flooding, or natural disaster pose a threat to life or health.

Employable person is an individual who is physically and mentally able to obtain employment and is not exempt in accordance with the criteria specified in ¶ 20.21(i)(1).

Essential needs are basic needs and special needs as defined in this section.

Family and community services are social services, including protective services, provided through the social work skills of casework, group work or community development to resolve social problems involving children, adults or communities. These services usually do not include financial assistance.

Foster care services are social services provided when an Indian child or dependent adult person lives away from his/her family home.

Household means persons living together as a family with a head of household who may or may not be related to the head of household, and who function as members of the family.

Indian is any person who is a member, or a one-fourth degree or more blood quantum descendant of a member, of any Indian tribe.

Indian court is an Indian tribal court or court of Indian offenses.

Indian tribe is any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688), which is federally recognized as eligible by the U.S. Government for the special programs and services provided by the Secretary to Indians because of their status as Indians.

In-home care means non-medical care services intended to prevent out-of-home placement or to stabilize a child or adult in her/his family home, and includes protective day care, homemaker services, parenting skills training, and/or respite care.

Liquid assets are those properties in the form of cash or financial instruments that can be converted to cash, such as savings or checking accounts, promissory notes, mortgages, and similar properties.

Near reservation means those areas or communities adjacent or contiguous to reservations that are designated by the Assistant Secretary—Indian Affairs upon recommendation of the local BIA Superintendent.

Need is the financial deficit after consideration of income and other liquid assets are deducted from the standard of assistance.

Non-medical care is the provision of any remedial or custodial care or service in or out of the recipient's home.

Out-of-home care agreement means the contractual relationship established between an out-of-home care provider and the BIA program requesting services on behalf of an eligible recipient. The agreement establishes: (a) The goals, objectives, and methods of service provision; (b) the rate of payment for care, which is not to exceed the prevailing state payment rate; and (c) conditions of reimbursement.

Public assistance is a program of financial assistance provided under title IV of the Social Security Act, as amended, including the Aid to Families with Dependent Children (AFDC) Program provided under title IV–A, and Supplemental Security Income (SSI) provided under title XVI.

Purchase of service agreement is a contractual fiscal arrangement between BIA and a service provider for personal and/or foster care of children or adults.

Recipient is an individual or group of persons who have been deemed eligible, and are receiving financial assistance or services under this part.

Redetermination means a periodic review of basic eligibility requirements specified in §§ 20.20(a) and 20.20(b), and financial need eligibility requirements for each program identified in §§ 20.21, 20.22, 20.23, 20.24, 20.26, and 20.27.

Reservation is a Federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

Residency means living permanently on a reservation or within an officially designated near-reservation service area.

Resources are income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute.

Secretary is the Secretary of the Interior.

Service provider is an entity, individual or organization that is awarded a contract from BIA to provide services under this part.

Special needs may be recurring or nonrecurring requirements beyond basic needs, and may include unusual diet items or special clothing that cannot be defined as a basic need. Medical or legal needs are not included under this provision.

Standard of assistance is the established state rate of payment for any of the services of financial assistance authorized under this part.

State general assistance is a non-federally matched public financial assistance program available from a state or county to meet the basic living needs of all eligible citizens.

State payment rate is the level of payment, established by a state agency, for the cost of care and services provided for foster care, group home, non-medical institutional care, and in-home care for children or adults.

Superintendent is the official in charge of a BIA agency office.

Tribal governing body is the officially recognized government of an Indian tribe.

Tribal Work Experience Program (TWEP) is a work experience program (WEP) that is contracted to and administered by a tribe.

Unemployable person is an individual who is unable to obtain employment and meet the criteria specified in § 20.21(i)(1).

Unemployed person is an individual who is physically and mentally able to obtain employment but is unemployed due to lack of available jobs.

Work Experience Program (WEP) is a work program designed to provide eligible general assistance clients with training and work experience which promote, preserve, and develop work skills and habits.

§ 20.2 Purpose.

The regulations in this part govern the provision of general assistance, child welfare assistance, miscellaneous assistance, child and family services, community services, adult care assistance, the work experience program, and quality assurance.

§ 20.3 Policy.

(a) In the administration of general assistance, child welfare assistance, burial and disaster assistance, family and community services, adult care assistance and work experience programs, it is the policy of the BIA to provide services to eligible Indians in a manner designed to promote individual self-determination, family unity, economic and social stability, and the attainment of personal independence and self-reliance. Through the application of professional social work skills and principles, it is BIA policy to work with Indians to promote and maintain social environments in their communities that emphasize safety and well-being for all children; promote family stability; and value individual independence.

(b) In administering social services programs, it is also BIA policy to emphasize the importance of individual case planning. The goal of case plan implementation is to assist people to become self-sufficient, preventing dependency, strengthening family relationships, and restoring individuals, families or groups to successful social functioning. When an ineligible adult is a member of an assistance household, the case plan shall address the spousal, parental and/or custodial responsibilities of the ineligible person relative to the financial support of the eligible members of the household.

(c) Further, it is BIA policy to ensure, insofar as possible, that Indians have full access to available Federal and state services. Therefore, the financial assistance and social services programs authorized under this part are secondary resources and are provided only when assistance or services are not available from state, local, or other primary providers.

3. Under subpart B—Administrative Procedures, new §§ 20.15 and 20.16 are added to read as follows:

§ 20.15 Reporting requirements for all social services programs.

The following required reports shall be submitted by each BIA Area social services program to the designated BIA authority on forms provided by the BIA:

(a) The Monthly Statistical Report shall include, by category of assistance, the number of active cases, the number of cases closed, the number of persons served, and total dollars expended during the month. This report is due no later than the fifteenth day of the subsequent month.

(b) The Quarterly Analysis of Funds Report shall include, by category of assistance, data on the number of cases, persons served, and expenditures per person and per case. The Quarterly Analysis of Funds Report is to be accompanied by a narrative report on the activities and accomplishments of the program, and on projected deficits, if any are anticipated. This report is due on the fifteenth of the month following the end of each quarter.

(c) The Annual Report shall include unduplicated counts of cases, persons, and dollars by category and by each reservation program. This report is due no later than ninety (90) days following the end of each fiscal year.

(d) Special reports to Congress are due when requested.

§ 20.16 Staffing requirements.

The following staffing requirements shall apply to all BIA social services programs:

(a) Each local program shall have a minimum of one staff member with a Master of Social Work (MSW) degree.

(b) Any additional staff member(s) engaging in the direct delivery of services shall have, at a minimum, a bachelors degree in a human services discipline or no fewer than three years of work experience in the field of human services.

(c) A social services program that is unable to comply with these requirements shall provide regular access to professional consultation and/or implement a formal staff development/training plan to achieve this standard. The Area Director shall determine whether the alternative plan will support and promote an acceptable level and quality of services.

4. Under subpart C—Eligibility Conditions, § 20.20 is amended by adding (c) through (f) and § 20.23 is revised to read as follows:

§ 20.20 General.

* * * * *

(c) The Assistant Secretary may authorize emergency short-term assistance and services to Indians not otherwise eligible under this part, who reside on a reservation or in designated near-reservation areas:

(1) Upon written request of an appropriate tribal governing body or the appropriate Bureau official, and

(2) When necessary to meet need as defined at § 20.1 and prevent hardship caused by fire, flood or acts of nature.

(d) When determining eligibility for programs provided under this part, cash distributed per capita pursuant to Public Law 97–458, Public Law 98–64 and Public Law 100–241, shall be disregarded to the extent that such cash does not, in the aggregate, exceed $2000 per individual each year. The $2000 limit is applied separately each year, and cash distributions which an individual received in a prior year and retained into subsequent years will not be counted as a resource in those years.

(e) When determining eligibility for programs provided under this part, income and resources of legally responsible relatives or individuals shall be considered as available to meet the need of the applicant(s). Legal relationships between husband and wife, parent and minor child, and guardian and ward are considered as relationships in which support is deemed.

(f) Upon written request of a tribal governing body and the recommendation of the appropriate Area Director and/or Agency Superintendent, the Assistant Secretary may designate near reservation service areas that are adjacent or contiguous to reservations. Upon approval by the Assistant Secretary, each designated near reservation service area will be published in the **Federal Register** as a locale(s) appropriate for the extension of financial assistance and/or social services. Requests for the designation of a near reservation service area shall be based on the following general criteria:

(1) Number of Indian people native to the reservation residing in the area;

(2) Written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation;

(3) Geographical proximity of the area to the reservation; and

(4) Administrative feasibility of providing an adequate level of services to the area.

§ 20.23 Burial and disaster assistance.

In the absence of other resources, burial and disaster assistance shall be provided to eligible Indians meeting the requirement prescribed in § 20.20(a) *provided* that they reside in areas where the needed services are not available to all residents on the same basis from a state, county, or local public jurisdiction. Case records shall be documented to reflect need and substantiate all relevant eligibility factors.

(a) *Burial assistance.* Burial assistance shall be provided to meet minimum burial expenses for eligible Indians.

(1) The deceased is considered the applicant and the determination of eligibility is based on the resources available to him/her, including, but not limited to, tribal burial programs, veterans' death benefits, Individual Indian Money (IIM) accounts, insurance policies, and cash on hand.

(2) Requests and applications for burial assistance shall be received from relatives or other persons who have assumed responsibility for making burial arrangements. In no instance, however, shall an application for burial assistance be approved after interment of the individual on whose behalf burial assistance is sought.

(3) Applications made on behalf of a deceased Indian person are subject to eligibility determinations in accordance with criteria specified at § 20.20(a). Prior to final burial arrangements, the caseworker shall evaluate each case relative to all available resources and income.

(4) Upon the request of a relative or other responsible party, the actual cost for transporting the body of a deceased Indian person determined to be eligible and without resources may be provided if the following conditions are met:

(i) No other resources for transportation are available;

(ii) The death occurred while the decedent was away from the reservation or other approved service area and the absence did not exceed a duration of sixty (60) days; and

(iii) Transportation costs are reasonable relative to distance and the prevailing rate for others in similar circumstances.

(5) In the absence of a locally established state/county rate, the approved payment rate shall be the national maximum burial payment rate to be established annually by the Assistant Secretary.

(6) A supplement may be granted when state/county/tribal burial benefits or other resources are available, but are less than the BIA's established rate. However, the supplement together with the public benefit may not exceed BIA's national payment rate.

(7) Upon request, funds to assist with a culturally relevant tribal burial practice may be approved if all other factors of eligibility are met. The rate of payment for this purpose, together with other burial assistance provided under this part, shall not exceed the amount established annually by the Assistant Secretary.

(b) *Disaster assistance.* (1) Disaster assistance payments shall be made only for food, shelter, and/or other necessities directly related to meeting immediate, basic living needs.

(2) The order of preference for payment standards is the Federal emergency payment standard, locally established state/county rate, or the rate as determined annually by the Assistant Secretary. Payment shall not exceed the payment standard. Emergency services and expenditures shall be coordinated with other appropriate disaster committees or programs and documented.

(3) The Assistant Secretary may authorize community-wide short term disaster assistance and services for Indians not eligible for other services under this part. This assistance is to be used in conjunction with other assistance for which the individual community members qualify and may be authorized only under the following conditions:

(i) The beneficiaries are Indians residing on a reservation or in a designated near-reservation area;

(ii) A written request is submitted to the Assistant Secretary by the appropriate tribal governing body or BIA official; and

(iii) The assistance is necessary to meet essential needs as defined in § 20.1.

5. Under subpart C—Eligibility Conditions, new §§ 20.26 and 20.27 are added to read as follows.

§ 20.26 Adult care assistance.

The purpose of the adult care program is to provide non-medical care for eligible adults who need personal care and supervision due to advanced age, infirmity, physical condition, or mental impairment. Services under this program can be provided only if they are not available through state, county, local or other Federal programs. Nothing in this subsection shall be construed to restrict payment of adult care financial assistance pending application and/or approval for other programs.

(a) Adult care assistance may be approved when:

(1) The adult or his/her legally responsible guardian applies for such assistance in writing.

(2) The adult is unable to meet his/her essential needs, including non-medical care and/or protection, with his/her own resources.

(3) There are no other Federal, state, or county public assistance resources, including services provided pursuant to titles XIX and XX of the Social Security Act, available to meet the required special need.

(4) The cost of care is not available from his/her immediate family.

(5) Facts regarding infirmity, and/or the physical or mental condition of the client and his/her need for non-medical adult care have been documented.

(b) Adult care assistance may be authorized only if the adult does not require skilled nursing care warranting medical supervision.

(c) Payments shall be authorized under purchase of service agreements only for care provided in state or tribally licensed/certified group settings, or by individual service providers licensed/certified by a tribe or a state.

(d) No adult care payment shall be approved for or on behalf of a client until the eligibility case worker certifies through documentation that all eligibility factors have been met.

(e) Adult care is to be provided in the setting determined to be the least restrictive (in-home care, adult day care, foster care, group home, or institutional) for the specific individual adult. If appropriate, and when a qualified care provider is available, in-home care is preferred. When an institutional or group care setting is in the adult's best interest, the preferred placement shall be in a facility located as close as possible to his/her home community.

(f) The cost of adult care provided by BIA shall not exceed the applicable state payment rate for similar care.

(g) When establishing the actual level of payment for an adult's care, the BIA shall:

(1) Consider all available resources when determining eligibility; and

(2) Determine the amount of the assistance payment for which the client is eligible based upon the deficit remaining after all available resources are deducted from the cost of care.

(h) Redetermination of adult care eligibility and the payment level.

(1) The BIA shall redetermine financial eligibility and the amount of the BIA payment based upon the deficit between the cost of care and resources available to the adult in need of care, including other Federal, state, or public assistance resources. Recipients or their authorized representatives are required

to inform the BIA immediately of any changes in status that may affect eligibility or the amount of assistance. The BIA shall redetermine eligibility whenever there is an indication of a change in circumstances affecting eligibility, but not less frequently than once every six months for each recipient.

(2) The redetermination process shall include personal contact with the recipient in the actual placement setting. The purposes of the contact are to evaluate changes in the adult's personal circumstances or condition and to assess the need for continued assistance.

§ 20.27 Work Experience Program (WEP).

WEP is a program for eligible general assistance recipients. It provides work experience and job skills that will enhance the recipients' potential for job placement. WEP participation is mandatory for general assistance recipients, unless they are excepted under 25 CFR 20.21(i).

(a) *Work experience and training sites.* (1) Work experience and training sites offering potential for job placement within a specified period of time shall be given priority.

(2) If eventual employment at a work site is not likely, other options for WEP placements that provide opportunity for the development of relevant skills and good work habits shall be preferred.

(3) Placement should not exceed a period of 24 months.

(4) Placements of WEP participants in subsidized employment may be authorized for periods up to six months if the employer shares in the cost of the participant's wages. Agreements with such employers shall include the amount of wages to be paid and a provision that the WEP participant will be considered for permanent employment if a vacancy exists.

(b) *Payment for work-related expenses.* (1) A monthly work-related payment not to exceed the amount established and periodically reviewed by the Assistant Secretary shall be allowed for WEP participation. No advance general assistance grant payments or WEP payments are authorized.

(2) Payments to participants shall not be considered as wages, but as grant assistance payments pursuant to provisions at 25 CFR 20.21.

(c) *Participants.* (1) In situations where the recognized head of the family unit is certified as unemployable, an alternate member of the assistance group, such as the spouse or another adult, shall be designated as available for WEP participation.

(2) Where there are multiple family units in one household, one member of each family unit shall be eligible to participate in WEP.

(d) *Program.* (1) The local WEP shall have specific written program procedures that cover hours of work, participation requirements, acceptable reasons for granting leave from work, evaluation criteria and monitoring plans.

(2) WEP services are administered as part of the general assistance program. The costs of providing WEP services is included within the total social services program budget. The actual cost of providing WEP services shall not exceed the following formula:

Average number of direct participants	Maximum allowable administrative costs for WEP (percent)
25 and below	40
26 to 50	30
51 and up	20

(3) Capital equipment, materials, and supplies for projects and tools or other equipment may not be purchased with grant assistance funds.

(4) Worker's compensation coverage and liability or other insurance may not be provided with grant assistance funds.

6. A new subpart E—Quality Assurance, consisting of § 20.35, is added to read as follows:

Subpart E—Quality Assurance

§ 20.35 Quality assurance reviews.

(a) The BIA shall establish and perform quality assurance reviews to assess the provision of quality services through uniform application of regulations. This will be done by performing regular, periodic reviews to determine the degree to which regulations are followed and implemented in all areas of operation, and to ensure that internal control processes comply with OMB Circular A–123. The review shall include operations at Central, Area, and Agency Office levels to ensure program integrity at all levels.

(b) *Schedule.* Scheduled annual reviews shall be performed at selected locations in each of BIA's areas.

A review schedule and the sampling method shall be distributed annually to each Area Director.

(c) The quality assessment process shall include procedures for:

(1) Reviewing program records and conducting on-site evaluations;

(2) Documenting the findings of compliance or non-compliance with program regulations and OMB Circular A–123 requirements; and

(3) Tracking corrective action plan(s), or administrative recommendations.

Dated: February 22, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–8188 Filed 4–6–94; 8:45 am]

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federal register

Thursday
April 7, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 256

Housing Improvement Program; Resource Allocation Methodology; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

RIN 1076–AD01

Resource Allocation Methodology for the Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This document proposes a revision to the distribution method for Housing Improvement Program (HIP) funds from a housing inventory basis to documented eligible applicants. A technical correction is also made to eliminate Category C, Downpayments which is inconsistent with the intent of the HIP. A revision is proposed to eliminate individuals who own a home acquired under Federal housing assistance from the Department of Housing and Urban Development (HUD) through an Indian Housing Authority from being served under HIP.

DATES: Comments must be submitted on or before June 6, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ron Thurman, Housing Specialist, Division of Housing Assistance, Bureau of Indian Affairs, 18th and C Streets NW. (Mail Stop 2525 MIB), Washington, DC 20240.

Request for Comments: Comments are requested from tribes, individuals, and tribal organizations. The Assistant Secretary—Indian Affairs, will mail a copy of this **Federal Register** Notice to all Federally-recognized Tribes with a personal letter explaining her support for HIP and her interest in the proper use of HIP funds.

FOR FURTHER INFORMATION CONTACT: Ron Thurman, Housing Specialist, Division of Housing Assistance, (202) 208–5427.

SUPPLEMENTARY INFORMATION: Since FY 1986, the BIA has distributed HIP funds using a formula that is based on biennial housing inventories submitted by individual tribes. The funding calculation formula is based on 90% of the repair need and up to 10% of the new construction need indicated by the inventories, except for Alaska where the percentages are 95% and 35%. These figures are converted to dollars, and the dollar amount is divided by the number of years required to complete a work plan. The formula is the basis for proportional distribution of appropriated funds. The use of percentages based on an assumed HIP responsibility does not reflect an accurate picture of individuals eligible for HIP assistance.

For a variety of reasons, many of the housing inventories are not accurate. Accuracy would require a house-by-house assessment and completion of a housing inventory work sheet describing the condition of each house inventoried to support the repair or replacement decision. Most tribes do not have sufficient qualified personnel with a construction background to complete the work sheet accurately. Presently, there is no requirement to determine whether the individual house is occupied and owned by a person who is eligible for HIP assistance.

At a meeting in Albuquerque, New Mexico, November 1–5, 1993, the Joint Tribal/DOI/BIA Reorganization Task Force recommended that HIP be transferred in FY 1995 to the Tribal Priority Allocation (TPA) section of the budget where program priorities and funding levels are established by individual tribes. They further recommended that the resource allocation methodology for HIP be revised from housing inventory to documented eligible applicants to ensure that funding distribution better responds to need.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

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

The Department of the Interior has reviewed this document under Executive Order 12866. 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.).

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirement contained in this part has been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq. and assigned clearance number 1076–0084.

The primary author of this document is Kay C. Keely, Acting Chief, Division of Housing Assistance.

List of Subjects in 25 CFR Part 256

Grant programs—housing and community development, Grant programs—Indians, Housing, Indians, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 256 of title 25, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citation for 25 CFR Part 256 continues to read:

Authority: 42 Stat. 208. (25 U.S.C. 13).

2. Section 256.3 (c) and (d) is revised to read as follows:

§ 256.3 Policy.

* * * * *

(c) Beginning in FY 1995 HIP funds will be distributed to tribes proportionally based upon the total number of documented program-eligible applicants submitted by all tribes. Tribes shall make every effort to advertise the opportunity to apply for housing assistance to all member and non-member Indians residing within the designated service area. Tribes shall review HIP applications for eligibility in accordance with § 256.6 and ensure that appropriate records and documents to verify eligibility are on file. On or before August 1, 1994, each Tribe shall submit to the Area Office a list of documented program-eligible applicants that also specifies the category of service to be provided to each applicant. This list shall be accompanied by the applications and a tribal resolution affirming the accuracy of the list. The Area housing staff will review the HIP applications and certify that they have done so before submitting the list of documented eligible applicants to the Central Office. In some instances, it may be easier for the Area housing staff to inspect the applications at the tribal offices. This decision may be made locally.

(d) Beginning in FY 1995, HIP funds shall be included in the Tribal Priority Allocation (TPA) section of the BIA budget. Beginning in FY 1996, each tribe shall establish its own funding level for HIP within the TPA allocation based upon the number of eligible applicants it plans to serve in that year.

Tribes are encouraged to provide adequate funding to meet the housing needs of individuals residing within the designated service area. Every effort shall be made to use HIP funds in conjunction with other programs so that the result will be a greater amount of housing improvements than would otherwise be possible with the HIP funds alone. Other funding sources shall be used only to supplement HIP funds, not as a means to exceed the regulatory cost limits for the category of service.

§ 256.4 [Removed]

3. Section 256.4 (c) is removed.

§ 256.6 [Amended]

4. Section 256.6(c) is revised to read as follows:

* * * * *

(c) Houses financed by the Department of Housing and Urban Development (HUD) shall not be eligible for assistance under HIP.

5. The introductory paragraph of § 256.7 is revised to read as follows:

§ 256.7 HIP selection criteria.

At least every two years, each tribe shall develop a single priority list of applicants who satisfy the eligibility requirements of § 256.6. The priority list shall be developed using a ranking system based upon five basic factors of need: Annual income, family size, overcrowded living conditions, age, and handicap or disability. Eligible applicants may receive points for any or all of these five criteria in accordance with the point schedule contained in Appendix A of this part. Individuals with a total score below zero, as a result of earning negative points for income, shall not be considered eligible and shall not be served. Housing assistance will be provided to individuals in priority order based upon the number of points earned. Eligibility information should be revalidated before service is actually provided.

* * * * *

6. Section 256.7(f) is removed.

7. In Appendix A to part 256—Summary of Selection Criteria—Point Schedule Factor No. 6 is removed.

Dated January 27, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–8189 Filed 4–6–94; 8:45 am]

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federal register

Thursday
April 7, 1994

Part V

Department of Health and Human Services

Office of Community Services

Fiscal Year 1994 Job Opportunities for Low-Income Individuals Program (Demonstration Projects); Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–94–01]

Request for Applications Under the Office of Community Services' Fiscal Year 1994 Job Opportunities for Low-Income Individuals Program (Demonstration Projects)

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' FY 1994 Job Opportunities for Low-Income Individuals Programs (Demonstration Projects).

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 505 of the Family Support Act of 1988.

CLOSING DATE: The closing date for submission of applications is June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 401–9233, Contact: Nolan Lewis.

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Part I—Preamble

A. Legislative Authority

The Senate Committee on Appropriations, in its recommendations, provides $5,500,000 for job creation demonstration activities authorized under section 505 of the Family Support Act of 1988, Public Law 100–485. Sen. Rep. No. 143, 103d Cong., 1st Sess. 170 (1993). Section 505 of the Family Support Act of 1988 authorizes the Secretary to enter into agreements with not less than 5 nor more than 10 non-profit organizations (including community development corporations) for the purpose of conducting demonstration projects to create employment and business opportunities for certain low-income individuals.

B. Eligible Applicants

The organizations eligible to apply for funding under this program is any non-profit organization (including community development corporations) that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code. Applicants must provide documentation of their tax exempt status. Any of the following is acceptable evidence of non-profit status: (1) A copy of the applicant organization's list in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code; or (2) a copy of the currently valid IRS tax exemption certificate. Failure to provide evidence of non-profit status will result in rejection of the application.

C. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

—Budget Period: The interval of time into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.
—Community-Level Data: Key information to be collected by each grantee that will allow for a national-level analysis of common features of JOLI projects. This includes data on the population of the target area, the percentage on public assistance, the percentage whose incomes fall below the poverty line, the unemployment rate, the number of new business starts and business closings, and a description of the major employers and average wage rates.
—Community Development Corporation: A private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business and civic leaders, which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development.
—Hypothesis: An assumption made in order to test its validity. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and result must be measured in order to confirm the hypothesis. For example: Eighty hours of classroom training in small business planning will be sufficient for participants to prepare a successful loan application. In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result).
—Intervention: Any planned activity within a project that is intended to produce changes in the target population and/or the environment and can be formally evaluated. For example, assistance in the preparation of a business plan and loan package are planned interventions.
—Job Creation: To bring about, by activities and services funded under this program, new jobs. Jobs that were not in existence before the start of the project. These activities can include self-employment/entrepreneurial training, the development of new businesses or the expansion of existing businesses.
—Non-profit Organizations: Any organization (including a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code.

—Private employers: Third-party private non-profit organizations or third-party for-profit businesses operating in the same community as the applicant.

—Process Evaluation: The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer questions such as: Who is receiving what services?, are the services being delivered as planned?, and are client competencies improving? It is also known as formative evaluation because it gathers information that can be used to improve the way a program operates while the program is in progress.

—Program Participant/Beneficiary: Any individual eligible to receive Aid to Families with Dependent Children under Part A of Title IV of the Social Security Act and any other individual whose income level does not exceed 100 percent of the official poverty line as found in the most recent Annual Revision of Poverty Income Guidelines published by the Department of Health and Human Services. (See Attachment A.)

—Project Period: The total time a project is approved for support, including any extensions.

—Self-Sufficiency: A condition where an individual or family, by reason of employment, does not need and is not eligible for public assistance.

D. Purpose

The purpose of this program is to demonstrate and evaluate ways of creating new employment and business opportunities for certain low-income individuals through the provision of technical and financial assistance to private employers in the community, self-employment/micro-enterprise programs and/or new business development programs. A low-income individual eligible to participate in a project conducted under this program is any individual eligible to receive Aid to Families with Dependent Children (AFDC) under Part A of Title IV of the Social Security Act and any other individual whose income level does not exceed 100 percent of the official poverty line. (See Attachment A.) Within these categories, emphasis should be on individuals who are unemployed, those residing in public housing, and those who are homeless.

Part II—Program Priority Areas

A. General Projects 1.0

The Congressional Conference Report on the FY 1992 appropriations for the Department of Labor, Health and Human Services, and Education and related agencies directs the ACF to require economic development strategies as part of the application process to ensure that highly qualified organizations participate in the demonstration. H.R. Conf. Rep. No. 282, 102d Cong., 1st Sess. 39 (1991). These strategies should include descriptions of how projects financed and jobs created under this program will be integrated into a larger effort to promote job and business opportunities for eligible program participants. Proposed projects should demonstrate how their program will impact the overall community/communities served by the applicant. OCS will only fund projects that create new jobs and/or business opportunities for eligible program participants. Projects funded under this program must demonstrate how the proposed project will enhance the participants' ability and skills in their progress toward self-sufficiency. Therefore, proposed projects must show promise toward progress of achieving self-sufficiency among the target population. OCS expects that the jobs and/or business/self employment opportunities to be created under this program will contribute to the goal of self-sufficiency. The employment opportunities should provide hourly wages that exceed the minimum wage and also provide benefits such as health insurance, transportation, child care, career development opportunities, etc.

Applicants must show that the proposed project will create a significant number of new full-time permanent jobs through the expansion of a pre-identified business or new business development and by providing opportunities for self-employment to eligible participants.

While projected employment in future years may be included in the application, it is essential that the focus of employment opportunities concentrate on new full-time, permanent jobs to be created during the duration of the grant project period and/or on the creation of new business development opportunities for low-income individuals.

In creating self-employment business opportunities for eligible participants, the applicant must detail how it will provide training and support services to potential entrepreneurs. The assistance to be provided to potential entrepreneurs must include, at a minimum, technical assistance in basic business planning and management concepts, and assistance in preparing a business plan (see Part IV, Criterion III for requirements) and loan application.

Any funds that are used for training purposes must be limited to providing specific job-related training to eligible participants who have been selected for employment (expansion of an existing business or new business development) and/or self-employment business opportunities.

In the review process, favorable consideration will be given to applicants with a demonstrated record of achievement in promoting job and enterprise opportunities for low-income people. Favorable consideration also will be given to those applicants who show the lowest cost-per-job created for low-income individuals. For this program, OCS views $15,000 as the maximum amount for the creation of a job and, unless there are extenuating circumstances, will not fund projects where the cost-per-job in OCS funds exceeds this amount. Only those jobs created and filled by low-income people will be counted in the cost-per-job formula. (See Part IV, Criterion IV)

Technical assistance should be specifically addressed to the needs of the private employer in creating new jobs to be filled by eligible individuals and/or to the individuals themselves such as skills training, job preparation, self-esteem building, etc. Financial assistance may be provided to the private employer as well as the individual.

If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written comments from the businesses must be included with the application.

The creation of a revolving loan fund with funds received under this program is an allowable activity. However, OCS encourages the use of funds from other sources for this purpose. Points will be awarded in the review process to those applicants who leverage funds from other sources. (See Part IV, Criterion VI.) Loans made to eligible beneficiaries for business development activities must be at or below market rate.

(**Note:** Interest accrued on revolving loan funds may be used to continue or expand the activities of the approved project.)

Grant funds received under this program may not be used for construction.

A formal, cooperative relationship between the applicant and the agency responsible for administering the Job Opportunities and Basic Skills (JOBS)

training program (as provided for under title IV–A of the Social Security Act) in the area served by the project is a requirement for funding. The application must include a signed, written agreement between the applicant and the local JOBS agency, or a letter of commitment (contingent only on receipt of OCS funds). The agreement must describe the cooperative relationship, including specific activities and/or actions each of these entities propose to carry out over the course of the grant period in support of the project.

The agreement, at a minimum, must cover activities that will be provided to the target population and which are related to one or more of the mandatory or optional components offered by the appropriate State's JOBS program. The mandatory activities offered by the States' JOBS programs consist of the following components: Basic education activities, job skills training, job readiness activities, job development and job placement. The optional components offered by the States' JOBS programs include: Group and individual job search counseling and training on job seeking skills; on-the-job-training; work supplementation; and community work experience. (See Attachment I for a list of the State JOBS agencies.)

Projects also must include an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant funds in creating new jobs and business opportunities. (See Part IV, Criterion V).

Applications should include a plan for disseminating the results of the project after expiration of the grant period. Applicants may budget up to $1,000 for dissemination purposes.

Priority will be given to applications proposing to serve those areas containing the highest percentage of individuals receiving Aid to Families with Dependent Children under Title IV–A of the Social Security Act. (See Part IV, Criterion II.)

B. Community Development Corporations Set-Aside 2.0

For Fiscal Year 1994, a set-aside fund of $1 million will be included for community development corporations. A community development corporation for purposes of this set-aside fund is a private, non-profit entity which has a record of implementing economic development projects or, whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development, and which has a tax exempt determination under Section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of Section 501(c) of such code.

Such projects must conform to the purposes, requirements, and prohibitions applicable to those submitted under Part II, General Projects 1.0.

Applications for these set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants.

Part III—Application Requirements

A. Background Information

1. Availability of Funds and Grant Amounts

The Office of Community Services expects to award approximately $5,500,000 by September 30, 1994 for new grants under this program.

A maximum of $500,000 for the entire multi-year project period will be awarded to selected organizations under this program in FY 94. OCS will award no less than 5 and no more than 10 grants under this program. Due to the limited number of grants available under this program, only one grant will be allowed to any organization.

2. Project and Budgets Periods

Project and budget periods will be 36 months. Full funding of the three-year project and budget periods in FY 94 assures stability for these 36 months.

3. Mobilization of Resources

OCS will give favorable consideration in the review process to applicants who mobilize cash and/or third-party in-kind contributions for direct use in the project. (See Part IV, Criterion VI.)

4. Program Participants/Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS and individuals eligible to receive Aid to Families with Dependent Children under Part A of title IV of the Social Security Act.

Attachment A to this announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for this program.

5. Cooperative Partnership Agreement

A signed written agreement or letter of commitment between the applicant and the local JOBS (welfare) agency must be submitted with the application in order to be reviewed and evaluated competitively. The agreement/letter must describe the cooperative relationship and include specific activities and/or actions that each of the entities proposes to carry out over the course of the grant period in support of the project. (Please review PART II, General Projects 1.0 for additional specific information related to this agreement.)

6. Prohibition and Restrictions on the Use of Funds

The use of funds for new construction or the purchase of real property is prohibited. Costs incurred for rearrangement and alteration of facilities required specifically for the grant program are allowable when specifically approved by ACF in writing.

If the applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidelines.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act must result in the application being ineligible for funding consideration.

7. Multiple Submittals

Due to the limited number of grants which will be made under this program, only one proposal from an eligible applicant will be funded by OCS for either the general project fund or the community development corporation set-aside fund.

8. Refunding

OCS will not provide refunding to a previously funded grantee to conduct

the same demonstration in the same target area.

9. Third-Party Project Evaluation

Projects also must include an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant in creating new jobs and business opportunities.

10. Economic Development Strategy

Applicants must include an economic development strategy in accordance with the legislative reference cited in Part II, Section A.

11. Maintenance of Effort

The application must include an assurance that activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried on without Federal assistance.

Part IV—Application Review Process

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth assessment and review process will use the following criteria coupled with the specific requirements described in Part III. Scoring will be based on a total of 100 points.

(Note: the following review criteria reiterate the collection of information requirements contained in Part VI of this announcement. These requirements are approved under OMB Control Number 0970–0062 expiration 09–30–95.)

A. Criteria for Review and Assessment of Applications in Priority Areas 1.0 and 2.0

Criterion I: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 15 Points)

(i) *Agency's Commitment and Experience in Program Area*

The application includes documentation which summarizes two similar projects undertaken by the applicant agency and the extent to which the stated and achieved performance targets, including permanent benefits to low-income populations, have been achieved. Application indicates how the agency will verify the extent to which the performance targets are achieved in this project. Application notes and justifies the priority that this project will have within the agency including the facilities and resources that it has available to carry out the project. In addition, the application describes how the job creation activities planned in this project relate to the job creation activities of the agency and how this project will continue without investment from this source.

(Note: The maximum number of points will be given only to those organizations with a demonstrated record of achievement in promoting job creation and enterprise opportunities for low-income people.)

(ii) *Staff Skills, Resources and Responsibilities*

The application must profile two or three individuals who will have the most responsibility for shaping the project, connecting it to customers, and achieving performance targets. The focus should be on the energy, capacity and commitment of those persons who will implement the project. Because this is a demonstration project within an already-established agency, OCS expects that the key staff person(s) would be identified, if not hired.

The application must include the minimum qualifications and a position description for the third-party evaluator (independent entity, i.e. an entity organizationally distinct from, and not under the control of the applicant). A third-party evaluator must have knowledge about and have experience in conducting process and outcome evaluations, evaluating issues in the job creation field, expansion of businesses and the creation of self-employment and small business opportunities for low-income neighborhoods and understands the complexity of the problems that target population faces. The competitive procurement regulations (45 CFR Part 74, Appendix H) apply to service contracts such as those for evaluators when the costs of such service will exceed $25,000.

Described the facilities and resources (i.e. space, equipment, etc.) that it has available to carry out the project.

Criterion II: Analysis of Need (Maximum: 15 Points)

The application includes a description of the geographic area and population to be served as well as a discussion of the nature and extent of the problem to be solved. It should indicate what the unemployment rates are in the geographic areas to be served and (to the extent practicable) cite how the proposed businesses and subsequent jobs will impact on the nature and extent of the problem. It should also include documentation regarding the number and percentage of individuals receiving Aid to Families with Dependent Children and the total number of individuals which make up the population in the area where the project will operate.

Criterion III: Work Program (Maximum: 20 Points)

The work plan and business plan(s), where appropriate, must be both sound and feasible. If the applicant is proposing to use project funds to provide technical and/or financial assistance to a third-party private employer to develop or expand a pre-identified business, the application must include a complete business plan. An application that does not include a business plan where one is appropriate may be disqualified and returned to the applicant.

The project must be responsive to the needs identified in the Analysis of Need.

(i) *Work Plan*

The work plan must include a hypothesis or hypotheses that is significant and includes the key interventions and permits measurement of the extent to which the target population can achieve greater self-sufficiency as a result of its involvement in the project. The key interventions should include the types of technical and financial assistance to be provided the recipients, the level of effort, as well as other activities. If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written commitments from the businesses must be included with the application. The work program must set forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems. The application provides a description of the process evaluation which will culminate in the development of a policies and procedures manual.

(ii) *Business Plan*

The business plan, where appropriate, is one of the major components that will be evaluated by OCS to determine the feasibility of a jobs creation project.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business

would not require a discussion of manufacturing nor product design.

The business plan should include the following:

—*The Business and its Industry.* This section should describe the nature and history of the business if the proposal is an expansion of an existing business, including the following:

1. Products and services;

2. Market research and evaluation (show that the product or service has a substantial market and can achieve sales in the face of competition);

3. Marketing plan (including the estimated market share and sales)

4. Manufacturing and operations plan (describe the kind of facilities, plant location, space, capital equipment and labor force [part and/or full-time wage structure] that are required to provide the company's product or service).

5. Critical risk and assumptions (include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture).

6. Community benefits (identify low-income individuals to be employed); and

7. A financial plan (In developing the financial plan, the following exhibits must be prepared for the first three years of the business' operation: (a) Profit and Loss Forecasts—for each year; (b) Cash Flow Projections—for each year; (c) pro forma balance sheets—for each year; (d) initial uses of project funds; and (e) any future capital requirements and sources.

(iii) *Facilities*

If the rearrangement or alteration of facilities will be required in implementing the project, the applicant has described and justified such changes.

Criterion IV: Significant and Beneficial Impact (Maximum: 25 Points)

(i) *Quality of JOBS/Business Opportunities*

The proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community. Expected results are quantifiable in terms of the creation of permanent, full-time jobs or business opportunities developed. In developing business opportunities and self-employment for low-income individuals the applicant proposes, at a minimum, to provide basic business planning and management concepts, and assistance in preparing a business plan and loan package. The application documents that:

—The business opportunities to be developed for eligible participants will contribute significantly to their progress toward self-sufficiency; and/or

—Jobs to be created for eligible participants will contribute significantly to their progress toward self-sufficiency; they provide, for example, wages that exceed the minimum wage, plus benefits such as health insurance, transportation, child care and career development opportunities.

(ii) *Cost-per-Job*

During the project period the proposed project will create new, permanent jobs or business opportunities for low-income residents at a cost-per-job below $15,000 in OCS funds, (e.g. cost per job is calculated by dividing the total amount of grant funds requested ($420,000) divided by the number of jobs to be created (60) equals the cost-per-job ($7,000)). If any other calculations are used, please include your methodology in this section.

(Note: Except in those instances where independent reviewers identify extenuating circumstances related to business development activities, the maximum number of points will be given only to those applicants proposing cost-per-job created estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.)

Criterion V: Third-Party Evaluation (Maximum: 10 Points)

A plan for a methodologically sound third-party (i.e., independent) evaluation of the demonstration project must be included in the application.

The Evaluation Plan:

—Includes a specific working definition of "self-sufficiency" (consistent with the broad definition contained in Part I) that permits the measurement of incremental progress of eligible individuals and their families from dependency toward self-sufficiency;

—Clearly defines the changes or benefits (outcomes) to be produced, the activities (interventions) that will produce the changes, and the measures of client progress toward self-sufficiency for which information will be collected (for example: increases in income, decreases in public assistance payments);

—Provides for the annual compilation of community-level data on the characteristics of the population in the project area, including percentage on public assistance, percentage below the poverty line, unemployment rate, business starts and failures, and major employers;

—Provides for the conduct of a continuing process evaluation. This should include the periodic assessment of the following: client characteristics, pertinent policies and procedures, staffing, cooperative partnerships with state and local agencies, use of other community resources, client outreach and recruitment, client service delivery, cost of services, and level of technical and financial assistance to employers. The types of data and information, measures and indicators to be used for the process evaluation, as well as the methods and timeframe for collecting and analyzing the required data should be indicated;

—Provides for the completion of two interim evaluation reports and a final report. The final evaluation report will describe the program design and any changes from the original workplan, outreach and recruitment results, interventions, and accomplishments. The measurement instruments, data collection procedures, and analysis techniques should be discussed, and the report should yield conclusions as to how well the program works and why. It should also discuss the program's potential for replication in other communities; and

—Includes a realistic plan for disseminating the project findings to other interested organizations and public agencies.

Criterion VI: Public-Private Partnerships (Maximum: 10 Points)

—The cooperative partnership arrangements are fully described and clearly relate to the objectives of the proposed project, and the activities include one or more of the mandatory or optional components of the State's JOBS program as described in Part II, Section A.

—The application documents that the applicant will mobilize from public and/or private sources cash and/or third-party in-kind contributions. Applications that document that the value of such contributions will be at least equal to the OCS funds requested, and demonstrate that the cooperative partnership arrangements clearly relate to the objectives of the proposed project, will receive the maximum number of points for this criterion. Lesser contributions will be given consideration based upon the value documented.

—Applicants should note that partnership relationships are not created via service delivery contracts; partners should be responsible for

substantive project components or elements.

Criterion VII: Budget Appropriateness and Reasonableness (Maximum: 5 Points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project.

The application includes a detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost if an indirect cost rate has not been negotiated with the cognizant Federal agency (See Part VI, Section B, Line 6j). The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Part V—Application Procedures

A. Availability of Forms

Attachment B contains all of the standard forms necessary for the application for awards under this OCS program. This attachment and Parts VI and VII of this announcement contain all of the instructions required for submittal of applications. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this announcement.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments C and D.

Part VII, Section A contains instructions for the project narrative.

B. Application Submission

The closing date for submission of applications is June 6, 1994.

1. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447, or

b. Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process under Chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications will be accepted at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 901 D Street, SW., 6th Floor, Washington, DC 20447 during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday.

3. *Late Applications.* Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

4. *Extension of Deadline.* The ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and four copies should be submitted.

C. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Pennsylvania, Oklahoma, Oregon, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs).

Applicants from these seventeen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must submit any required material to the SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the ACF can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment E of this announcement.

D. Application Consideration of OCS Specific Requirements

Applications which meet the screening requirements in Part V, item E below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to the guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which will be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding

since other factors are taken into consideration, including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

E. Criteria for Screening Applicants

1. Initial Screening

All timely applicants will receive an acknowledgement with an assigned identification number. This number, along with any identification code, must be referenced in all subsequent communications concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–9234.

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

a. The application must contain a Standard Form 424 Application for Federal Assistance (SF–424), a budget (SF–424A), and signed *Assurances* (SF 424B) completed according to instructions published in Part VI and Attachments B, C, and D of this Program Announcement.

b. A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be limited to 50 pages, typewritten on one side of the paper only. Charts, exhibits, letters of support and cooperative agreements are not counted against this page limit. It is strongly recommended that you follow the format for the narrative in Part VII, A, 10.

c. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

d. Application must contain documentation of the applicant's tax exempt status as required under Part I, Section B.

2. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

a. *Eligibility:* Applicant meets the eligibility requirements described in Part I, Section B. Proof of non-profit status must be included in the Appendices to the Project Narrative (See Part VII, Section A, 11).

Applicants must also be aware that the applicant's legal name as required on the SF–424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

b. *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to those types of low-income participants and beneficiaries described in Part III, Section A, Program Participants/ Beneficiaries.

c. *Grant Amount*: The amount of funds requested does not exceed the limits indicated in Part III, Section A., item 1.

d. *Cooperative Partnership Agreement.* The application contains a written agreement or letter of commitment that includes, at a minimum, the activities cited in Part II, Section A. The agreement must be signed by an official of the agency responsible for administering the JOBS program in the area to be served.

e. *Third-Party Project Evaluation.* A third-party project evaluation plan is included.

f. *Business Plan.* If a third-party private employer is part of the proposed project, a complete business plan is included in the application.

An application will be disqualified from the competition and returned if it does not conform to all of the above requirements.

Part VI—Instructions for Completing Application Package

(Approved by the Office of Management and Budget under Control Number 0970–0062 date of expiration 09–30–93.)

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

A. SF–424—Application for Federal Assistance

Top of Page. Please enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. For the purposes of this announcement, all projects are considered *Applications;* there are no *Pre-Applications.*

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

Item 2. *Date Submitted* and *Applicant Identifier*—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. *Date Received by State*—N/A

Item 4. *Date Received by Federal Agency*—Leave blank.

Items 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/ EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled *Federal Identifier* located at the top right hand corner of the form.

Item 7. If the applicant is a non-profit corporation, enter *N* in the box and specify *non-profit* corporation in the space marked *Other.* Proof of non-profit status, such as IRS determination, Articles of Incorporation, or By-laws, must be included as an appendix to the project narrative.

Item 8. *Type of Application*—Please indicate the type of application.

Item 9. *Name of Federal Agency*—Enter DHHS-ACF/OCS.

Item 10. *The Catalog of Federal Domestic Assistance* number for OCS programs covered under this announcement is *93.561.* The title is *Job Opportunities for Low-Income Individuals Program (Demonstration Projects).*

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

JO—General Project
JS—Community Development Corporation Set-Aside

Item 12. *Areas Affected by Project*—List only the largest unit or units affected, such as State, county or city.

Item 13. *Proposed Project*—The ending date should be calculated based on a 36-month project period.

Item 14. *Congressional District of Applicant/Project*—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located.

Item 15a. This amount should be no greater than the amount specified under Part III, Availability of Funds and Grant Amounts.

Item 15b–e. These items should reflect both cash and third-party, in-kind contributions for the budget period requested.

Item 15f. N/A

Item 15g. Enter the sum of Items 15a–15e.

B. SF–424A—Budget Information—Non-Construction Programs

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the Federal Funds budget entries will relate to the requested OCS funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included in Non-Federal entries.

Sections A B, C and D of SF–424A should reflect budget estimates for the first budget period of the project.

Section A—Budget Summary

Lines 1–4.

Col. (a)

Line 1—Enter *Job Opportunities for Low-Income Individuals.*

Col. (b)

Line 1—Catalog of Federal Domestic Assistance number is 93.561.

Cols. (c) and (d)

Columns (c) and (d) are not relevant to this program and should not be completed.

Column (e)–(g)

For line 1, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project. (Maximum $500,000)

Line 5—Enter the figures from Line 1 for all columns completed (e), (f), and (g).

Section B—Budget Categories

Please Note: This information supersedes the instructions provided following SF–424A.

Columns (1)–(5):

Column 1: Enter the *first* budget period of 12 months.

Column 2: Enter the *second* budget period of 12 months.

Column 3: Enter the *third* budget period of 12 months.

Column 4: Leave blank.

Column 5: Enter the total requirements for Federal funds by the Object Class Categories of this section.

Allocability of costs are governed by the cost principles set forth in OMB Circular A–122 and 45 CFR Part 74.

Budget estimates for national administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class other identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives, large dollar amounts; local, regional, or other travels, new positions, major equipment purchases and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Personnel—Line 6a. Enter the total costs of salaries and wages.

Justification

Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated the project, the individual annual salaries, and the cost to the project of the organization's staff who will be working on the project. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel—Line 6c. Enter total costs of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification

Include the total number of traveler(s), total number of trips, destinations, number of days, transportation costs and subsistence allowances. Travel costs to attend two national workshops in Washington, DC by the project director should be included.

Equipment—Line 6d. Enter the total costs of all non-expendable personal property to be acquired by the project. *Non-expendable personal property* means tangible personal property having a unit cost of $5,000 or more and having a useful life of one year.

Justification

Only equipment required to conduct the project may be purchased with Federal funds. The applicant organization or its subgrantees must not have such equipment, or a reasonable facsimile, available for use in the project. The justification also must contain plans for future use or disposal of the equipment after the project ends. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined above. (See Line 21 for additional requirements.)

Supplies—Line 6e. Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Justification

Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including: (1) The estimated cost of the third-party evaluation contract; travel costs for the chief evaluator to attend two national workshops in Washington, DC should be included; (2) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.), and (3) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification

Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Whenever the applicant/grantee intends to delegate part of the program to

another agency, the applicant/grantee must submit Sections A and B of this Form SF-424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR Part 74, Appendix H. Free and open competition is encouraged for any procurement activities planned using ACF grant funds. Applicants who anticipate evaluation procurements that will exceed $5,000 and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, a description of the survey conducted of other service providers, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

(Note: Previous or past experience with contractor is not sufficient justification for sole source.)

For successful applicants, the Financial Assistance Award will cite under Remarks, item 18, approval of this action. Also include any contracts with organizations for the provision of technical assistance.

Construction—Line 6g. Not applicable.

Other—Line 6h. Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Lines 6i. Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j. Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a cognizant Federal agency other than the Department of Health and Human Services. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Totals—Line 6k. Enter the total amounts of Lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean those other than OCS funds. Therefore, mobilized funds from other Federal programs should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Justification

Describe third-party, in-kind contributions, if included.

Grant Program—Line 8

Column (a): Enter the project title.

Column (b): Enter the amount of contributions to be made by the applicant to the project.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant.

Column (d): Enter the amount of cash and third-party in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Grant Program—Lines 9, 10, and 11 Should be Left Blank

Grant Program—Line 12

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Federal—Line 13. Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period.

Non Federal—Line 14. Enter the amount of cash from all other sources needed by quarter during the first 12-month budget period.

Totals—Line 15. Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

For new applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years).

Section F—Other Budget Information

Direct Charges—Line 21. Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local

transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Indirect Charges—Line 22. Enter the type of HHS or other cognizant Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved and attach a copy of the rate agreement.

Remarks—Line 23. Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–424B Assurances-Non-Construction

All applicants must fill out, sign, date and return the *Assurances* with the application.

Part VII—Contents of Application and Receipt Process

A. Contents of Application

Each application submission should include a signed original and four additional copies of the application. Each application should include the following in the order presented:

1. Table of Contents;

2. Completed Standard Form 424 which has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

(Note: The original SF–424 must bear the original signature of the authorizing representative of the applicant organization)

3. *Budget Information-Non-Construction Programs* (SF–424A);

4. A narrative budget justification for each object class category required under Section B, SF–424A;

5. Filled out, signed, and dated *Assurances-Non-Construction Programs* (SF–424B);

6. By signing and submitting this application, the applicant is certifying that it will comply with the Federal requirements concerning debarment regulations set forth in attachments E and F.

7. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment H.

8. Disclosure of Lobbying Activities, SF–LLL: Filled out, signed, and dated form found at Attachment H, if appropriate.

9. An Executive Summary—not to exceed 300 words;

10. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Eligibility Confirmation
(ii) Organizational Experience and Staff Responsibilities
(iii) Analysis of Need
(iv) Project Design/Work Program
(v) Business Plan (If appropriate)
(vi) Third-Party Evaluation
(vii) Cooperative Partnership Agreement
(viii) Budget Appropriateness and Reasonableness

11. Appendices—proof of non-profit status as outlined in Part I, Section B; proof that the organization is a community development corporation, if applying under the CDC Set-aside; commitments from officials of businesses that will be expanded or from franchises, where applicable; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and resumes.

The total number of pages for the narrative portion of the application package must not exceed 50 pages, excluding Appendices. Pages should be numbered sequentially throughout, excluding Appendices, beginning with the SF 424 as Page 1. The application may also contain letters that show collaboration or substantive commitments to the project by organizations other than the JOBS agency. Such letters are not part of the narrative and should be included in the Appendices. These letters are, therefore, not counted against the fifty page limit.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½×11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-holed, punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip. The submission of bound applications, or applications enclosed in binders, is specifically discouraged.

Attachment J provides a checklist to applicants in preparing a complete application package.

B. Acknowledgement of Receipt

Applicants who meet the initial screening criteria outlined in Part V, Section E, 1, will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program letter code must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9234.

Part VIII—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

Project directors and chief evaluators will be required to attend two national evaluation workshops in Washington, DC. A program development and evaluation workshop will be scheduled shortly after the effective date of the grant. They also will be required to attend, as presenters, the final evaluation workshop on utilization and dissemination to be held at the end of the project period.

Grantees will be required to submit quarterly progress and financial reports (SF 269) as well as a final progress and financial report within 90 days of the expiration of the grant. Interim evaluation reports, along with a written policies and procedures manual based on the findings of the process evaluation, will be due 30 days after the first twelve months, and the second interim evaluation 30 days after the second twelve months, and a final evaluation report will be due 90 days after the expiration of the grant. This final report will cover 36 months of activities related to project participants.

Grantees are subject to the audit requirements in 45 CFR Parts 74 (non-profit organization) and OMB Circular A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their

subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Attachment G indicates the regulations which apply to all applicants/grantees under the Job Opportunities for Low-Income Individuals Program.

Dated: March 31, 1994.

Donald Sykes,

Director, Office of Community Services.

ATTACHMENT A.—1994 POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$7,360
2	9,840
3	12,320
4	14,800
5	17,280
6	19,760
7	22,240
8	24,720

For family units with more than 8 members, add $2,480 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$9,200

POVERTY INCOME GUIDELINES FOR ALASKA—Continued

Size of family unit	Poverty guideline
2	12,300
3	15,400
4	18,500
5	21,600
6	24,700
7	27,800
8	30,900

For family units with more than 8 members, add $3,100 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$8,470
2	11,320
3	14,170
4	17,020
5	19,870
6	22,720
7	25,570
8	28,420

For family units with more than 8 members, add $2,850 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

BILLING CODE 4184–01–P

ATTACHMENT B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4 88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A—Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B—Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) of Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C—Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F—Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

BILLING CODE 4184–01–P

ATTACHMENT C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Attachment D—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency:

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." Provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause, entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions, "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions."

Attachment E—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glen Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, Fax (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to:

Linda Clarke, Telephone (809) 774–0750

Attachment F—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by O
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

Sections 74.62(a)	Non-Federal Audits.
74.173	Hospitals.
74.174(b)	Other Nonprofit Organizations.
74.304	Final Decisions in Disputes.
74.710	Real Property, Equipment and Supplies.
74.715	General Program Income.

Attachment G

The following DHHS regulations apply to all applicants/ grantees under the Job Opportunities for Low-Income Individuals Program:

Title 45 of the *Code of Federal Regulations:*

Part 16—Procedures of the Departmental Grant Appeals Board

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension form Eligibility for Financial Assistance Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs

Part 84—Non-discrimination on the Basis of Handicap in Programs

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administration Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment H—Certification Regarding Maintenance of Effort

The undersigned certifies that:

(1) Activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried on without Federal assistance.

(2) Funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State have not been reduced in order to provide the required matching contributions.

When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back to provide the match required for this project.

Organization

Authorized Signature

Title

Date

Attachment I—Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Washington, DC 20447

Jobs Program Directory

February 1994.

Alabama

Claire Ealy, Director, Office of Work and Training Services, Public Assistance Division, S. Gordon Persons Building, 50 Ripley Street, Montgomery, Alabama 36130, (205) 242–1950

Alaska

Charles Knittel, Work Programs Coordinator, Division of Public Assistance, Department of Health and Social Services, P.O. Box 110640, Juneau, Alaska 99811–0640, (907) 465–3347

Arizona

Gretchen Evans, JOBS Program Director, Dept. of Economic Security, P.O. Box 6123, Site Code 8011, Phoenix, Arizona 85005, (602) 542–6310

Arkansas

Ken Whitlock, Deputy Director, Project SUCCESS, Department of Human Services, P.O. Box 1437, Little Rock, Arkansas 72203, (501) 682–8375

California

Bruce Wagstaff, Chief, Employment and Immigrations Programs Branch, Department of Social Services, 744 P Street M/S 6–700, Sacramento, California 95814, (916) 657–2367

Colorado

Bob Henson, Director, Work Programs, Department of Social Services, 1575 Sherman Street, Denver, Colorado 80203, (303) 866–2643

Connecticut

Dawn Homer-Bouthiette, Planning Supervisor, Job Connection, Department of Social Services, 110 Bartholomew Avenue, Hartford, Connecticut 06106, (203) 566–7125

Delaware

Rebecca Varella, Chief Administrator, Employment and Training, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720, (302) 577–4451

District of Columbia

Shari Curtis, Chief, Bureau of Training and Employment, Department of Human Services, 33 N Street NE., Washington, DC 20001, (202) 727–1293

Florida

Reggis Smith, Chief, Benefit Recovery and Special Programs, Department of Health and Rehabilitative Services, 1317 Winewood Boulevard, Bldg. 6, Tallahassee, Florida 32399–0700, (904) 487–2966

Georgia

Sylvia Elam, Chief, Employment Services Unit, Division of Family and Children Services, Department of Human Resources, 2 Peachtree St., 14th Floor, Room 402, Atlanta, Georgia 30303, (404) 657–3737

Guam

Diana Calvo, Social Services Supervisor, Department of Public Health and Social Services, P.O. Box 2816, Agana, Guam 96910, (011–671) 734–7286

Hawaii

Garry Kemp, Special Assistant to the Director, Department of Human Services, P.O. Box 339, Honolulu, Hawaii 96809, (808) 586–7054

Idaho

Kathy James, Acting Bureau Chief, Bureau of Family Self Support, Department of Health and Welfare, 450 West State Street, Boise, Idaho 83720, (208) 334–5704

Illinois

Karan Maxson, Administrator, Division of Planning and Community Services, Department of Public Aid, 100 S. Grand, 2nd Floor, Springfield, Illinois 62762, (217) 785–3300

Indiana

Thomas Reel, Program Manager, IMPACT, Department of Public Welfare, 402 W. Washington, W. 363, Indianapolis, Indiana 46204, (317) 232–2002

Iowa

Doug Howard, Coordinator, Employment and Training Programs, Department of Human Services, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319, (515) 281–8629

Kansas

Phyllis Lewin, Director, Employment Preparation Services, Department of Social and Rehabilitation Services, 300 S.W. Oakley, West Hall, Topeka, Kansas 66606, (913) 296–4276

Kentucky

Sharon Perry, Assistant Director, Center for Program Development, Department of Social Insurance, Cabinet for Human Resources, 275 E. Main Street, Frankfurt, Kentucky 40621, (502) 564–3703

Louisiana

Howard Prejean, Assistant Secretary, Department of Social Services, Office of Eligibility Determination, P.O. Box 3776, Baton Rouge, Louisiana 70821, (504) 342–4953

Maine

Barbara Van Burgel, ASPIRE Coordinator, Bureau of Income Maintenance, Department of Human Services, Statehouse Station #11, 32 Winthrop St., Augusta, Maine 04333, (207) 289–3106

Maryland

Charlene Gallion, Acting Executive Director, Office of Project Independence Management, Department of Human Resources, Room 745, 311 W. Saratoga Street, Baltimore, Maryland 21201, (410) 333–0837

Massachusetts

John Buonomo, Director, Massachusetts JOBS Program, Department of Public Welfare, 600 Washington, St., Boston, Massachusetts 02111, (617) 348–5931

Michigan

Alex D. Hawkins, Director, Job Skills Development Group, Michigan Jobs Commission, 201 North Washington Square, Third Floor, Victor Centre, Lansing, Michigan 48913, (517) 373–7382

Minnesota

Bonnie Baker, Supervisor, Program Development, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, (612) 296–2499

Mississippi

Jean Temple, Director, JOBS Branch, Office of Children and Youth, Department of Human Services, 421 W. Pascagoula, Jackson, Mississippi 29302, (601) 359–4855

Missouri

Richard Koon, FUTURES Program Director, Income Maintenance, Division of Family Services, 72728 Plaza Drive, P.O. Box 88, Jefferson City, Missouri 65103, (314) 751–3124

Montana

Marylis Filipovich, Bureau Chief, Program and Policy, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, (406) 444–4540

Nebraska

Margaret Hall, Public Assistance Administrator, Public Assistance Division, Department of Social Services, 301 Centennial Mall South, P.O. Box 95026, Lincoln, Nebraska 68509, (402) 471–3121

Nevada

John Alexander, Employment and Training Coordinator, Nevada State Welfare Division, Capitol Complex, 2527 North Carson Street, Carson City, Nevada 98710, (702) 687–4143

New Hampshire

Arthur Chicaderis, JOBS Administrator, Employment Support Services, Office of Economic Services, Division of Human Services, Department of Health and Human Services, 6 Hazen Drive, Concord, New Hampshire 03301–6521, (603) 271–4249

New Jersey

Marion E. Reitz, Director, Division of Family Development, Department of Human Services, CN 176, Trenton, New Jersey 08625, (609) 588–2401

New Mexico

Bill Dunbar, Acting Director, Income Support Division, Department of Human Services, P.O. Box 2348, Santa Fe, New Mexico 87500, (505) 827–7252

New York

Jack Ryan, Director, Bureau of Employment Programs, Department of Social Services, 40 North Pearl Street, Albany, New York 12243, (518) 473–8744

North Carolina

Lucy Burgess, Chief, Employment Programs Section, Department of Human Resources, 325 North Salisbury Street, Raleigh, North Carolina 27611, (919) 733–2873

North Dakota

Gloria House, JOBS Coordinator, Director of Public Assistance, Department of Human Services, State Capitol, New Wing 3rd Floor, Bismark, North Dakota 58505, (701) 224–4001

Ohio

Mary L. Harris, Deputy Director, Family Support and JOBS, Department of Human Services, State Office Tower, 31st Floor, 30 East Broad Street, Columbus, Ohio 43266–0423, (614) 466–3196

Oklahoma

Raymond Haddock, Division Administrator, Family Services Division, Department of Human Services, P.O. Box 25352, Oklahoma City, Oklahoma 73125, (405) 521–3076

Oregon

Debbi White, JOBS Program Manager, Adult and Family Services Division, Human Resource Bldg., 2nd Floor, Salem, Oregon 97310–1013, (503) 945–6127

Pennsylvania

David Florey, Director, Bureau of Employment and Training Program, Department of Public Welfare, P.O. Box 2675, Harrisburg, Pennsylvania 17105, (717) 787–8613

Puerto Rico

Migdalia Marrero, Special Asst. to Secretary, SOSEDF, Isla Grande, Building #10, P.O. Box 11398, Santurce, Puerto Rico 00910, (809) 722–2863

Rhode Island

Sherry Campanelli, Associate Director, Community Services, Department of Human Services, 600 New London Avenue, Cranston, Rhode Island 02920, (401) 464–2423

South Carolina

Hiram Spain, Executive Assistant for Self-Sufficiency, Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202, (803) 737–5937

South Dakota

Julie Osnes, Administrator, Office of Family Independence, Department of Social Services, Richard F. Kneip Building, Pierre, South Dakota 57501, (605) 773–3493

Tennessee

Wanda Moore, Director of Program Services, Department of Human Services, 12th Floor, 400 Deadericks, Nashville, Tennessee 37219, (615) 741–6953

Texas

Irma Bermea, Deputy Commissioner, Department of Human Services, Mail Code 521E, P.O. Box 2960, Austin, Texas 78769, (512) 450–3011

Utah

Helen Thatcher, Assistant Director, Office of Family Support, Department of Human Services, 120 North 200 West, Salt Lake City, Utah 84145–0500, (801) 538–8231

Vermont

Steve Gold, Director, REACH–UP Program, Department of Social Welfare, State Office Building, 103 South Main Street, Waterbury, Vermont 05676, (802) 241–2800

Virgin Islands

Ermin Boshulte, Director, Public Assistance Programs, Department of Human Services, Financial Programs Division, Knud Hansen Complex—Building A, 1303 Hospital Ground, Charlotte Amalie, VI 00802, (809) 774–4673

Virginia

David Olds, Program Manager, Employment Services, Department of Social Services, 730 E. Broad St., 2nd Floor, Richmond, Virginia 23219–1849, (804) 692–1229

Washington

Lee Todorovich, Acting Assistant Director, Division of Income Assistance, Department of Social and Health Services, P.O. Box 45400, Olympia, Washington 98504–5400, (206) 438–8350

West Virginia

Sharon Paterno, Director, Division of Work and Training, Department of Health and Human Services, Building 6, State Office Complex, Charleston, West Virginia 25305, (304) 558–3186

Wisconsin

Jean Rogers, Administrator, Division of Economic Support Department of Health and Social Services, P.O. Box 7935, 1 West Wilson Street, Madison, Wisconsin 53707–7935, (608) 266–3035

Wyoming

Kirk McKinney, JOBS Coordinator, Self-Sufficiency Division, Department of Family Services, Hathaway Building, Rm. 347, 2300 Capitol Avenue, Cheyenne, Wyoming 82002–0710, (307) 777–6849

Attachment J—Checklist for Use in Submitting OCS Grant Applications Job Opportunities for Low-Income Individuals (Optional)

The application should contain:

1. Table of Contents.

2. A completed, *signed* SF–424, *Application for Federal Assistance*. The letter code for the priority area (JO) should be in the lower right-hand corner of the page.

3. A completed SF–424A, *Budget Information—Non-Construction".*

4. A narrative budget justification for each object class category required under Section B, SF–424A;

5. Filled out signed, and dated *Assurances-Non-Construction Programs* (SF–424B);

6. The applicant should sign Attachments E and F. In so doing, the applicant is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E.

7. A *signed* copy of *Certification Regarding Anti-Lobbying Activities.*

8. A completed Disclosure of Lobbying Activities, if applicable.

9. An Executive Summary—not to exceed 300 words;

10. A Project Narrative beginning with a Table of Contents that describes the project in the following order:

(i) Eligibility Confirmation
(ii) Organizational Experience and Staff Responsibilities
(iii) Analysis of Need
(iv) Project Design/Work Program
(v) Business Plan (If appropriate)
(vi) Third-Party Evaluation
(vii) Cooperative Partnership Agreement
(viii) Budget Appropriateness and Reasonableness

11. A *signed* copy of the Cooperative Partnership Agreement or letter of commitment.

12. Appendices, including proof of non-profit status; proof that the organization is a community development corporation, if applying under the CDC Set-aside; commitments from officials of businesses that will be expanded or from franchises, where applicable; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and resumes.

13. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The narrative portion of the application must not exceed a total of 50 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, enclosed in binders, is specifically discouraged.

[FR Doc. 94–8275 Filed 4–6–94; 8:45 am]
BILLING CODE 4184–01–P

federal register

Thursday
April 7, 1994

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 248

Use of Columbia River In-Lieu Fishing Sites; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 248

RIN: 1076–AC79

Use of Columbia River In-Lieu Fishing Sites

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule sets forth an amendment to the regulation at 25 CFR 248.6 consistent with the decision of the Ninth Circuit Court of Appeals and the final Judgment in *Sohappy* v. *Hodel*, Ninth Circuit No. 88–3531, 911 F.2d 1312 (9th Cir. 1990). The court declared invalid that portion of the regulation prohibiting permanent occupancy of the five Columbia River in-lieu fishing sites. This final rule will delete the prohibition against construction of permanent dwellings and structures on the five in-lieu sites.

EFFECTIVE DATE: This final rule is effective May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, Branch of Fisheries, Portland Area Office, Bureau of Indian Affairs, 911 NE 11th Ave., Portland, Oregon 97232–4169; Telephone No. (503) 231–6749.

SUPPLEMENTARY INFORMATION:

I. Background

Several Pacific Northwest Indian tribes hold treaty rights to fish on the Columbia River. In the 1930's the construction of Bonneville Dam flooded some of the Indians' usual and accustomed fishing sites along the river. In 1945 Congress authorized acquisition of replacement sites to be held by the Secretary of the Interior for the use and benefit of the Indians. The five sites acquired under that authorization are managed by the Bureau of Indian Affairs pursuant to regulations in 25 CFR part 248.

Section 248.6 provides that "no dwellings or structures shall be erected, placed, or maintained upon the sites, except that camping facilities may be placed thereon only as herein described and fish drying facilities and fishing platforms may be erected by Indians for use during the fishing season." The intent of the regulation was to prohibit permanent occupancy of the sites in order to provide a rational and reasonable means for ensuring health and safety on the sites and for providing a fair opportunity to all eligible Indians to use the sites for fishing purposes.

Sohappy v. *Hodel*, Civil No. 86–715–FR (D. Or.), was filed by individual Indians and a group called "Chiefs and Council of the Columbia River Indians" in order to challenge the Bureau of Indian Affairs' eviction of several Indians living in permanent dwellings on the sites. The Federal District Court held that the regulation prohibiting permanent occupancy is consistent with rights reserved by treaty and with the 1945 statute authorizing acquisition of the five sites. The Ninth Circuit Court of Appeals reversed, holding that the 1945 act and the tribes' treaties do not preclude construction of permanent dwellings at the sites. *Sohappy* v. *Hodel*, 911 F.2d 1312 (9th Cir. 1990). The case was remanded to the District Court where final Judgment was entered on August 30, 1991.

The Judgment declares 25 CFR 248.6 invalid insofar as it prohibits permanent occupancy of the five sites and provides that the Bureau of Indian Affairs "shall take good faith steps" to amend the regulation consistent with the Ninth Circuit's decision and the final Judgment. The Judgment does not preclude the Bureau from taking reasonable actions necessary to enforce applicable health and safety laws. Therefore, the Bureau of Indian Affairs published the proposed amendment (57 FR 45258) to revise section 248.6 to delete the prohibition against construction of permanent dwellings and structures on the sites and to retain the requirement that the sites be used in a manner that conforms to applicable health, sanitation and safety laws.

The Judgment in *Sohappy* v. *Hodel* does not affect the Indian tribes' right, title or interest in the sites or the nature and extent of the tribes' sovereign authority to use or manage the sites for fishing purposes under their treaties, *Settler* v. *Lameer*, 507 F.2d 231 (9th Cir. 1974). It is also important to note that the regulations in 25 CFR part 248 do not apply to the fishing access sites designated in Section 401 of the Act of November 1, 1988. The Indian tribes, the Bureau of Indian Affairs, and the U.S. Army Corps of Engineers are working together on plans for development, management and regulation of the new fishing access sites.

II. Responses to Public Comments

The following is a summary of the comments received by the Bureau of Indian Affairs in response to the proposed rule published on September 30, 1992 (57 FR 45258) and the Department's response to these issues.

There were no comments on or objections to the proposed amendment to delete the prohibition against the construction of permanent dwellings and structures on the five in-lieu sites, which was the only subject matter of the proposed rule. However, several comments suggested that the requirement that the sites be used in conformity with applicable health, sanitation and safety standards be changed or deleted on the grounds that the requirement is contrary to the Judgment in *Sohappy* v. *Hodel* and illegally recognizes, or might be construed as recognizing, State or local regulatory authority over the in-lieu sites. Although this portion of the regulation was not the subject matter of the proposed rule, we addressed the comment in order to clarify the purpose and intent of the existing provision of the regulation.

The regulation, as originally adopted in 1969, provides that the "sites must be used in a manner that conforms to the health, sanitation, and safety requirements of the State or local law, or, in the absence of appropriate State or local laws, to the health, sanitation, and safety recommendations of the U.S. Public Health Service." That portion of the regulation was not challenged by the plaintiffs in *Sohappy* v. *Hodel*. Moreover, the final Judgment in *Sohappy* v. *Hodel* expressly recognizes the Bureau's continuing authority to manage and maintain the sites consistent "with the health and safety requirements of 25 CFR part 248 and other applicable laws." Therefore, the requirement that the sites be used in conformity with appropriate health, sanitation, and safety laws is not in conflict with the Judgment in *Sohappy* v. *Hodel*.

The Bureau agrees that the States do not have regulatory jurisdiction or authority over the in-lieu fishing sites. The sites are Federal properties held by the United States for the benefit of the Indian tribes with treaty fishing rights in the Columbia River. The Bureau regulates and manages the sites as a matter of Federal law, but, in the absence of specific Bureau regulations governing health, sanitation, and safety requirements, the regulation provides for the incorporation by reference of State or U.S. Public Health Service standards. There were no comments which documented any instance of attempted State regulatory enforcement. Because it is clear the States lack regulatory authority at the sites, we do not believe there is any need to amend or delete this language from the regulation.

Comments from the Yakima Indian Nation and the Confederated Tribes of the Warm Springs Reservation, suggest

that management and regulation of the sites should be governed by the law of the tribe which ceded the territory wherein the sites are located. The sites are owned by the Federal government and are managed by the Bureau for the benefit of all the tribes with treaty fishing rights in the Columbia River, and therefore exclusive management cannot be granted to a single tribe, absent an agreement between all the affected tribes. The suggestion has not been adopted in this final rule.

Finally, one comment suggested that the proposed regulation inappropriately affects the tribes' right, title and interests in the sites, restricts the Indians' right to use the sites for fishing and related purposes, and permits unreasonable actions by the agency, all contrary to the final Judgment in *Sohappy* v. *Hodel*. There was no documentation regarding any specific impact on the tribes' rights or suggestions of any specific language change. The Judgment in *Sohappy* v. *Hodel* declared the regulation invalid insofar as it prohibits permanent occupancy of the five in-lieu sites. The amendment specifically deletes the prohibition against construction of permanent dwellings and structures on the sites. We believe the final rule is consistent with the Judgment and no changes have been made.

III. The Final Rule

This final rule is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department has certified to the Office of Management and Budget that this final regulation meets the applicable standards provided in section 2(a) and section 2(b)(2) of Executive Order 12778.

In accordance with Executive Order 12630, the Department has determined that this final rule does not have significant takings implications.

The Department has determined that this final rule does not have significant Federalism effects.

The Department of the Interior has reviewed this document under Executive Order 12866 and has determined that this is not a significant rule.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because of the limited applicability as stated above.

The Department of the Interior has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

There are no information collection requirements contained in this final rule that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 25 CFR Part 248

Fisheries, Fishing, Indians.

For the reasons set out in the preamble, part 248 of subchapter J of chapter I of Title 25 of the Code of Federal Regulations is amended to read as follows:

PART 248—USE OF COLUMBIA RIVER IN-LIEU FISHING SITES

1. The authority citation for 25 CFR part 248 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9.

2. Section 248.6 is revised to read as follows:

§ 248.6 Structures.

Dwellings, camping facilities, and other structures such as fish drying facilities and fishing platforms may be erected, placed, or maintained on the sites for use in the conduct of treaty fishing and related activities. Sites must be used in a manner that conforms to the health, sanitation, and safety requirements of the State or local law, or, in the absence of appropriate State or local laws, to the health, sanitation, and safety recommendations of the U.S. Public Health Service. The privileges or right of access to or use of the sites of any individual may be suspended or withdrawn, in the discretion of the Area Director, when such individual having violated such health, sanitation, and safety requirements repeats such violation after having been given notice to cease and desist therefrom.

Dated: March 15, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–8329 Filed 4–6–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
April 7, 1994

Part VII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 113
Indian Moneys, Proceeds of Labor; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 113

RIN: 1076–AC86

Indian Moneys, Proceeds of Labor (IMPL)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to delete the regulations contained in the Code of Federal Regulations pursuant to the public law which suspended all deposits to Indian Monies, Proceeds of Labor (IMPL) accounts after September 30, 1982. The law eliminated the use of IMPL accounts, and since these accounts are no longer in use, they will be removed from the BIA accounting system.

DATES: Comments must be received before May 9, 1994.

ADDRESSES: Written comments should be directed to the Bureau of Indian Affairs, Office of Trust Funds Management, 505 Marquette NW., suite 700, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Parris, Bureau of Indian Affairs, Office of Trust Funds Management, 505 Marquette NW., suite 700, Albuquerque, NM 87102, Telephone Number 505–766–3233.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.

This proposed rulemaking action will delete part 113 of subchapter G of chapter I of title 25 of the Code of Federal Regulations, which contains regulations governing Indian Monies, Proceeds of Labor (IMPL) established under the Act of March 3, 1883, as amended (25 U.S.C. 155).

Pursuant to the amendments contained in Public Law 197–257, title I, section 100, 25 U.S.C. 155 B, which provided that, "No funds shall be deposited in such 'Indian monies, proceeds of labor' (IMPL) accounts after September 30, 1982," all deposits to IMPL accounts were discontinued. The unobligated IMPL balances at the close of business on September 30, 1982, including the income resulting from investment of funds from such accounts prior to such date, were transferred to and held in escrow accounts. After consultation with appropriate tribes and individual Indians up to September 30, 1985, to determine the extent to which the funds held in escrow accounts represented income from the investment of "special deposits" relating to individual Indians or a specific tribe, funds were transferred to appropriate trust accounts for individual Indians and tribes during the period of October 1, 1985, through September 30, 1987. The unobligated balances of the IMPL escrow accounts as of the close of business on September 30, 1987, are to be withdrawn and deposited into miscellaneous receipts of the U.S. Treasury. The IMPL accounts are to be removed from the Bureau of Indian Affairs trust accounting system and are no longer available for use.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the office identified in the **ADDRESSES** section of this document.

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

The Department of the Interior has determined that this document is not a significant rule under Executive Order 12866 and therefore will not require the approval of the Office of Management and Budget.

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).

In accordance with Executive Order 12630, the Department has determined that this proposed rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The Department has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

There are no new information collection requirements requiring approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The primary author of this proposed rule is Loren J. Farmer, Policy, Analysis and Evaluation Staff, Bureau of Indian Affairs, Office of Trust Funds Management, 505 Marquette NW., suite 700, Albuquerque, NM 87102.

List of Subjects in 25 CFR Part 113

Accounting, Indians—business and finance.

For reasons set out in the preamble and under the authority of Public Law 97–257, title I, section 100 (September 30, 1982, 96 Stat. 839), part 113 of title 25, chapter I of the Code of Federal Regulations is proposed to be removed.

Dated: February 4, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–8325 Filed 4–6–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
April 7, 1994

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Proposed 1994–1995 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed 1994–1995 Migratory Game Bird Hunting Regulations (Preliminary) with Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The Service also requests proposals from Indian Tribes that wish to establish special migratory bird hunting regulations. These regulations will permit the taking of the designated species during the 1994–95 season. The Service annually prescribes outside limits (frameworks) within which States may select hunting seasons. The Service has also employed guidelines to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. These seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and Tribal governments in the management of migratory game birds; and are designed to permit harvests at levels compatible with migratory bird population and habitat conditions.

DATES: Tribal proposals and related comments should be submitted by June 3, 1994. The comment period for proposed early-season frameworks will end on July 22, 1994; and for proposed late-season frameworks on September 2, 1994. The public hearing for early-season frameworks will be held on June 23, 1994, at 9 a.m. The public hearing for late-season frameworks will be held on August 4, 1994, at 9 a.m.

ADDRESSES: Both public hearings will be held in the Auditorium, Department of the Interior Building, 1849 C Street NW., Washington, DC. Written comments on the proposals and notice of intention to testify at either hearing may be mailed to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information on tribal proposals contact Keith A. Morehouse, for other issues regarding annual migratory bird hunting regulations contact William O. Vogel. Both Dr. Morehouse and Mr. Vogel may be contacted at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent and request for Tribal proposals with the preliminary proposals for the annual regulations-development process. The remaining proposed and final rulemaking documents will be published separately.

Notice of Intent to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1994–1995 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1994–95 hunting season, regulations will be proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1994–95 Migratory Game Bird Hunting Regulations (Preliminary) in this document. Definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, were published in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1994–1995

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain portions of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the hunting seasons and, on the other hand, the lack of current data on the status of most migratory game birds until later in the summer.

Because the process is strongly influenced by the times when information is available for consideration, the overall regulations process is divided into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1994–1995 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

Sections of this and subsequent documents which outline hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Tundra Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring attention. Therefore, items requiring no attention will be omitted and the remaining numbered items will be discontinuous and appear incomplete.

Hearings

Two public hearings pertaining to 1994–1995 migratory game bird hunting regulations are scheduled. Both hearings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 23, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, 1849 C Street NW., Washington, DC. This hearing is for the purpose of reviewing the status of migratory shore and upland game birds. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 4, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 23 public hearing. The public is invited to participate in both hearings. Persons wishing to make a statement at these hearings should write to the address indicated under the caption **ADDRESSES**.

Requests for Tribal Proposals

Background

Beginning with the 1985-86 hunting season, the Service has employed guidelines described in the June 4, 1985 Federal Register (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for: (1) on-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) For the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to put forward a request for consultation as a result of the proposal being published in the **Federal Register**. The Service will not presume to make a determination, without being advised by a tribe or a State, that any issue is/is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, the Service has reached annual agreement with tribes (for example, in Minnesota, the Mille Lacs Band of Chippewa Indians) for hunting by tribal members on their lands or on lands where they have reserved hunting rights. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1994-95 hunting season must submit a proposal that includes: (1) The requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.); (4) steps that will be taken to limit level of harvest, where it could be shown that failure to

limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Proposal Procedures

Pertinent details in proposals received from tribes will be published for public review in later **Federal Register** documents. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1994–95 hunting season should submit their proposals as soon as possible, but no later than June 3, 1994. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional Office. Tribes that request special hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed regulations. Promulgation of final migratory game bird hunting regulations will take into consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption ADDRESSES.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. Specific comment periods will be established for each series of proposed rulemakings. All relevant comments will be accepted through the closing date of the comment period on the particular proposal under consideration. The Service will consider, but possibly may not respond in detail to, each comment. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will be present at the following winter meetings of the various Flyway Councils:

Date: March 20, 1994

—Atlantic Flyway Council, 8:30 a.m.
—Mississippi Flyway Council, 8:30 a.m.
—Central Flyway Council, 8:00 a.m.
—Pacific Flyway Council, 9:30 a.m.
—National Waterfowl Council, 3:30 p.m.

The Council meetings will be held at the Egan Civic and Convention Center, Anchorage, Alaska.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with the Environmental Protection Agency on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

Prior to issuance of the 1994–95 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531-1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act and the Paperwork Reduction Act

This document was reviewed under Executive Order 12866.

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, in accordance with Office of Management and Budget instructions, a Final Regulatory Impact Analysis (FRIA) was prepared in 1981 and revised in 1990. Although a FRIA is no longer required, the economic analysis contained in the FRIA has been reviewed and the Service has determined that it meets the requirements of Executive Order 12866. This analysis was updated for 1994. The FRIA update included waterfowl hunter and harvest information from the 1992–93 season. The summary of the 1994 update follows:

"New information which can be compared to that appearing in the 1990 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1992 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1992–93 hunting season. There was essentially no change in the total fall flight of ducks, regulatory frameworks, hunter numbers, number of hunting days, or total duck harvest between the 1991–92 and the 1992–93 seasons."

Copies of the updated analysis are available upon request from the Office of Migratory Bird Management. The address is indicated under the caption ADDRESSES.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Authorship

The primary authors of this proposed rule are Keith A. Morehouse and William O. Vogel, Office of Migratory Bird Management, (703) 358–1714.

List of Subjects in 50 CFR part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994-95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a-d and e-j).

Dated: March 10, 1994.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 1994–1995 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils; specific framework proposals (including opening and closing dates, seasons lengths, and bag limits) may be deferred. Unless otherwise specified, no change from the final 1993–94 frameworks of August 23 and September 24, 1993, (58 FR 44590 and 50188) is proposed. Specific preliminary proposals that vary from the 1993–94 frameworks and issues requiring early discussion, action, or the attention of the States or Tribes are contained below:

1. Ducks.

F. Zones and Splits.

Temporary Zone in the Southern San Joaquin Valley of California. In 1993, the Service allowed the State of California an additional year to modify its zoning proposal to conform more closely with the Service's policy. The Service encourages a reopening of dialogue in order to resolve this problem as soon as possible.

G. Special seasons/species management.

i. Canvasback Management.

During 1983-92, annual sport-harvest regulations for this species were guided by provisions in the environmental assessment "Proposed Hunting Regulations on Canvasback Ducks, 1983". That document acknowledged separate eastern and western populations and set breeding-population threshold levels for each, below which all possible actions, including season closure, in the respective regions, would be considered for canvasbacks. In 1993, after completing a review of canvasback databases, the Service determined that currently there is not sufficient evidence to warrant managing canvasbacks as separate eastern and western populations. However, the Service did not adopt a new harvest strategy to regulate the overall harvest of canvasbacks and the allocation of that harvest. Rather, it continued to follow guidelines set forth in the environmental assessment for a continental population. Because the most recent 3-year average (482,000 birds) was below the threshold identified in the assessment (500,000 birds), the Service determined liberalizations were not warranted during 1993-94; no changes in regulations from those which occurred during 1992-93 were enacted.

Although the Service delayed implementation of a revised harvest strategy, the Service is not satisfied with an indefinite continuation of the 1983 guidelines. The Service desires to build consensus on an improved harvest-management strategy which ensures the welfare of the canvasback population and preserves the historical emphasis on Flyway-based management.

The Service has circulated to the Flyway Councils and Technical Sections a draft harvest-management strategy to be considered for the 1994–95 hunting season and continues to welcome suggestions for improving our capabilities to manage the harvests of this important species. Copies of the draft harvest-management strategy are available at the address indicated under the caption **ADDRESSES**.

ii. September Teal Seasons.

Evaluations of shooting hours for teal seasons were initiated in several Mississippi and Central Flyway States in 1993, and more than 1 year likely will be required to achieve needed sample sizes. Provided methods being employed are acceptable and the amount of progress being made indicates a good-faith effort, we would recommend continuation of presunrise shooting hours conditional upon satisfactory progress toward completion of evaluations.

iii. September Wood Duck/Teal Seasons.

Evaluations of shooting hours for wood duck/teal seasons forwarded to Service in 1993 were sufficient to allow continuation of presunrise shooting hours in Florida, Kentucky, and Tennessee.

4. Canada Geese.

In 1993, the Service announced that the administrative process for setting hunting seasons does not permit the setting of regular seasons that open prior to the Saturday nearest October 1 during the late-season regulations-development cycle. Those portions of seasons that open earlier must be established during the early-season regulations-development cycle in June. The Service is concerned about setting seasons in the absence of current status information. Because of this, requests for regular Canada goose seasons that open earlier than the Saturday nearest October 1 must include full justification of the need for the early opening, which will be weighed against the risk of establishing seasons prior to the time status information is available. The Service proposed to implement these procedures beginning with the 1994-95 hunting season in order to allow those States desiring early-season dates for regular Canada goose seasons sufficient time to prepare their proposals and to provide an opportunity for flyway council review.

7. Snow and Ross's (Light) Geese.

In 1993, the Central Flyway Council recommended a review of framework closing dates for light geese. The Service indicated it would work with the Flyway Councils during the coming year to review its policy of framework dates for light geese. At this time, the Service requests that the States and Flyway Councils submit any pertinent information for joint review and that the Service, States, Flyway Councils, and other interested parties accelerate discussions regarding closing dates for light geese in migration-terminus and other areas.

9. Sandhill Cranes.

The Service has clearly indicated that it does not believe it is appropriate to increase harvest on the Mid-continent Population at this time, and that there should be no increase or shift in harvest toward the Gulf Coast Subpopulation, especially the greater-sandhill-crane component. In recent years, the Central Flyway Council has requested changes in the frameworks which would increase harvest pressure on this population. The Service recognizes the desire of the Central Flyway Council to liberalize regulations in certain areas, but concern for greater sandhill cranes would preclude any increase under the current approach to establishing frameworks.

Because there is an east-west gradient in the distribution of the 3 subspecies managed as the Mid-continent Population, the Service would be willing to consider an approach that would, in the future, provide the ability to establish frameworks by geographic areas within the Central Flyway. Such an approach of setting differential frameworks would provide the ability to shift harvest toward the western portions of the flyway, while limiting harvest in eastern portions. The Service requests comments regarding such an approach.

15. Band-tailed Pigeons.

Evidence from three separate surveys suggests that the long-term decline experienced by the Coastal Population may have subsided; and, in fact, the

overall and individual State population estimates appear to have stabilized at low levels. Also, the status of the Interior Population is not well understood. Efforts are underway to gather more information about both populations. In 1993, all States having band-tailed pigeon hunting seasons either participated in the nationwide Migratory Bird harvest Information Program or required band-tailed pigeon hunters to obtain mandatory State permits to provide sampling frames for obtaining more precise estimates of band-tailed pigeon harvest. Those States issuing permits were required to conduct a harvest survey and provide the results to the Service by June 1 of each year. In addition, all States with band-tailed pigeon hunting seasons are participating in a wing-collection survey to provide information on annual recruitment. The Service will continue to closely monitor population and harvest information from both populations and will evaluate this information in June prior to making any decisions regarding the 1994-95 seasons. Indian Tribes also should consider this situation when proposing harvest regulations for this species.

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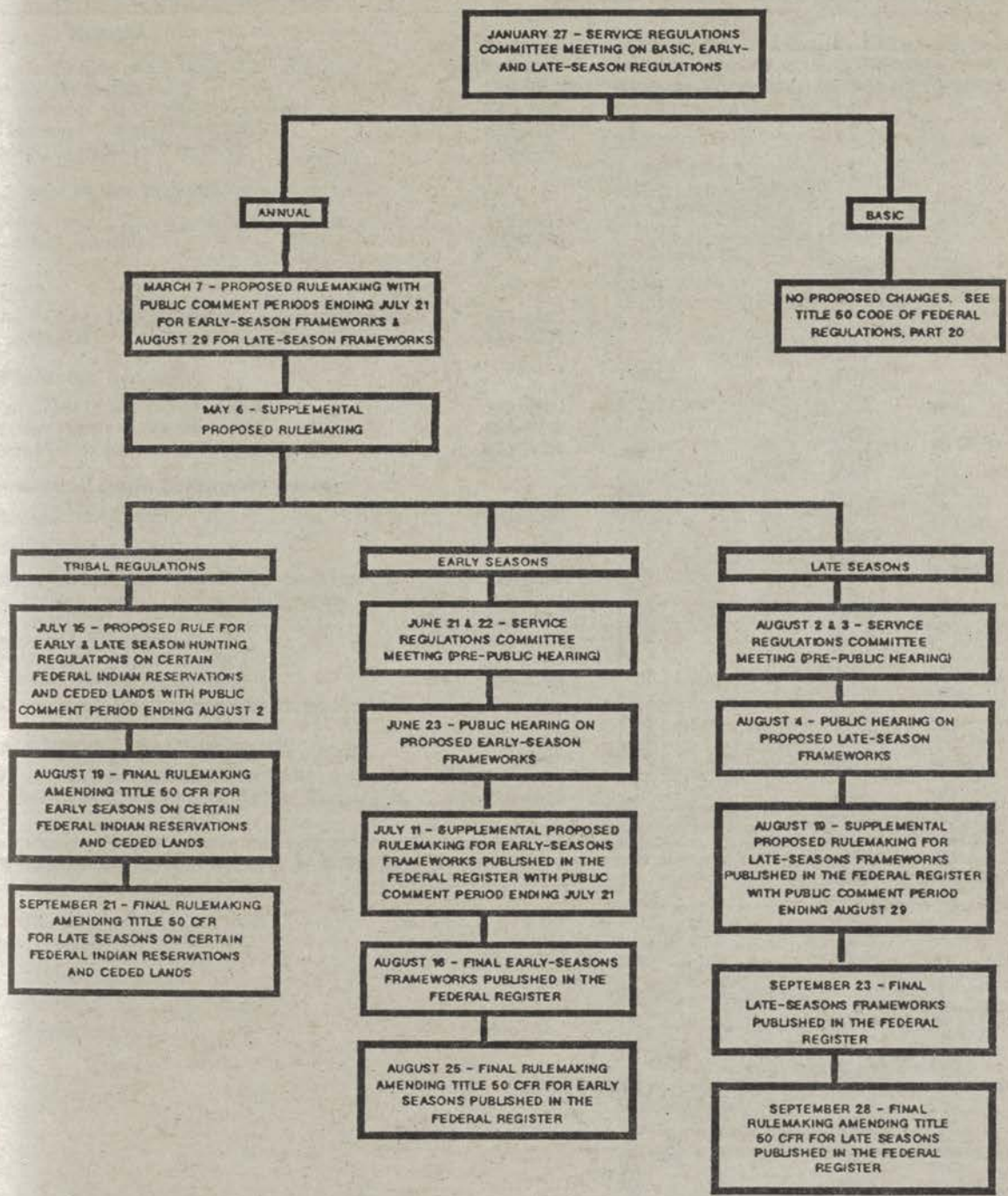

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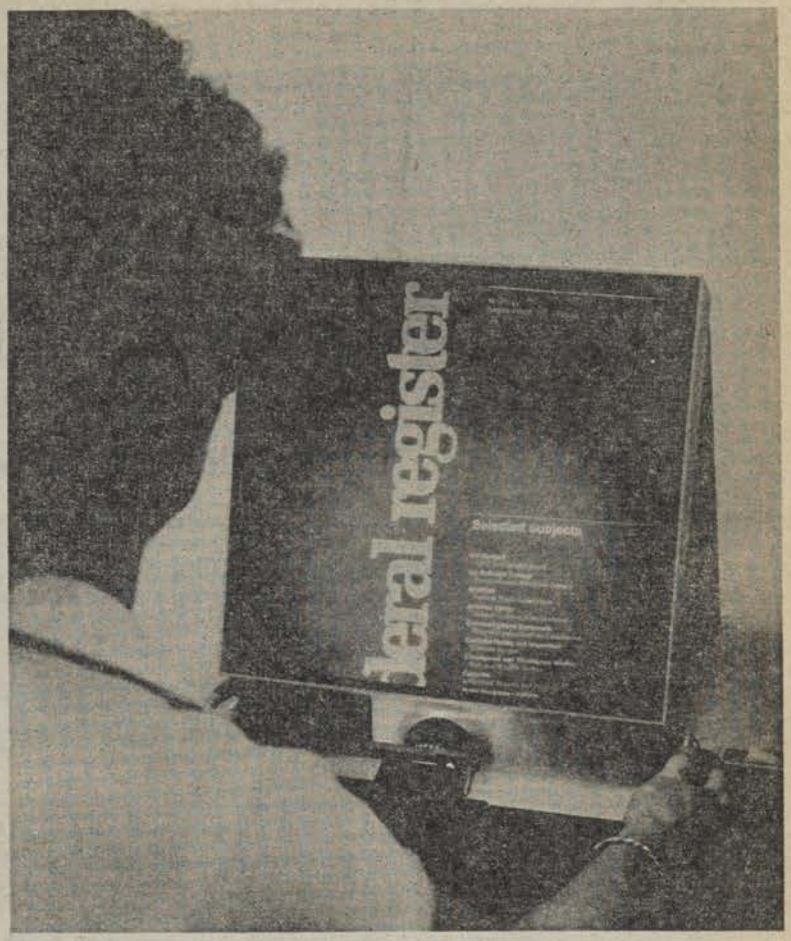

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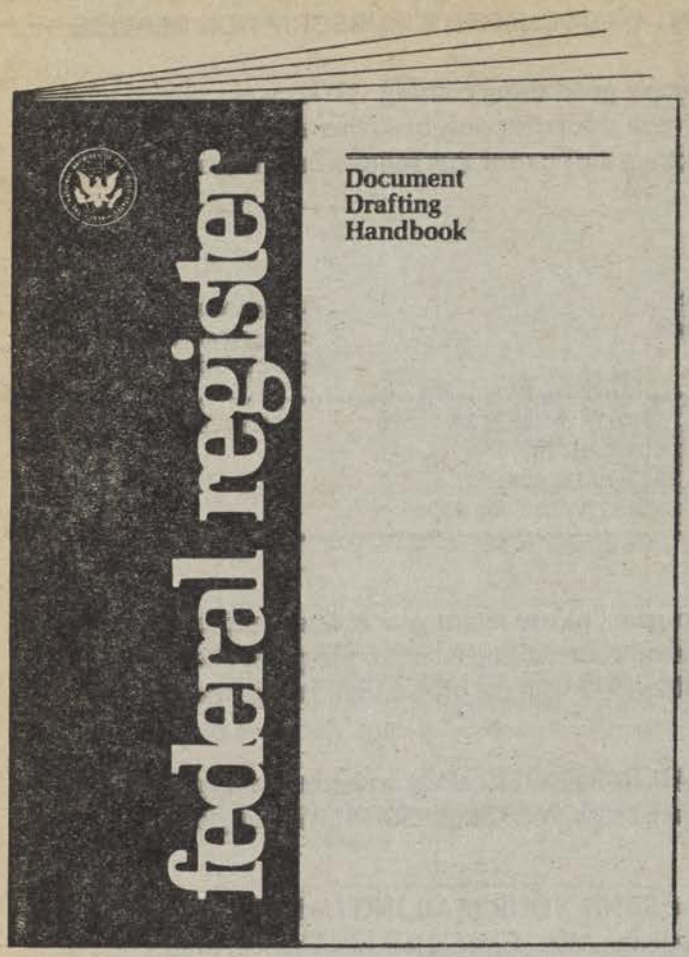

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