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(two briefings)

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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

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

Food Stamp Program: Technical Amendments Concerning Disabled in Group Homes and Income Exclusion for Plans for Achieving Self-Support

AGENCY: Food and Nutrition Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final regulation (59 FR 5697) published on February 8, 1994. The regulations concerned certain provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 that dealt with disabled persons in group homes and income exclusions for Plans for Achieving Self-Support.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Background

As published, this final rule expands the food stamp eligibility of certain blind and disabled individuals residing in group homes and excludes income of an SSI recipient necessary for the fulfillment of a Plan for Achieving Self-Support (PASS). The provisions concerning the eligibility of certain blind and disabled individuals residing in group homes was effective and had to be implemented no later than February 1, 1992.

Need for Correction

The final rule as published contains an error that needs to be corrected.

Correction of Publication

Accordingly, the publication on February 8, 1994 is corrected as follows:

On page 5697, in the first column, in the paragraph entitled **DATES** the date "February 2, 1992" is corrected to read "February 1, 1992".

Dated: April 22, 1994.

William Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–10547 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Stabilization and Conservation Service

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD25

1994 Marketing Quota and Price Support for Burley Tobacco

AGENCIES: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1994 crop of burley tobacco. In accordance with the Agricultural Adjustment Act of 1938 (1938 Act), as amended, the Secretary determined the 1994 marketing quota for burley tobacco to be 542.7 million pounds. In accordance with the Agricultural Act of 1949 (1949 Act), as amended, the Secretary determined the 1994 price support level to be 171.4 cents per pound.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3736, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–8839.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not 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;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Final Regulatory Impact Analysis

A final regulatory impact analysis describing the impact of the established quota and support level is available on request from Robert L. Tarczy.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither ASCS nor the Commodity Credit Corporation is required by 5 U.S.C 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Public Law. 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rulemaking contained in 5 U.S.C. 553 or in any directive of the Secretary.

On February 1, 1994, the Secretary announced the national marketing quota and price support level for the 1994 crop of burley tobacco.

Marketing Quota

Section 319(c)(3)(A)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level. However, any downward adjustment in such loan inventories may not exceed the greater of 35 million pounds or 50 percent of the amount which the loan inventories exceed the reserve stock level.

Section 319(c)(3)(C) further provides that, with respect to the 1990 through 1994 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The reserve stock level is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1994 crop of burley tobacco by January 15, 1994. Six such manufacturers were required to submit such a statement for the 1994 crop and the total of their intended purchases for the 1994 crop is 324.0 million pounds. The three-year average of exports is 183.8 million pounds.

The national marketing quota for the 1993 crop year was 603.0 million pounds (58 FR 36857). Thus, in accordance with section 301(b)(14)(D), the reserve stock level for use in determining the 1994 marketing quota for burley tobacco is 90.5 million pounds.

On January 21, 1994, USDA projected that the loan coops would have in their inventories 420.5 million pounds of burley tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 165.0 million pounds.

The total of the three marketing quota components for the 1994–95 marketing year is 342.8 million pounds. However, the 1994 national marketing quota cannot be less than 90 percent of 1993's quota. Accordingly, the national marketing quota for the marketing year beginning October 1, 1994, for burley tobacco is 542.7 million pounds.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national poundage quota for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1994 crop of burley tobacco of 1,862,367 pounds is adequate for these purposes. In setting farm quotas for the 1994 burley crop, it was also determined based on past practice that a factor of 0.90 would be used to adjust preliminary farm quotas to reach the national poundage quota.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1994 crop of burley tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1994 crop of burley tobacco shall be:

(1) The level, in cents per pound, at which the 1993 crop of burley tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A)(I) and (II)) is 4.7 cents per pound. The difference in the cost index from January 1 to December 31, 1993, is also 4.7 cents per pound. Applying these components to the price support formula (4.7 cents per pound, two-thirds weight; 4.7 cents per pound, one-third weight) results in a weighted total of 4.7 cents per pound. As indicated, section 106 provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. In order to remain competitive in foreign and domestic

markets, the Secretary used his discretion to limit the increase to 65 percent of the maximum allowable increase. Accordingly, the 1994 crop of burley tobacco will be supported at 171.4 cents per pound, 3.1 cents higher than in 1993.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Section 723.112 is amended by:

A. Redesignating existing text as paragraph (a), and

B. Adding paragraph (b) to read as follows:

§ 723.112 Burley (type 31) tobacco.

* * * * *

(b) The 1994-crop national marketing quota is 542.7 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b and 714c.

4. Section 1464.19 is amended by:

A. Redesignating existing text as paragraph (a), and

B. Adding paragraph (b) to read as follows:

§ 1464.19 Burley (type 31) tobacco.

* * * * *

(b) The 1994-crop national price support level is 171.4 cents per pound.

Signed at Washington, DC, on April 22, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–10482 Filed 5–2–94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 94–48]

RIN 1550–AA73

Conversions From Mutual to Stock Form

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations governing mutual-to-stock conversions of insured savings associations. The purpose of these amendments is to revise, clarify and update the current regulations to strengthen the conversion standards and ensure the integrity of the conversion process.

The amendments revise and clarify the appraisal standards; prohibit the use of "running" proxies by management of converting associations; place the current tax-qualified Employee Stock Ownership Plan (ESOP) stock purchase priority after those of eligible depositors; provide stock purchase priority to long-term depositors; require that a stock purchase preference be given to eligible depositors residing in the association's local community; prohibit management stock benefit plans in a conversion; prohibit merger conversions except in supervisory situations; lengthen the conversion public comment period; require associations to submit business plans for all conversions; prohibit the repurchase of a converted association's stock within one year of conversion; and make publicly available preliminary conversion proxy materials.

Interested parties are invited to submit written comments on the conversion regulations, both as to the amendments adopted here and the issues on which comment is specifically solicited and as to any other current provisions of the conversion regulations as they relate to this interim rule.

DATES: The interim final rule is effective May 3, 1994. Written comments must be received on or before June 17, 1994. These amendments will apply to all conversion applications pending or filed on or after May 3, 1994.

ADDRESSES: Comments should be directed to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. 94–48. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Teri M. Valocchi, Counsel (Banking and Finance) (202/906–7299), James H. Underwood, Special Counsel (202/906–7354), Leon R. Pleasants, Chief Financial Analyst (202/906–6414), J. Larry Fleck, Assistant Chief Counsel (202/906–6413), V. Gerard Comizio, Deputy Chief Counsel (202/906–6411), Corporate and Securities Division, Chief Counsel's Office; Scott Ciardi, Financial Analyst (202/906–6960); David A. Sjogren, Program Manager (202/906–6739), Diana L. Garmus, Deputy Assistant Director (202/906–5683), Corporate Activities Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OTS has broad authority to authorize and regulate mutual to stock conversions of savings associations under sections 5(i) and (p) of the Home Owners' Loan Act, as amended (HOLA), 12 U.S.C. 1464(i) and (p).[1] For the past 20 years—since the OTS's predecessor, the Federal Home Loan Bank Board (FHLBB) instituted mutual to stock conversion regulations in 1974[2]—mutual to stock conversions have been a successful vehicle for bringing new capital into the thrift industry. Since 1974, over 1,000 mutual savings associations have converted to the stock form of ownership, in the process raising approximately $16 billion in new capital.

While mutual to stock conversions provide an opportunity for thrifts to raise capital, they may also provide an opportunity for an association's insiders to engage in transactions that transfer to the insiders an inappropriate amount of a converting association's value. Thus, the OTS mutual to stock conversion regulations reflect standards and safeguards developed over the years to maintain the integrity of the conversion process, to ensure safety and soundness by responding to the potential for

[1] The OTS also has broad authority to approve and regulate mutual savings and loan holding companies under section 10(o) of HOLA, 12 U.S.C. 1467a(o).

[2] 39 FR 9142 (March 7, 1974).

abuses in thrift conversions and to allow the conversion process to function effectively as a capital raising tool.

The OTS mutual to stock conversion regulations seek to balance concerns such as a fair opportunity for participation by account holders and the desire to infuse significant amounts of new capital into converting savings associations. In addition, the regulations are structured to assure that a savings association receives fair value for its conversion stock and to prevent insider abuse by governing the manner and extent to which a savings association's insiders and their associates, individually and in the aggregate, may acquire stock and other benefits in a conversion.

In recent months, mutual to stock conversions have become the subject of controversy and negative media attention. In particular, there has been controversy over the fact that some states offer insiders of state savings banks the opportunity to gain potentially greater benefits and more generous compensation packages than are currently permitted under OTS rules. Congress also has expressed serious concerns in this area. Legislation has been introduced in both the House and Senate to address the issue of minimum standards for conversions by state savings banks and limitations on management benefits in conversions. In addition, both the Financial Institutions Subcommittee of the House Banking Committee and the Senate Banking Committee recently have held hearings on perceived abuses in mutual to stock conversions.

Although the OTS believes that its current regulations have generally provided sound safeguards for mutual to stock conversions, the OTS and the FHLBB, in administering the conversion program, have refined the conversion regulations periodically in light of experience with the conversion process and in response to developments in the market place. As a result of the recent events concerning mutual to stock conversions, the OTS has again reviewed its conversion regulations to assess whether additional revisions to its rules are necessary.

As part of its review, the OTS has analyzed the changing financial condition of converting mutual associations. During the 1980s, most mutual savings associations were marginally capitalized and many were insolvent. As a result, the FHLBB undertook a number of regulatory initiatives designed to encourage associations to convert to stock form. Many associations took advantage of these changes to recapitalize. Now, however, most mutual institutions in the industry are healthy. Generally, these healthy institutions are not converting to meet regulatory capital requirements. Instead, they seek to raise capital to expand their current operations through branching or acquiring other institutions, to engage in new activities, through both the formation of a holding company and establishment or acquisition of operating subsidiaries, and to establish stock benefit plans for management and employees. This change in the reasons for conversions has caused the OTS to rethink the need for the regulatory inducements for conversion contained in the current regulations.

Based upon the foregoing, the OTS has identified several areas of the regulations, discussed below, that it has determined to revise, update and clarify to further strengthen the standards governing the conversion process. The OTS has consulted with the Federal Deposit Insurance Corporation ("FDIC") in developing these changes to ensure consistent policy in this area. The OTS also has determined to adopt the amendments immediately as an interim final rule to protect the integrity of the conversion process. As such, the final rule is designed to assure the public that the conversion program will continue to be fair and equitable. Also, Congress has made it clear that it expects both the OTS and the FDIC to act promptly to assure that any abuses or potential abuses in the mutual to stock conversion area are addressed.

II. Description of Revisions to Conversion Regulations

A. Revision to the Appraisal Standards

Pursuant to 12 CFR 563b.3(c)(1), a converting savings association is required to sell its capital stock at a total price equal to its estimated *pro forma* market value, based on an independent valuation. When the FHLBB adopted the initial conversion regulations, it found that underpricing conversion stock would result in "windfall" distributions of the value of a converting association and that no method of conversion could be considered equitable unless the conversion stock was accurately appraised and sold at its *pro forma* market value. This was necessary to assure that the association received full value for the conversion stock it distributed.

The current regulations contain safeguards designed to enhance the accuracy of conversion appraisals. Under 12 CFR 563b.7(f), the OTS requires that the appraisal be prepared by an appraiser who is independent of the converting association and who has expertise in the area of corporate appraisals. Although the conversion regulations have been amended numerous times since 1974, the requirement that the conversion stock be sold at its *pro forma* market value has remained constant.

The integrity of the conversion process rests, in large part, on the accuracy of the appraised value of the converting association. It is for this reason that the OTS is concerned about recent conversions that have exhibited significant increases in the immediate post-conversion trading market for the stock. Although some of these increases can be explained by the high levels of speculation that have existed generally in the market for financial institution stocks, the OTS is concerned that many of these appraisal reports may have set *pro forma* market values that were significantly below the true value of the converting associations. In such cases, the converting association is harmed because the net proceeds from the conversion, and the association's capital levels, are lower as a result of its stock being undervalued upon issuance. Conversely, insiders and other sophisticated investors are able to accrue undeserved financial benefits. When this occurs, the independence and competence of the appraiser are called into question.

The OTS relies on the independent appraiser to submit an appraisal report that is impartial, objective and arrived at independently, without undue influence from the converting association or any of its other agents, including its attorneys, accountants, underwriters or selling agents. The OTS is taking this opportunity to remind those persons serving as conversion appraisers that the current regulations require that the conversion applicant submit information demonstrating, to the satisfaction of the OTS, the independence and expertise of the appraiser.[3] In those cases where there appears to be a consistent pattern of undervaluation on the part of an appraiser, it may be difficult for the applicant or the appraiser to establish that the appraiser has acted independently and in a competent manner. In more egregious cases, the OTS also may determine to censure, suspend or bar an appraiser from practicing before the OTS under the OTS rules of practice, 12 CFR part 513.

Under the current rules, § 563b.7(f)(1)(ii) permits the appraisal report to contain a "brief summary" of data that is sufficient to support the

[3] 12 CFR 563b.7(f)(2).

appraiser's conclusions as to the *pro forma* market value of the converting association. Section 563b.7(f)(3), however, permits the OTS to request additional information with respect to the pricing of the converting association's capital stock. In practice, the OTS, relying on § 563b.7(f)(3), has required that a full appraisal report be submitted as part of the conversion application. In that regard, the OTS and its predecessor, the FHLBB, have provided detailed policy guidance to the industry regarding appropriate appraisal standards to be used in valuing conversion stock.[4]

In order to eliminate any potential confusion in this area, the OTS is amending § 563b.7(f)(1)(ii) by deleting suggestions that the appraisal report need only be a "brief summary" and specifying that a full appraisal report is required. The revised language codifies the current practice of OTS staff requiring a more complete and detailed description of the elements that make up an appraisal report and justification for the methodology employed. Because a full appraisal will now be required under paragraph (f)(1)(ii), the reference to "full appraisal" in § 563b.7(f)(3) is unnecessary and is deleted. The OTS expects that appraisals will continue to contain sufficient detail to support the conclusions contained therein and that appraisers will deliberate carefully in the formation of an opinion to arrive at a *pro forma* market value that is consistent with post-conversion market values.

Section 563.7(f) also has been revised to provide that in those instances where the initial appraisal report is deemed to be materially deficient and/or substantially incomplete, the OTS may deem the entire conversion application materially deficient and/or substantially incomplete, and in accordance with the OTS applications processing rules, 12 CFR part 516, decline to further process the application. In such cases, the applicant will be required to refile the conversion application, including a revised appraisal, as a new application and pay any applicable filing fees.

Under current § 563b.7(f)(2), the fact that a person is participating in effecting a sale of the conversion stock, either as an underwriter or as a selling agent, does not preclude such person or an affiliate of such person from being considered independent for purposes of preparing the appraisal for the conversion. Although the staff has not experienced any problems to date where a conversion appraisal firm or its affiliate have participated in effecting the sale of the conversion stock, the OTS believes that it is essential that conversion appraisals not be tainted in any manner by a real or potential conflict in such an affiliate relationship that would cause the appraiser to not be independent in his or her judgments. Thus, while no changes are being adopted at this time, the OTS is requesting public comment as to whether it should amend § 563b.7(f)(2) to prohibit an appraiser or its affiliates from also serving as an underwriter or selling agent.

Finally, in order to further enhance regulatory oversight in this area, the OTS intends to issue updated guidance for conversion appraisers that will provide specific details on appraisal methodology and report content.

B. Prohibition on Use of "Running" Proxies

Section 563b.5(d)(4), adopted in 1985, provides for management of a converting association to use previously obtained proxies, *i.e.*, "running" proxies, from a voting member. Previously, the conversion rules prohibited the use of "running" proxies. The requirement was changed in 1985 to reduce conversion costs for marginally capitalized savings associations.[5]

Section 563b.5(d)(4), however, requires that each voting member be furnished a proxy statement on the special plan of conversion meeting, and only allows for use of the "running" proxy in the event the voting member does not grant a later-dated proxy to vote at the meeting called to consider the plan of conversion or attend such meeting and vote in person.

Currently, as discussed in section I. above, most mutual associations in the thrift industry seeking to convert are well-capitalized. Thus, the regulatory rationale for truncating the proxy solicitation and voting requirements generally no longer exists. In addition, depositors in greater numbers recently have expressed increased interest in the conversion plans of their associations. The OTS believes, based on its experiences in this area, that the current ability to use "running" proxies has lessened the incentive of converting associations to actively solicit depositors to consider and vote on conversions.

Thus, the OTS has decided to revise § 563b.5(d)(4) to prohibit the use of "running" proxies. The OTS believes the prohibition is the most effective manner in which to assure full participation of the association's membership in the conversion process. The requirement to use a proxy specifically designed for the conversion will require thrift management to more actively solicit its depositors to obtain their votes for conversion.

In addition, the last two paragraphs of Item 1 and Item 4(d) of the Form PS have been revised to conform with the revisions discussed above. Finally, a sentence has been added to § 575.13(a)(4) of the mutual holding company regulations to conform with this revision.

C. Re-Prioritize Stock Purchase by Tax-Qualified Employee Stock Ownership Plans.

Under OTS rules, a conversion offering may involve as many as three phases: A subscription offering, a direct community offering and an underwritten public offering. Only the subscription offering phase, which affords account holders the opportunity to subscribe for stock on a priority basis, is required; if all of the stock is purchased in the subscription phase, any other offering is unnecessary.

The conversion regulations protect the status of mutual account holders by establishing a detailed series of subscription priorities for purchases of conversion stock. Currently, § 563b.3(c)(2) requires that first priority to purchase the stock issued in the conversion, after certain tax-qualified ESOP purchases, discussed below, belongs to eligible account holders, *i.e.*, depositors holding qualifying deposits at the savings association as of a date (eligibility record date) at least ninety days prior to the date of adoption of the plan of conversion by the association's board of directors.[6] The regulations also provide that each eligible account holder must receive, without payment, nontransferable subscription rights in an amount equal to the greater of the maximum purchase limitation established under the converting association's plan of conversion, or certain formulas prescribed under the regulations.[7]

In 1986, amendments to the conversion regulations were adopted to eliminate uncertainty on a variety of issues presented by employee stock benefit plans and to enhance the ability of officers, directors and employees of a

[4] FHLBB, Guidelines for Appraisal Reports for the Valuation of Savings and Loan Associations and Savings Banks Converting From Mutual to Stock Form of Organization (October 1983); FHLBB, Guidelines for the Valuation of Savings and Loans Converting from Mutual to Stock Form (June 15, 1981).

[5] 50 FR 20555 (May 17, 1985).

[6] 12 CFR 563b.2(a)(16).

[7] 12 CFR 563b.3(c)(2).

savings association to acquire stock when the association converted, through various types of employee stock benefit vehicles.[8] Prior to the 1986 amendments, the first priority to purchase conversion stock had always been with eligible account holders. The 1986 amendments, which granted a first priority purchase right to tax-qualified employee benefit plans, were based on the FHLBB's belief that acquisition of an association's stock by such plans provided a means for officers and employees of converting associations to acquire larger ownership stakes in their associations upon conversion without undermining the basic equities of the conversion process.[9] In addition, and perhaps more significantly, the FHLBB sought to afford undercapitalized mutual savings associations, that feared hostile takeovers as a public company, a measure of anti-takeover protection through the opportunity to place a significant block of conversion stock in friendly hands, and thus, encourage capital raising through conversion.

Section 563b.3(c)(23) currently provides an explicit top priority for tax-qualified employee stock benefit plans that permits plans to purchase up to 10% of the total conversion stock offering ahead of eligible depositors. This priority also is on a preferred basis; thus, in the event an offering is over-subscribed, the plans' stock purchases will not be affected.

Although the OTS believes that it is still appropriate to provide management incentives and to encourage employee stock ownership in the converted association, these interests have been overshadowed by other factors. Because most mutual associations are now healthy, there is a need to balance the interests of management and employees against those of account holders by providing long-term depositors at mutual savings associations the first opportunity to buy conversion stock. The OTS is therefore amending § 563b.3(c)(23) to revise the stock purchase priorities so as to place eligible account holders before the tax-qualified employee stock benefit plans and to place tax-qualified employee stock benefit plans before supplemental eligible account holders [10] and all other voting members who have subscription rights. Finally, the OTS is amending § 563b.3 (c)(6)(i), (c)(7), and (d)(4) to conform to these changes.

D. Revision to Eligibility Record Date

As discussed above, the intent of the eligibility record date is to give long-term depositors a priority in purchasing stock. It has been the OTS's experience, however, that converting associations have opted for the minimum 90-day period for determining who is a long-term depositor. Upon review of this area, the OTS does not believe that use of the minimum 90-day period is a meaningful indicator of long-term depositor status and should be substantially lengthened. Thus, the OTS is amending the existing rule to require that the eligibility record date be set at a date no less than a year prior to board of director approval of the plan of conversion. In so doing, the OTS stresses that the one year period is a minimum time period; converting associations are encouraged to establish longer time periods to maximize the stock purchase priority for long-term depositors. The OTS also is requesting public comment as to whether a longer minimum time period would be appropriate.

E. Priority to Account Holders and Voting Members Residing in the Association's Local Community

The current conversion regulations require that, following the subscription offering of conversion stock to account holders, all nonsubscribed shares be sold either in a public offering or a direct community offering giving "a preference to natural persons residing in the counties in which the association has an office." [11] Thus, the regulations currently permit a converting association to conduct a community offering of conversion stock in the local community, prior to a general public offering. The current regulations, however, do not permit converting associations to give account holders and voting members in those local communities a priority to purchase stock in the initial subscription offering. The OTS, has, however, on a case by case basis, recently permitted thrift subsidiaries of mutual holding companies to prioritize stock purchases in this manner.

Upon consideration of its favorable experiences with local community stock priorities in stock offerings of thrift subsidiaries of mutual holding companies, the OTS now believes it is appropriate to require converting associations to give the local community a more meaningful opportunity to participate in all conversions on a priority basis at the subscription offering stage. Accordingly, new § 563b.3 (c)(2)(i), (4)(i), and (5)(i) have been added to extend this preference to the eligible account holder, supplemental eligible account holder and other voting member priorities in the subscription stock offering. The preference in each priority group will be to those persons who reside in the association's "local community" or within 100 miles of a home or branch office of the converting association. The term "local community" is defined in new § 563b.2(a)(19) to include all counties in which the converting association has a home or branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other similar local area(s) as provided for in the converting association's plan of conversion, as approved by the OTS. Current § 563b.3(c)(2)(i)–(ii), 4(i)–(iv) and (5)(i)–(ii) will be redesignated as § 563b.3(c)(2)(ii)–(iii), (4)(ii)–(v) and (5)(ii)–(iii). For purposes of consistency, section 563b.3(c)(6)(iv) is revised to conform with new section 563b.3(c)(2)(i).

Additionally, 12 U.S.C. 1464(b) and 12 CFR 545.11(b) establish that a federally chartered savings association may accept and maintain deposit accounts within its discretion and subject to criteria established by the association. The OTS solicits public comment on whether a converting association should have the ability to prevent depositors who do not reside in the local community from participating in a conversion. In addition, the OTS specifically solicits comments as to whether an association, in anticipation of conversion, should be permitted to: (1) refuse to open accounts for potential depositors residing outside the local community, and (2) close accounts of depositors residing outside the local community.

F. Revision of Policy Regarding Management Stock Benefit Plans

Under § 563b.3(c)(8), the amount of stock that officers, directors and their associates can purchase, in the aggregate, is limited to between 25% to 35% of the conversion stock, based upon the total asset size of the converting association. In addition, existing § 563b.3(c)(6)(i) allows any one or more tax-qualified employee stock benefit plans to purchase in the aggregate not more than 10% of the total offering of shares and allows such purchase regardless of the number of shares to be purchased by other parties.

[8] 51 FR 40127 (November 5, 1986).

[9] *Id.*

[10] The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors and their associates, as of the last day of the calendar quarter preceding the OTS's approval of the application for conversion. See current 12 CFR 563b.2 (a)(37) and (a)(38).

[11] 12 CFR 563b.3(c)(6).

Current OTS policy also permits management stock benefit and recognition plans (collectively "MRPs") to purchase up to 3% or 4% of the conversion stock, depending upon the association's capital position.[12] Current OTS policy limits the combined ESOP and MRP purchases to 10% to 12% of the conversion stock, depending upon the association's capital position. OTS policy also permits management to be granted stock options in an amount up to 10% of the shares issued in the conversion.[13] Finally, the OTS recently, on a case by case basis, has imposed specific percentage limitations on the amount of stock that may vest with individual officers and directors.

Given that mutual savings associations currently seeking to convert generally are well-capitalized, the OTS has become increasingly concerned that the association's management may be undertaking conversions for reasons other than the need for capital. Some thrift insiders may be sacrificing the interests of their associations and mutual account holders to acquire significant amounts of conversion stock and other benefits as cheaply as possible in the conversion process. In addition, in some cases the issuance of conversion stock to a MRP lessens the opportunity for depositors to obtain conversion stock. Finally, the issuance of stock options at the conversion price, rather than at aftermarket trading prices, which in recent years has been substantially higher than the conversion price, creates the impression that management is structuring an excessive compensation package. While the OTS believes there are valid business reasons for thrifts to adopt MRPs and stock option plans in order to attract and retain qualified management, these plans are now more appropriately implemented subsequent to the conversion and with shareholder approval.

The OTS is therefore substantially revising and codifying its policies regarding the establishment of MRPs and stock option plans during the conversion process in new § 563b.3(g)(4). The new provisions require that any decision to implement MRPs or stock option plans after conversion be voted on and approved by a majority of the shareholders no earlier than the first annual meeting following the conversion. The rule further requires that thrift subsidiaries of mutual holding companies obtain a vote of a majority of stockholders, other than the parent mutual holding company, to approve such plans.[14] The provisions also prohibit the use of conversion stock to fund MRPs, require that MRPs be awarded and stock options be granted only after shareholder approval is received and require that stock options be granted at the market price at which the stock is trading at the time of grant. In addition, any intention by management to implement MRPs or stock option plans within one year of conversion would be (1) required to be fully disclosed in the proxy soliciting and conversion stock offering materials, and (2) subject to the prior approval of the appropriate OTS Regional Director. Finally, the regulation codifies the OTS's current policies regarding permissible amounts that may be included in stock option and MRP plans formed within one year of conversion. Codification of these policies is designed to provide clear guidance in this area.

G. Prohibition on Merger Conversions

Under § 563b.10, a mutual savings association may convert to stock form by merging with an existing stock association or by becoming a subsidiary of an existing holding company. In this type of conversion, the account holders of the mutual savings association, instead of being offered the opportunity to purchase stock of the converting mutual association, are instead offered the opportunity to purchase shares of the acquiring stock association or holding company. The structure of these transactions raises unique issues not involved in other types of conversions. These include the adequacy of the consideration paid by an acquiror, whether a "control premium" should or can be incorporated into the valuation of the mutual savings association; the treatment of the mutual account holders in connection with the distribution of the acquiror's stock; whether mutual account holders should be able to purchase the acquiror's stock at a discount and the amount of such discount; and the appropriateness of management compensation and stock incentive packages offered by an acquiror to coax the mutual association's management into the merger conversion.

When merger conversions were first allowed by the FHLBB in the 1980s, they were perceived to be a useful supervisory tool by which significantly undercapitalized or marginally capitalized savings associations could improve their capital positions. In recent years, however, the OTS began to have increasing concern about merger conversions involving healthy associations. In Thrift Bulletin 58 (April 19, 1993), the OTS established increased disclosure requirements for merger conversion proxy statements to ensure that account holders received adequate and accurate disclosure about proposed merger conversion transactions. In so doing, the OTS asserted its view that merger conversions provide more opportunity than standard conversions for insider abuse.[15] In addition, the OTS voiced concerns that institutions participating in merger conversions were not providing sufficient disclosure to account holders regarding this more complex form of conversion transaction.[16]

In addition, there have been numerous complaints recently by account holders and others that permitting healthy mutual savings associations to be acquired by means of a merger conversion has resulted in some thrift insiders putting their self interest ahead of the interests of the converting association and its account holders.

As a result of these concerns, the OTS recently imposed a moratorium on healthy savings associations entering into these transactions. In its announcement, the OTS stated that the moratorium would not prohibit the acquisition of an undercapitalized thrift by a healthy acquiror.

In undertaking the moratorium, the OTS noted that in many cases, management of the converting mutual savings associations engaging in merger conversions were receiving extremely generous compensation and benefit packages. While OTS rules limit many forms of excessive compensation in merger conversions,[17] there is still an

[12] See FHLBB Office of General Counsel Questions and Answers on Part 563b: Conversion and Employee Stock Benefits Plans at 4, 6 (May 1987).

[13] Id.

[14] In this regard, § 10(o)(8)(B) of the HOLA requires that a mutual holding company, which is generally controlled by the management of its thrift subsidiary, must own more than 50% of its thrift subsidiary. Thus, absent a disinterested stockholder vote requirement, management will be able to ensure approval of its compensation plans.

[15] OTS Thrift Bulletin 58, at 1 (April 19, 1993).

[16] *Id.*

[17] For example, the OTS policy statement on mergers, 12 CFR 571.5, in pertinent part, specifically provides that compensation, including deferred compensation to officers, directors and controlling persons of a merging association may not be in excess of that which is reasonable and commensurate with their duties and responsibilities. The rule provides that mergers will be particularly scrutinized where any such persons will receive a material increase in compensation above that paid by the merging association prior to the commencement of merger negotiations. In this regard, an increase in compensation in excess of the greater of 15% or $10,000 gives rise to

Continued

issue as to whether management is opting for a merger conversion instead of a standard conversion based on the best interests of the association and its depositors or in response to the level of benefits offered to management by the acquiring entity.

In addition, merger conversions are perceived as being overly generous to the acquiring entities since they are essentially able to acquire the mutual association at no cost. Unlike other corporate acquisitions, the acquiror pays nothing for the converting association's stock. Rather, simultaneous with the acquisition, the acquiror's primary obligation is to make an equity offering of its own stock to depositors of the converting association, retaining all proceeds of the offering.

The OTS conversion regulations are based upon the principle that a conversion cannot be equitable unless the potential for "windfall" gains is virtually eliminated. In a standard conversion, the *pro forma* market value of the converting savings association is an appropriate means for determining the price of the stock to be sold. In a merger conversion, however, the acquiring entity is obtaining control and should pay a premium for the *pro forma* value of the stock. In essence, the acquiring entity is obtaining control and receiving a "windfall" gain. As a result, there is tremendous incentive for an acquirer to offer excessive benefits to the management of a mutual savings association to participate in a merger conversion. Upon further review of this issue, the OTS has been unable to resolve the valuation and "windfall" gains problem that the OTS currently believes is inherent in merger conversion transactions.

The OTS therefore has concluded that in nonsupervisory cases, there should be a two step process. The account holders at the mutual association should be given the opportunity to purchase stock in a mutual to stock conversion. This assures the account holders that they will have the opportunity to more directly participate in any appreciation of the converting association's stock price following the conversion. After the conversion to stock form, stockholders can vote on whether to merge with another institution, subject to the rules governing post-conversion transactions.

Based on the reasons described above, the OTS has determined to amend its conversion regulations to limit merger conversions to supervisory cases. As noted earlier, merger conversions may serve a useful purpose in those cases where a savings association is unable to convert on a stand alone basis because of its weak financial condition.

While eliminating the authority for nonsupervisory merger conversions in the interim final rule, the OTS is soliciting comment as to whether merger conversions involving healthy savings associations should be permitted in the future, and if so, under what circumstances. In particular, the OTS is interested in receiving comments on how merger conversions could be structured to avoid the problems discussed above, including the problems associated with valuation issues.

H. Extension of the Conversion Public Comment Period

Section 563b.4(b)(1) requires a conversion applicant to publish, in writing, a notice of the filing of an application. Pursuant to the rule, written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the OTS if filed within ten business days after the date of this notice. Failure to provide the written comments within the ten day period may preclude the pursuit of any administrative or judicial remedies.

Depositors of converting associations and community groups have become increasingly interested in expressing their views on proposed conversions, usually through the public comment process. In this regard, the current ten day comment period may not be sufficient time for interested parties to review and comment on a detailed conversion application. Thus, the OTS is revising § 563b.4(b)(1) to conform the public comment period in the conversion regulations with the longer twenty calendar day public comment period provided under the acquisition of control regulations.[18] The revision also would permit the OTS, in its discretion and upon written request, to extend the twenty day comment period for an additional twenty days. The OTS believes that this revision will give interested parties a more meaningful opportunity to express their views on a proposed conversion transaction. In so doing, the OTS does not believe this requirement will impose an undue burden, since most converting associations undertake holding company conversions, *i.e.*, where a holding company is being formed in the transaction, and are subject to the time periods under the acquisition of control regulations.

I. Submission of Business Plans for All Conversion Transactions

The OTS conversion regulations do not require business plans in standard mutual to stock conversion transactions. The OTS acquisition of control regulations, however, do require a consolidated business plan conforming to the requirements set by the Regional Director to be included in holding company conversions.[19] Because most converting associations also form a holding company at the time of the conversion, most converting associations currently file a business plan.

The OTS believes that all converting associations should be required to demonstrate how they will prudently deploy and utilize the conversion proceeds. Therefore, the exhibits portion of the conversion application form, Form AC, is being amended to require a new Exhibit 8, a consolidated business plan subject to approval by the Regional Director. Also, in response to the OTS's experience that a number of associations have recently submitted business plans that do not adequately address the deployment of conversion proceeds, the new Exhibit 8 includes a requirement that each converting association provide, as part of the business plan submitted with the application for conversion, a detailed discussion of how the capital acquired in the conversion will be utilized. If the plan is to be treated confidentially, the applicant should follow the procedures set forth at § 563b.4(c).

J. Revision to Post-Conversion Stock Repurchase Rules

The capital distributions regulation[20] and § 563b.3(g)(3) of the conversion regulations provide that a well capitalized converted association can repurchase its capital stock, within certain limits and restrictions, by filing with the Regional Director an open-market stock repurchase program for no more than 5% of the association's outstanding capital stock during a six month period. This provision is in essence a safe harbor, provided an institution is well capitalized.[21] Section 563b.3(g)(3) also provides that OTS may object to proposed repurchases fitting within the safe harbor if the repurchases would adversely affect the financial condition of the thrift.[22] Provided the

presumptions of unreasonableness and sale of control. See 12 CFR 571.5(d)(3).

[18] 12 CFR part 574.

[19] 12 CFR 574.6(a)(1)(ix).

[20] 12 CFR 563.134.

[21] 12 CFR 563.134(b).

[22] 12 CFR 563b.3(g)(3)(iii)(A).

safe harbor is met, a converted association can, under current rules, buy back up to 30% of the stock sold in the conversion within three years of conversion.

The agency's experience has been that many associations begin substantial buyback programs immediately following their conversions. While OTS believes that stock repurchase programs may serve valid business purposes, *e.g.*, maintaining the value of a converting institution's stock in an active trading market, the OTS has concerns that substantial buyback programs begun immediately after conversion may not have a valid business purpose. In addition, repurchases begun immediately after conversion raise substantial issues regarding whether conversion stock has been appropriately valued.

To address these concerns, Form AC has been revised to now require that each converting association provide, as part of the business plan submitted with the application for conversion, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

Also, the OTS is revising § 563b.3(g)(3) to prohibit stock repurchases for one year following conversion. After one year, a recently converted association may file with the appropriate Regional Director an open-market repurchase program in which it can request stock repurchases of no more than 5% of the outstanding capital stock during any twelve month period within the following two years. In addition to the current standards governing permissible repurchases, the Regional Director can now disapprove repurchases if the association does not demonstrate a valid business purpose for the stock repurchase. The regulation, however, will permit the Regional Director to approve amounts greater than 5% in the second and third years if there are circumstances that would justify such repurchases. Section 563b.3(g)(1)(iii) has been deleted to conform with this revision.

The OTS also is soliciting comments as to whether the current requirements of the capital distributions regulations governing the "upstreaming" of conversion proceeds to holding companies formed by converting institutions should be revised to further restrict the upstreaming of substantial amounts of the conversion proceeds soon after the conversion.

K. Other Issues

1. Subscription Rights

The conversion regulations require that prior to the completion of a conversion, no person may transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another.[23]

The OTS notes that the FDIC and others have recently suggested that it may be appropriate for depositors to be able to transfer and sell their subscription rights so that any "windfall" value can be distributed directly to the depositors.

In this regard, the OTS believes that this type of change to the current conversion regulations would raise a number of novel and complex legal and policy issues, many of which were taken into account previously by the FHLBB in determining to prohibit transferability. These issues include the possibility of adverse federal tax consequences to depositors receiving such rights, undue pressure on mutual associations to convert that may evolve from significant shifts of savings funds by depositors into such associations, difficulties in equitably allocating such subscription rights among depositors, potential manipulation of the process by sophisticated third parties to the detriment of the depositors, incentives for manipulation by insiders, the continued need for establishment and maintenance of a liquidation account,[24] and significantly increased conversion costs due to compliance with securities laws requirements for registering subscription rights for public distribution.

The OTS believes these issues must be carefully analyzed before considering regulatory changes in this area. Therefore, the OTS is not proposing any change at this time that would allow for the transfer or sale of subscription rights, but is requesting comment on whether subscription rights should continue to be nontransferable, or if transferability is recommended, the reasons for, and the manner in which to allow for, such transfer.

2. Availability of Conversion Documents

The conversion regulations, since adoption in 1974, have prohibited the placing of copies of preliminary conversion stock offering and proxy soliciting materials in the OTS public files. The OTS has noted, over the past few years, an increasing interest shown by account holders, the public and the media in the information contained in those portions of an application for conversion.

The OTS believes that even though this information is preliminary in nature, it may be useful for account holders and the public to access it earlier in the conversion process. The OTS, therefore, is revising § 563b.4(c) to eliminate the automatic confidential treatment that has been afforded this information in the past. The revision will permit the public to have ready access to all relevant materials regarding proposed conversion transactions.[25] Applicants will have the ability to request confidential treatment of any portion of these materials by following the confidential treatment procedures contained in section 563b.4(c).

3. Conforming Changes to Mutual Holding Company Regulations and Other Technical Changes

The mutual holding company regulations, 12 CFR part 575, generally incorporate the substantive and procedural standards for conversion contained in the conversion regulations. To the extent the interim final rule addresses conversion standards, those same standards apply to mutual holding company transactions. Thus, the OTS is also revising 12 CFR part 575 to make clarifying and conforming changes to those regulations to reflect the changes being made to 12 CFR part 563b.

Also, the interim final rule makes certain other technical and conforming changes to the conversion regulations.

4. Proposal to Impose Convenience and Needs Test in Conversion Transactions

Elsewhere in this issue of the **Federal Register**, the OTS is soliciting public comment on an amendment to its conversion regulations that would impose an additional standard requiring that the OTS, in considering whether to

[23] 12 CFR 563b.3(i)(1).

[24] The regulations require that a converting association establish and maintain a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in an amount equal to the association's net worth at the date of conversion. Each eligible account holder is deemed to have a pro rata inchoate interest in the liquidation account. In the event of a complete liquidation of the association, an account holder's interest may not be increased after conversion, but may be reduced by any subsequent decrease in the account holder's savings account balance. See 12 CFR 563b.3(c)(13).

[25] This revision augments the amount of information regarding conversions currently required to be made public by converting associations. Section 563b.4(a)(3)(i) requires that, promptly after adoption of a plan of conversion by its board of directors, a converting association must notify its members, and make copies of the adopted plan of conversion available for inspection by its members at each office of the savings association. Section 563b.4(a)(3)(ii) also allows a converting association to issue a press release announcing the conversion.

approve a mutual to stock conversion transaction, consider the needs and convenience of the community served by the converting association. To date, a convenience and needs test generally has not been applied to these transactions.

III. Paperwork Reduction Act

The reporting requirements contained in this interim final rule have been submitted to and approved by the Office of Management and Budget under OMB Control No. 1550–0014 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The reporting requirements in this interim final rule are found in 12 CFR 563b.100. The information is needed by the OTS to further strengthen the standards governing the conversion process. The likely recordkeepers are savings associations.

Estimated number of respondents: 70.

Estimated average annual burden per respondent: 500.

Estimated annual frequency of responses: 1.

Estimated total annual reporting burden: 35,000.

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

V. Executive Order 12866

The OTS has determined that the interim final regulation does not constitute a "significant regulatory action" for purposes of E.O. 12866.

VI. Administrative Procedure Act

Pursuant to 5 U.S.C. 553, OTS has found good cause to dispense with both prior notice and comment on this interim final rule and with a 30-day delay of its effective date in light of the critical need to ensure an equitable conversion process while still providing converting associations access to the capital markets. The OTS has a number of conversion applications pending and it expects that it will receive significantly more in the next few weeks. Unless these revisions are implemented immediately, associations will be able to avoid compliance with the new rules by filing and attempting to obtain approval of their conversion applications before the new rules become effective. If the OTS were to proceed with a notice of proposed rulemaking, the only practical solution to this problem would be to impose an administrative moratorium on all conversions until the rulemaking process is complete. That type of rulemaking process would take a minimum of several months. The result would thus be to preclude converting savings associations from raising additional capital at a time when the capital markets are receptive to capital stock offerings by financial institutions. Should the capital markets become less favorable, such a delay could prevent savings associations from raising sufficient new capital through a mutual to stock conversion. The public interest is served by encouraging savings associations to raise additional capital because an association's capital is the financial cushion that protects the association's depositors and the federal fund that insures the depositors' accounts. In view of the need both to ensure an equitable conversion process and to provide converting associations with access to the capital markets without delay, the OTS finds that good cause exists for dispensing with the notice and comment procedures of the Administrative Procedure Act. Similarly, the OTS finds that good cause exists for eliminating the 30-day delay of the effective date.

The revised rules will become effective upon publication in the **Federal Register** and will be applicable to all applications pending or newly filed as of that date. The OTS generally expects converting associations with pending applications to comply with the revised rules. The OTS may grant, on a case by case basis, a waiver in writing from any provision in the interim final rule for good cause shown. The request for a waiver must contain sufficient information to substantiate the justification for the waiver.

The OTS, however, seeks public comment on the conversion regulations, both as to the amendments adopted here and the issues on which comment is specifically solicited and as to any other current provisions of the conversion regulations as they relate to this interim final rule. The OTS may modify the rule in response to those comments if appropriate.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set out in the preamble, parts 563b and 575 of subchapter D, chapter V, title 12 of the Code of Federal Regulations are amended as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1. The authority citation for 12 CFR part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

2. Section 563b.2 is amended by removing paragraph (a)(14); by redesignating paragraphs (a)(15) through (a)(19) and (a)(29) through (a)(40) as paragraphs (a)(14) through (a)(18) and paragraphs (a)(30) through (a)(41), respectively; by revising paragraph (a)(16); and by adding paragraphs (a)(19) and (a)(29) to read as follows:

§ 563b.2 Definitions.

(a) * * *

(16) *Eligible account holder.* The term *eligible account holder* means any person holding a qualifying deposit as determined in accordance with § 563b.3(e) of this part, but shall include only those account holders with savings accounts in place for a minimum of one year prior to board of director adoption of the plan of conversion.

* * * * *

(19) *Local community.* The term *local community* includes all counties in which the converting association has its home office or a branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other similar local area(s) as provided for in the plan of conversion, as approved by the OTS.

* * * * *

(29) *Regional Director.* The term *regional director* means the senior representative of the Director of the Office of Thrift Supervision for all matters dealing with examination and supervision of savings associations in the region in which the converting savings association has its principal office.

* * * * *

3. Section 563b.3 is amended by:

a. Revising paragraphs (c)(6)(i), (c)(6)(iv), (c)(7), (c)(14), (c)(23), (d)(4), (g) heading, (g)(1)(i) and (g)(1)(ii) and (g)(3);

b. Redesignating paragraphs (c)(2)(i), (c)(2)(ii), (c)(4)(i) through (c)(4)(iv), (c)(5)(i) and (c)(5)(ii) as paragraphs (c)(2)(ii), (c)(2)(iii), (c)(4)(ii) through (c)(4)(v), (c)(5)(ii) and (c)(5)(iii), respectively;

c. Removing paragraph (g)(1)(iii); and

d. Adding new paragraphs (c)(2)(i), (c)(4)(i), (c)(5)(i), and (g)(4).

The additions and revisions read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(c) * * *

(2) * * *

(i) The stock to be offered and sold in the subscription offering shall give a preference to eligible account holders residing in the association's local community or within 100 miles of the association's home or branch office(s).

* * * * *

(4) * * *

(i) The stock to be offered and sold in the subscription offering shall give a preference to supplemental eligible account holders residing in the association's local community or within 100 miles of the association's home or branch office(s).

* * * * *

(5) * * *

(i) The stock to be offered and sold in the subscription offering shall give a preference to voting members residing in the association's local community or within 100 miles of the association's home or branch office(s).

* * * * *

(6) * * *

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to not more than five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

* * * * *

(iv) A condition that any direct community offering by the converting savings association shall give a preference to natural persons residing in the association's local community or within 100 miles of the association's home or branch office(s).

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, provide that the total shares that any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person.

* * * * *

(14) Provide for an eligibility record date, which shall be not less than one year prior to the date of adoption of the plan of conversion by the converting savings association's board of directors.

* * * * *

(23) Provide that eligible account holders with subscription rights have priority to purchase conversion stock prior to tax-qualified employee stock benefit plans and tax-qualified employee stock benefit plans have priority to purchase conversion stock prior to supplemental eligible account holders and other voting members who have subscription rights. If shares are sold in the conversion stock offering in excess of the maximum proposed offering, shares may be sold to the tax-qualified employee stock benefit plans in accordance with the purchase limitations provided in paragraph (c)(7) of this section.

* * * * *

(d) * * *

(4) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to less than ten percent (10%) of the total offering of shares. The percentage amount by which any order for conversion stock exceeds 5% of the total offering of shares shall be aggregated with the percentage amounts by which all other orders for conversion stock exceed 5% of the total offering of shares. The aggregate amount shall not exceed 10% of the total offering of shares, except that this limitation shall not apply to the purchases of the tax-qualified employee stock benefit plans.

* * * * *

(g) *Restrictions on repurchase of stock; payment of dividends; and use of stock option and management or employee stock benefit plans.* * * *

(1) * * *

(i) A repurchase, on a *pro rata* basis pursuant to an offer approved by the Office and made to all shareholders of such association; or

(ii) The repurchase of qualifying shares of a director.

* * * * *

(3)(i) A converted savings association subject to paragraph (g)(1) of this section may repurchase its capital stock provided:

(A) No repurchases occur within one year following conversion;

(B) Repurchases within two years after the conversion are part of an open-market stock repurchase program that does not allow for a repurchase of more than 5% of the association's outstanding capital stock during a twelve month period;

(C) The repurchases do not cause the association to become undercapitalized (as defined in 12 CFR 565.4); and

(D) The association provides to the Regional Director, with a copy to the Chief Counsel's Office, Corporate and Securities Division, no later than ten days prior to the commencement of a repurchase program, written notice containing a full description of the repurchase program to be undertaken, the effect of such repurchases on its regulatory capital position, and a valid business purpose for the repurchase; and the Regional Director does not disapprove the repurchase program based upon a determination that:

(*1*) The repurchase program would materially adversely affect the financial condition of the savings association;

(*2*) The information submitted by the savings association is insufficient upon which to base a conclusion as to whether the association's financial condition would be materially adversely affected; or

(*3*) The association did not demonstrate a valid business purpose for the stock repurchase.

(ii) Notwithstanding paragraph (g)(3)(i) of this section, during the second and third year following conversion, the Regional Director, in accordance with the standards contained in this paragraph, may permit stock repurchases in amounts greater than 5% of the association's outstanding capital stock during a twelve month period.

(4) Use of Stock Option and Management or Employee Stock Benefit Plans. No converted savings association shall, for a one year period from the date

of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified plan complying with (c)(6) of this section, unless each of the following requirements are met:

(i) Each of the plans was fully disclosed in the proxy soliciting and conversion stock offering materials;

(ii) For stock option plans, the total number of shares of common stock for which options may be granted does not exceed ten percent of the amount of shares issued in the conversion;

(iii) For management or employee stock benefit plans, the aggregate amount of such plans shall not exceed three percent of the amount of shares issued in the conversion;

(iv) The aggregate amount of all shares obtained by a tax-qualified employee stock benefit plan(s) in the conversion, pursuant to (c)(6) of this section, or within one year following the conversion, and all the shares in a management or employee stock benefit plan, pursuant to paragraph (g)(4)(iii) of this section, shall not exceed ten percent of the total amount of shares issued in the conversion;

(v) Associations that have in excess of ten percent tangible capital following the conversion, may be granted, on a case by case basis, approval to establish a management or employee stock benefit plan pursuant to paragraph (g)(4)(iii) of this section in an amount up to four percent of the amount of the shares issued in the conversion, and an aggregate total of up to twelve percent for all plans established pursuant to paragraph (g)(4)(iv) of this section;

(vi) No individual shall receive more than twenty-five percent of the shares of any plan and directors who are not employees of the association shall not receive more than five percent of the stock individually, or thirty percent in the aggregate, of any plan;

(vii) All such plans are approved by a majority of the association's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation and no earlier than the first annual meeting following the conversion;

(viii) In the case of a savings association subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation and no earlier than the first annual meeting following the stock issuance;

(ix) For stock option plans, stock options are granted at the market price at which the stock is trading at the time of grant;

(x) For management or employee stock benefit plans, no conversion stock is used to fund the plans; and

(xi) Prior to implementation, all such plans are submitted to the appropriate Regional Director for review and approval in accordance with the foregoing standards. In connection with such review, the Regional Director shall consider all relevant supervisory information, including, among other things, the association's capital level, operating history and size of the association. The Regional Director may permit amounts greater than those specified in paragraph (g)(4)(vi) of this section, provided that the aggregate limitations of paragraphs (g)(4)(ii)–(v) of this section are not exceeded.

* * * * *

4. Section 563b.4 is amended by removing the phrases "District Director" and "District Director's" where they appear in paragraph (b)(1) and adding in lieu thereof the phrases "Regional Director" and "Regional Director's", respectively; and by revising the concluding text of paragraph (b)(1) following the notice of filing and paragraph (c) to read as follows:

§ 563b.4 Notice of filing; public statements; confidentiality.

* * * * *

(b) * * *

(1) * * *

Written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the Office if filed within twenty calendar days after the date of this notice. The OTS may, in its discretion, and upon written request, extend the twenty day comment period for an additional twenty calendar days. Failure to provide the written comments in twenty calendar days may preclude the pursuit of any administrative or judicial remedies. Two copies of the comments should be sent to the Chief Counsel, Corporate and Securities Division, one copy to the Corporate Activities Division and one copy to the Regional Director. The proposed plan of conversion and any comments will be available for inspection by any member of the applicant at the Chief Counsel's Office and at the Regional Director's Office. A copy of the plan of conversion may also be inspected at the home office and each branch office of the applicant.

* * * * *

(c) Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or any part of any exhibit included in any application under this part, such information pertaining to such item or exhibit shall be separately bound and labeled "confidential," and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this part shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the Office determines to withhold from public availability under 5 U.S.C. 552 and part 505 of this chapter. Preliminary soliciting materials will be made available upon filing, unless such materials are not otherwise available to the public and are bound and labeled "confidential." The applicant will be advised of any decision by the Office to make public information designated "confidential" by the applicant. Even though sections of the application are considered "confidential," as far as public inspection thereof is concerned, to the extent it deems necessary, the Office may comment on such confidential submissions in any public statement in connection with its decision on the application without prior notice to the applicant.

5. Section 563b.5 is amended by revising paragraphs (d)(4) and (e)(5) to read as follows:

§ 563b.5 Solicitation of proxies; proxy statement.

* * * * *

(d) * * *

(4) Each voting member must be furnished a form of proxy conforming with paragraph (d) of this section. No applicant shall use previously-executed proxies.

(e) * * *

(5) All preliminary copies of material filed pursuant to paragraphs (e)(1), (e)(2) and (e)(4) of this section shall be clearly marked on the cover page "Preliminary Copy". Such preliminary copies shall be public unless otherwise deemed confidential pursuant to § 563b.4(c) of this part.

* * * * *

6. Section 563b.7 is amended by revising paragraphs (f)(1)(ii) and (f)(3), by removing the period at the end of paragraph (f)(1)(iii) and adding a semicolon in its place, and by adding paragraph (f)(1)(iv) to read as follows:

§ 563b.7 Pricing and sale of securities.

(f) * * *

(1) * * *

(ii) The materials shall contain a full appraisal, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein;

* * * * *

(iv) In those instances where the initial appraisal report is deemed to be materially deficient and/or substantially incomplete, the OTS may deem the entire conversion application materially deficient and/or substantially incomplete, and in accordance with the OTS applications processing rules, 12 CFR part 516, decline to further process the application.

* * * * *

(3) In addition to the information required in paragraphs (f)(1) and (f)(2) of this section, the applicant shall file with the Office such additional information with respect to the pricing of the capital stock of the association as the Office may request.

* * * * *

§ 563b.8 [Amended]

7. Section 563b.8 is amended by removing the phrase "District Director" where it appears in paragraphs (e)(1) and (t)(1), and by adding in lieu thereof the phrase "Regional Director".

8. Section 563b.10 is revised to read as follows:

§ 563b.10 Conversion of a savings association through merger with an existing holding company or stock savings association.

A savings association that qualifies for a voluntary supervisory conversion under subpart C of this part may convert to stock form by merging with an existing holding company or interim Federal or state chartered stock association in a transaction in which stock of the existing holding company or resulting association is issued.

9. Section 563b.100 is amended by removing the phrase "90 days" in Form AC, the first paragraph of Item 6 and by adding in lieu thereof the phrase "one year"; and by adding Exhibit 8 to Form AC to read as follows:

§ 563b.100 Form AC—Application for Conversion.

Form AC

* * * * *

Exhibit 8. Business Plans

(a) Furnish a consolidated business plan. The converting association shall provide, as part of the business plan, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

(b) Applicant should follow § 563b.4(c) if the business plan is to be deemed confidential.

10. Section 563b.101 is amended by revising Items 1 and 4(d) of Form PS to read as follows:

§ 563b.101 Form PS—Proxy Statements.

Form PS

* * * * *

Item 1. Notice of Meeting

The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement and the full address, ZIP code and telephone number of the applicant.

In accordance with § 563b.5(d)(4) of this part, the applicant shall not use previously-executed proxies to vote on the plan of conversion.

* * * * *

Item 4. Voting Rights and Vote Required for Approval

* * * * *

(d) The applicant shall not use previously-executed proxies to vote on the plan of conversion.

* * * * *

PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

11. The authority citation for 12 CFR part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828.

12. Section 575.7 is amended by adding paragraph (e) to read as follows:

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

* * * * *

(e) *Procedural and substantive requirements.* The procedural and substantive requirements of §§ 563b.3 through 563b.8 of this subchapter shall apply to all mutual holding company stock issuances under this section, unless clearly inapplicable.

13. Section 575.13 is amended by adding a new sentence at the end of paragraph (a)(4) to read as follows:

§ 575.13 Procedural requirements.

(a) * * *

(4) * * * Notwithstanding the provisions in this paragraph (a)(4), "running" proxies or similar proxies may not be used to vote for a mutual to stock conversion undertaken either by a mutual savings association or a mutual holding company.

* * * * *

Dated: April 7, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–9981 Filed 5–2–94; 8:45 am]

BILLING CODE 6720–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Management of Investments, Liquidity, Interest Rate Risk, and Eligible Investments; Correction

AGENCY: Farm Credit Administration.

ACTION: Correcting amendments.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (58 FR 63034, November 30, 1993) that amended the regulations which govern the investment activities of Farm Credit System banks. This document corrects two typographical errors in the final rule.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the **Federal Register**, a typographical error was inadvertently made in the § 615.5140(a)(8)(i)(B) and (a)(11)(ii).

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

Accordingly, 12 CFR part 615 is corrected by making the following correcting amendments:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS; AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128,

2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart E—Investment Management

§ 615.5140 [Corrected]

Section 615.5140(a)(8)(i)(B) and (a)(11)(ii) is corrected by removing the reference "§ 615.5131(i)" and adding in its place, the reference "§ 615.5131(j)".

Dated: April 26, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–10490 Filed 5–2–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ACE–01]

Establishment of Class E Airspace; Belle Plaine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Belle Plaine, Iowa. The development of a new standard instrument approach procedure (SIAP) at the Belle Plaine Municipal Airport, Belle Plaine, Iowa, utilizing the Cedar Rapids, Iowa, Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) and the Belle Plaine non-directional beacon (NDB) on the airport as a navigational aid has made this action necessary. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 21, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at the Belle Plaine Municipal Airport, Belle Plaine, Iowa (59 FR 8566).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. We discovered there was a minor error in the geographic coordinates of the Belle Plaine Municipal Airport. In addition, there was a reference to the Belle Plaine, Iowa, NDB and Cedar Rapids, Iowa, VORTAC in the official description, which is not required. They were corrected in this document. Other than these changes, this amendment is the same as that proposed in the notice. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Belle Plaine, Iowa, extending upward from 700 feet above the surface excluding that portion which overlies the Cedar Rapids, Iowa, Class E airspace. The development of new SIAPs at Belle Plaine Municipal Airport has made this rule necessary. The intended effect of this rule is to provide adequate Class E airspace for aircraft executing the NDB or VOR/DME–A SIAPs at Belle Plaine Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE IA E5 Belle Plaine, IA [New]

Belle Plaine Municipal Airport, IA
(lat. 41°52′39″ N, long. 92°17′08″ W)

That airspace extending upward from 700 feet above the surface within a 6.5–mile radius of the Belle Plaine Municipal Airport, Iowa, excluding that portion which overlies the Cedar Rapids, Iowa, Class E airspace.

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region

[FR Doc. 94–10378 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–03]

Revision of Class D Airspace; Kansas City, MO, Richard-Gebaur Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace at the Kansas City Richards-Gebaur Airport, Missouri. This change is necessary to exclude the Hillside Airport at Stilwell, Kansas, from this Class D airspace.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace at the Kansas City Richards-Gebaur Airport, Missouri (59 FR 4608).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D airspace at the Kansas City Richards-Gebaur Airport. On September 16, 1993, Airspace Reclassification discontinued the use of the term "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. During the Airspace Reclassification project, the Hillside Airport at Stilwell, Kansas, was to be excluded from the Richards-Gebaur Class D airspace. However, it was inadvertently not addressed in the official description. Hillside is a public use airport which was established in 1956 and serves numerous non-radio aircraft, as well as ultralight vehicles. Under the rules prior to September 16, 1993, an aircraft could land and take off at this airport without contacting the Richards-Gebaur Tower. Under the present rules, an aircraft operating to/from the Hillside Airport must contact this Tower. The intended effect of this rule is to provide access for aircraft utilizing the Hillside Airport without the requirement to establish radio contact with the Richards-Gebaur Tower. The coordinates for this airspace docket are based on North American Datum 83.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE MO D Kansas City, MO [Revised]

Richard-Gebaur Airport, MO
(lat. 38°50′38″ N, long. 94°33′37″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Richards-Gebaur Airport; excluding that airspace from the surface to 1,700 feet MSL bounded on the north by lat. 38°50′00″ N and on the east by long. 94°36′00″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–10376 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ACE–06]

Establishment of Class E Airspace; Sullivan, MO, Sullivan Regional Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Sullivan Regional Airport, Sullivan, Missouri. The development of a standard instrument approach procedure (SIAP) at the Sullivan Regional Airport, Sullivan, Missouri, utilizing a new nondirectional beacon (NDB) has made this action necessary. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed. For aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at the Sullivan Regional Airport, Sullivan, Missouri (59 FR 4611).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as the proposed in the notice. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Sullivan, Missouri, extending from 700 feet AGL to 1200 feet AGL. The

development of a SIAP based on a new NDB located on the Sullivan Regional Airport, Sullivan, Missouri, made this proposal necessary. The intended effect of this rule is to provide adequate Class E airspace for aircraft executing the NDB SIAP at Sullivan Regional Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE MO E5 Sullivan, MO [New]

Sullivan Regional Airport, MO
(lat. 38°14′01″ N, long. 91°09′53″ W)

That airsapce extending upward from 700 feet above the surface within a 6.4-mile radius of Sullivan Regional Airport and within 2.5 miles each side of the 068-degree bearing from the Sullivan Regional Airport extending from the 6.4-mile radius to 6.7 miles northeast of the airport.

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–10380 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27715; Amdt. No. 1599]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

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

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

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

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

By Subscription

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

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

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

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with

Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on April 22, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective June 23, 1994

Gambell, AK, Gambell, NDB or GPS RWY 16, Orig.
Gambell, AK, Gambell, NDB/DME or GPS RWY 34, Amdt. 1
Gulkana, AK, Gulkana, VOR or GPS RWY 32, Amdt. 6
Gulkana, AK, Gulkana, VOR or GPS RWY 14, Amdt. 6
Homer, AK, Homer, NDB or GPS RWY 3, Amdt. 2B
Northway, AK, Northway, NDB or GPS RWY 4, Orig.
Northway, AK, Northway, NDB or GPS RWY 22, Orig.
Northway, AK, Northway, VOR/DME or GPS–A, Orig.
Northway, AK, Northway, VOR or GPS–B, Amdt. 3
Hamilton, AL, Marion County, VOR or GPS RWY 18, Amdt. 4A
Muscle Shoals, AL, Muscle Shoals Regional, VOR/DME or GPS RWY 11, Amdt. 5A
Muscle Shoals, AL, Muscle Shoals Regional, VOR or GPS RWY 29, Amdt. 26A
Tuscaloosa, AL, Tuscaloosa Muni, NDB or GPS RWY 4, Amdt. 10
Tuscaloosa, AL, Tuscaloosa Muni, VOR or TACAN or GPS RWY 22, Amdt. 13
Fort Smith, AR, Fort Smith Regional, VOR or TACAN or GPS RWY 25, Amdt. 20A
Fort Smith, AR, Fort Smith Regional, VOR/DME or TACAN or GPS RWY 7, Amdt. 10
Jonesboro, AR, Jonesboro Muni, VOR or GPS RWY 23, Amdt. 9
Magnolia, AR, Magnolia Muni, NDB or GPS RWY 35, Orig.
Mountain Home, AR, Baxter County Regional, VOR or GPS–A, Amdt. 9
Mountain Home, AR, Baxter County Regional, VOR/DME RNAV or GPS RWY 5, Amdt. 1
Douglas Bisbee, AZ, Bisbee Douglas Intl, VOR/DME or GPS RWY 17, Amdt. 5
Phoenix, AZ, Phoenix-Deer Valley Muni, NDB or GPS RWY 25L, Amdt. 3
Daggett, CA Barstow-Daggett, VOR or TACAN or GPS RWY 21, Amdt. 8
Firebaugh, CA, Firebaugh, VOR/DME or GPS–A, Amdt. 2
Fortuna, CA, Rohnerville, VOR or GPS RWY 11, Amdt. 2
Modesto, CA, Modesto City-County Airport-Harry Sham Field, VOR or GPS RWY 28R, Amdt. 10A
Napa, CA, Napa County, VOR or GPS RWY 6, Amdt. 11
Oakland, CA Metropolitan Oakland Intl, VOR or GPS RWY 9R, Amdt. 7
Oakland, CA Metropolitan Oakland Intl, VOR/DME or GPS RWY 27L, Amdt. 10
Palmdale, CA, Palmdale Production Flt/Test Instln AF Plant 42, VOR/DME or TACAN or GPS RWY 25, Amdt. 6
Sacramento, CA, Mather Field, VOR or GPS RWY 4R, Orig.
Sacramento, CA, Mather Field, VOR/DME or GPS RWY 22L, Orig.
Willows, CA, Willows-Glenn County, VOR/DME or GPS RWY 34, Amdt. 4
Grand Junction, CO, Walker Field, VOR or GPS RWY 11, Amdt. 1
Montrose, CO, Montrose Regional VOR/DME or GPS RWY 13, Amdt. 8A
Rifle, CO, Garfield County Regional, VOR/DME or GPS–C, Orig.
New Haven, CT, Tweed-New Haven, VOR or GPS RWY 2, Amdt. 22
New Haven, CT, Tweed-New Haven, VOR or GPS–A, Amdt. 2
Washington, DC, Washington National, VOR/DME or GPS RWY 15, Orig.
Wilmington, DE, New Castle County, VOR or GPS RWY 19, Amdt. 4
Wilmington, DE, New Castle County, VOR or GPS RWY 1, Amdt. 3
Immokalee, FL, Immokalee, VOR or GPS RWY 18, Amdt. 4
Marathon, FL, Marathon, NDB or GPS RWY 7, Amdt. 2A
Miami, FL, Miami Intl, VOR or GPS RWY 12, Amdt. 29
Miami, FL, Miami Intl, RNAV or GPS RWY 9L, Amdt. 9
Miami, FL, Miami Intl, NDB or GPS RWY 27L, Amdt. 18
Miami, FL, Miami Intl, VOR or GPS RWY 30, Amdt. 8
Miami, FL, Miami Intl, RNAV or GPS RWY 27R, Amdt. 5A
Titusville, FL, Space Center Executive, NDB or GPS RWY 18, Amdt. 11
Dalton, GA, Dalton Muni, NDB or GPS RWY 14, Orig.
Hazlehurst, GA, Hazlehurst, NDB or GPS RWY 14, Amdt. 3
Milledgeville, GA, Baldwin County, NDB or GPS RWY 28, Orig.
Moultrie, GA, Moultrie Muni, VOR or GPS RWY 22, Amdt. 11A
Statesboro, GA, Statesboro Muni, NDB or GPS RWY 32, Amdt. 4
Sylvania, GA, Plantation Airpark, NDB or GPS RWY 23, Amdt. 1A
Valdosta, GA, Valdosta Regional, VOR or GPS RWY 35, Orig.
Valdosta, GA, Valdosta Regional, VOR or GPS RWY 17, Orig.
Kailua-Kona, HI, Keahole-Kona International, VOR or TACAN or GPS RWY 35, Amdt. 6
Kailua-Kona, HI, Keahole-Kona International, VOR/DME or TACAN or GPS RWY 17, Amdt. 3
Charles City, IA, Charles City Muni, NDB or GPS RWY 30, Amdt. 2C
Charles City, IA, Charles City Muni, NDB or GPS RWY 12, Orig. B
Cherokee, IA, Cherokee Muni, NDB or GPS RWY 36, Amdt. 4
Creston, IA, Creston Muni, NDB or GPS RWY 34, Orig. A
Independence, IA, Independence Muni, NDB or GPS RWY 17, Amdt. 2
Mason City, IA, Mason City Muni, VOR or GPS RWY 35, Amdt. 5A
Mason City, IA, Mason City Muni, VOR/DME or GPS RWY 17, Amdt. 3A
Mason City, IA, Mason City Muni, RNAV or GPS RWY 30, Amdt. 5
Orange City, IA, Orange City Muni, NDB or GPS RWY 34, Amdt. 3
Sheldon, IA, Sheldon Muni, VOR or GPS RWY 33, Amdt. 1
Boise, ID, Boise Air Terminal (Gowen Field), VOR/DME or GPS RWY 10R, Orig.
Twin Falls, ID, Twin Falls-Sun Valley Regional-Joslin Field, NDB or GPS RWY 25, Amdt. 5
Twin Falls, ID, Twin Falls-Sun Valley Regional-Joslin Field, VOR or GPS RWY 7, Amdt. 3

Kankakee, IL, Greater Kankakee, VOR or GPS RWY 4, Amdt. 5
Kankakee, IL, Greater Kankakee, VOR or GPS RWY 22, Amdt. 6
Morris, IL, Morris Municipal-James R. Washburn Field, VOR or GPS–A, Amdt. 9
Mount Carmel, IL, Mount Carmel Muni, VOR or GPS RWY 22, Amdt. 7
Mount Carmel, IL, Mount Carmel Muni, NDB or GPS RWY 4, Amdt. 3
Mount Sterling, IL, Mount Sterling Muni, VOR/DME or GPS–A, Orig.
Salem, IL, Salem-Leckrone, NDB or GPS RWY 18, Amdt. 8
Angola, IN, Tri-State Steuben County, NDB or GPS RWY 5, Amdt. 6
Elkhart, IN, Elkhart Muni, RNAV or GPS RWY 17, Amdt. 3
Elkhart, IN, Elkhart Muni, VOR or GPS RWY 27, Amdt. 13A
Elkhart, IN, Elkhart Muni, VOR or GPS RWY 9, Amdt. 5
Elkhart, IN, Elkhart Muni, VOR/DME or GPS RWY 35, Amdt. 2
Jeffersonville, IN, Clark County, VOR or GPS RWY 18, Amdt. 2
Richmond, IN, Richmond Muni, VOR or GPS RWY 24, Amdt. 11
Richmond, IN, Richmond Muni, VOR or GPS RWY 6, Amdt. 10
Richmond, IN, Richmond Muni, VOR or GPS RWY 33, Orig.
Washington, IN, Daviess County, NDB or GPS RWY 18, Amdt. 5
Anthony, KS, Anthony Muni, VOR or GPS–A, Orig.
Atwood, KS, Atwood-Rawlins County City-County, NDB or GPS RWY 16, Amdt. 1
Colby, KS, Shaltz Field, NDB or GPS RWY 17, Orig.
Concordia, KS, Blosser Muni, NDB or GPS RWY 17, Amdt. 1A
Dodge City, KS, Dodge City Regional, VOR/DME or GPS RWY 32, Amdt. 3A
El Dorado, KS, Captain Jack Thomas/El Dorado, NDB or GPS RWY 4, Amdt. 2
Elkhart, KS, Elkhart-Morton County, NDB or GPS RWY 35, Orig.
McPherson, KS, McPherson, NDB or GPS RWY 18, Orig.
Ulysses, KS, Ulysses, NDB or GPS RWY 12, Amdt. 2
Louisville, KY, Bowman Field, NDB or GPS RWY 32, Amdt. 14
Louisville, KY, Bowman Field, VOR or GPS RWY 14, Amdt. 90
Louisville, KY, Bowman Field, VOR or GPS RWY 24, Amdt. 6A
Shreveport, LA, Shreveport Downtown, VOR or GPS RWY 14, Amdt. 14
Marksville, LA, Marksville Muni, VOR/DME or GPS–A, Amdt. 3
Marksville, LA, Marksville Muni, NDB or GPS RWY 4, Amdt. 1A
Boston, MA, General Edward Lawrence Logan Intl, VOR/DME or GPS–A, Orig.
Boston, MA, General Edward Lawrence Logan Intl, NDB or GPS RWY 4R, Amdt. 22
Boston, MA, General Edward Lawrence Logan Intl, VOR/DME or GPS RWY 15R, Orig.
Boston, MA, General Edward Lawrence Logan Intl, NDB or GPS RWY 22L, Amdt. 9
Salisbury, MD, Salisbury-Wicomico County Regional, VOR or GPS RWY 5, Amdt. 8A
Salisbury, MD, Salisbury-Wicomico County Regional, VOR or GPS RWY 23, Amdt. 8A
Salisbury, MD, Salisbury-Wicomico County Regional, VOR or GPS RWY 32, Amdt. 8A
Houlton, ME, Houlton Intl, VOR or GPS RWY 5, Amdt. 9
Millinocket, ME, Millinocket Muni, NDB or GPS RWY 29, Amdt. 3
Millinocket, ME, Millinocket Muni, VOR or GPS–A, Amdt. 10
Alma, MI, Gratiot Community, NDB or GPS RWY 9, Amdt. 5
Alma, MI, Gratiot Community, VOR/DME RNAV or GPS RWY 27, Amdt. 6
Gladwin, MI, Charles C. Zettel Memorial, NDB or GPS RWY 27, Amdt. 3A
Greenville, MI, Greenville Muni, VOR/DME or GPS–A, Orig.
Ironwood, MI, Gogebic County, VOR/DME or GPS RWY 27, Amdt. 8
Ironwood, MI, Gogebic County, VOR or GPS RWY 9, Amdt. 12
Marquette, MI, Marquette County, VOR or GPS RWY 8, Amdt. 2A
Marquette, MI, Marquette County, VOR or GPS RWY 26, Amdt. 2A
Marshall, MI, Brooks Field, VOR or GPS RWY 28, Amdt. 13
Saginaw, MI, Tri-City Intl, VOR or GPS RWY 5, Amdt. 14
Saginaw, MI, Tri-City Intl, VOR or GPS RWY 14, Amdt. 13
Saginaw, MI, Tri-City Intl, VOR or GPS RWY 23, Amdt. 14
Saginaw, MI, Tri-City Intl, VOR or GPS RWY 32, Amdt. 9
Bemidji, MN, Bemidji-Beltrami County, VOR or GPS RWY 13, Amdt. 16A
Bemidji, MN, Bemidji-Beltrami County, VOR/DME or TACAN or GPS RWY 31, Amdt. 12A
Benson, MN, Benson Muni, NDB or GPS RWY 14, Amdt. 5
Grand Rapids, MN, Grand Rapids/Itasca County-Gordon Newstrom Field, VOR/DME or GPS RWY 16, Orig.
Grand Rapids, MN, Grand Rapids/Itasca County-Gordon Newstrom Field, VOR or GPS RWY 34, Amdt. 9
Pipestone, MN, Pipestone Muni, NDB or GPS RWY 36, Amdt. 5A
Willmar, MN, Willmar Muni-John L. Rice Field, VOR or GPS RWY 10, Amdt. 1A
Willmar, MN, Willmar Muni-John L. Rice Field, VOR or GPS RWY 28, Amdt. 1A
Grain Valley, MO, East Kansas City, VOR/DME RNAV or GPS RWY 27, Amdt. 1
Grain Valley, MO, East Kansas City, VOR or GPS RWY 23, Amdt. 2
Lebanon, MO, Floyd W. Jones Lebanon, NDB or GPS RWY 36, Amdt. 5
Malden, MO, Malden Muni, VOR or GPS RWY 31, Amdt. 7A
Malden, MO, Malden Muni, RNAV or GPS RWY 13, Orig.
Mountain View, MO, Mountain View, NDB or GPS RWY 28, Amdt. 3
Poplar Bluff, MO, Poplar Bluff Muni, NDB or GPS RWY 36, Amdt. 1A
Clarksdale, MS, Fletcher Field, NDB or GPS–A, Orig.
Clarksdale, MS, Fletcher Field, NDB or GPS RWY 36, Amdt. 7
Greenwood, MS, Greenwood-Leflore, RNAV or GPS RWY 36, Amdt. 3
Greenwood, MS, Greenwood-Leflore, VOR or GPS RWY 5, Amdt. 9
Greenwood, MS, Greenwood-Leflore, NDB or GPS RWY 18, Amdt. 1
Miles City, MT, Frank Wiley Field, VOR or GPS RWY 4, Amdt. 11
Miles City, MT, Frank Wiley Field, VOR/DME or GPS RWY 22, Amdt. 8
Shelby, MT, Shelby, NDB or GPS RWY 23, Amdt. 6
Elkin, NC, Elkin Muni, NDB or GPS RWY 25, Amdt. 1
Kenansville, NC, Duplin County, NDB or GPS RWY 22, Amdt. 5
Morganton, NC, Morganton-Lenoir, NDB or GPS RWY 3, Amdt. 4
New Bern, NC, Craven County Regional, VOR or GPS RWY 4, Amdt. 3A
New Bern, NC, Craven County Regional, VOR or GPS RWY 22, Amdt. 1B
Oxford, NC, Henderson-Oxford, NDB or GPS RWY 6, Amdt. 1B
Salisbury, NC, Rowan County, VOR or GPS–A, Amdt. 7
Salisbury, NC, Rowan County, VOR or GPS RWY 2, Amdt. 5
Salisbury, NC, Rowan County, VOR or GPS RWY 20, Amdt. 1
Salisbury, NC, Rowan County, NDB or GPS–B, Amdt. 10
Jamestown, ND, Jamestown Muni, VOR or GPS RWY 13, Amdt. 7
Jamestown, ND, Jamestown Muni, VOR or GPS RWY 31, Amdt. 8
Alliance, NE, Alliance Muni, VOR or GPS RWY 12, Amdt. 2
O'Neill, NE, The O'Neill Muni-John L. Baker Field, VOR or GPS RWY 13, Amdt. 5
O'Neill, NE, The O'Neill Muni-John L. Baker Field, VOR or GPS RWY 31, Amdt. 1
Scottsbluff, NE, William B. Heilig Field, NDB or GPS RWY 12, Amdt. 7
Scottsbluff, NE, William B. Heilig Field, VOR or TACAN or GPS RWY 23, Amdt. 10
Scottsbluff, NE, William B. Heilig Field, VOR/DME or GPS RWY 5, Amdt. 3
York, NE, York Muni, NDB or GPS RWY 35, Amdt. 2
Claremont, NH, Claremont Muni, NDB or GPS–A, Orig.
Lebanon, NH, Lebanon Muni, NDB or GPS–B, Amdt. 3
Teterboro, NJ, Teterboro, VOR/DME RNAV or GPS RWY 24, Orig. A
Teterboro, NJ, Teterboro, VOR/DME or GPS–B, Amdt. 2
Teterboro, NJ, Teterboro, VOR/DME or GPS–A, Amdt. 2
Teterboro, NJ, Teterboro, NDB or GPS RWY 6, Amdt. 17A
Vineland, NJ, Kroelinger, VOR or GPS–B, Orig.
Artesia, NM, Artesia Muni, NDB or GPS RWY 12, Amdt. 2
Artesia, NM, Artesia Muni, NDB or GPS RWY 30, Amdt. 2
Zuni Pueblo, NM, Black Rock, VOR/DME or GPS RWY 7, Orig.
Reno, NV, Reno Cannon Intl, VOR or GPS–D, Amdt. 6
Reno, NV, Reno Cannon Intl, NDB or GPS RWY 16R, Amdt. 5
Newburgh, NY, Stewart Intl, RNAV or GPS RWY 16, Amdt. 2A
Newburgh, NY, Stewart Intl, NDB or GPS RWY 9, Amdt. 7
Newburgh, NY, Stewart Intl, RNAV or GPS RWY 27, Amdt. 1A

Poughkeepsie, NY, Dutchess County, VOR or GPS–A, Amdt. 10
Poughkeepsie, NY, Dutchess County, VOR/DME or TACAN or GPS RWY 24, Amdt. 3
Poughkeepsie, NY, Dutchess County, RNAV or GPS RWY 6, Amdt. 5
Schenectady, NY, Schenectady County, NDB or GPS RWY 22, Amdt. 14
Schenectady, NY, Schenectady County, NDB or GPS RWY 28, Amdt. 9
Ashland, OH, Ashland County, NDB or GPS RWY 18, Amdt. 8
Ashland, OH, Ashland County, VOR or GPS–A, Amdt. 6
Cleveland, OH, Burke Lakefront, NDB or GPS RWY 24R, Orig. B
Ottawa, OH, Putman County, VOR or GPS RWY 27, Amdt. 1
Toledo, OH, Toledo Express, VOR/DME RNAV or GPS RWY 16, Amdt. 5
Toledo, OH, Toledo Express, VOR/DME or GPS RWY 34, Amdt. 5
Toledo, OH, Toledo Express, NDB or GPS RWY 7, Amdt. 23
Van Wert, OH, Van Wert County, NDB or GPS RWY 9, Amdt. 1
Versailles, OH, Darke County, NDB or GPS RWY 9, Amdt. 7
Wilmington, OH, Airborne Airpark, VOR or GPS RWY 4, Amdt. 4
Wilmington, OH, Airborne Airpark, VOR/DME or GPS RWY 22, Amdt. 3
Blackwell, OK, Blackwell-Tonkawa Muni, VOR/DME RNAV or GPS RWY 17, Amdt. 2
Blackwell, OK, Blackwell-Tonkawa Muni, VOR or GPS–A, Amdt. 3
Cushing, OK, Cushing Muni, NDB or GPS RWY 35, Amdt. 3B
Durant, OK, Eaker Field, NDB or GPS RWY 35, Amdt. 5
Guthrie, OK, Guthrie Muni, NDB or GPS RWY 16, Amdt. 3
Guymon, OK, Guymon Muni, NDB or GPS RWY 18, Amdt. 5
Tulsa, OK, Tulsa Intl, VOR or TACAN or GPS RWY 26, Amdt. 22
Tulsa, OK, Tulsa Intl, NDB or GPS RWY 36R, Amdt. 19
Tulsa, OK, Tulsa Intl, VOR/DME or TACAN or GPS RWY 8, Amdt. 3A
Tulsa, OK, Tulsa Intl, NDB or GPS RWY 18L, Amdt. 10
Klamath Falls, OR, Klamath Falls Intl, VOR/DME or TACAN or GPS RWY 14, Amdt. 3
Klamath Falls, OR, Klamath Falls Intl, VOR or GPS–B, Amdt. 3
Klamath Falls, OR, Klamath Falls Intl, NDB or GPS RWY 32, Amdt. 1
Pendleton, OR, Eastern Oregon Regional At Pendleton, NDB or GPS–A, Amdt. 7
Pendleton, OR, Eastern Oregon Regional At Pendleton, VOR or GPS RWY 7, Amdt. 14
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 17, Amdt. 4
Philadelphia, PA, Philadelphia Intl, VOR/DME or GPS–A, Amdt. 1
Philadelphia, PA, Philadelphia Intl, NDB or GPS RWY 27L, Amdt. 5
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 35, Amdt. 3A
Pittsburgh, PA, Allegheny County, VOR/DME RNAV or GPS RWY 10, Amdt. 6
Pittsburgh, PA, Allegheny County, VOR or GPS RWY 5, Amdt. 9A
Pittsburgh, PA, Allegheny County, NDB or GPS RWY 28, Amdt. 22A
Washington, PA, Washington County, NDB or GPS RWY 27, Orig. A
Washington, PA, Washington County, VOR or GPS–B, Amdt. 6A
Aguadilla, PR, Rafael Hernandez, VOR/DME or TACAN or GPS RWY 8, Amdt. 1
Providence, RI, Theodore Francis Green State, VOR or GPS RWY 34, Amdt. 4
Aiken, SC, Aiken Muni, NDB or GPS RWY 24, Amdt. 9
Aiken, SC, Aiken Muni, VOR/DME or GPS–A, Orig.
Greenville, SC, Donaldson Center, NDB or GPS RWY 4, Amdt. 4
Kingstree, SC, Williamsburg County, NDB or GPS RWY 14, Amdt. 3
North Myrtle Beach, SC, Grand Strand, VOR or GPS RWY 5, Amdt. 19
North Myrtle Beach, SC, Grand Strand, VOR or GPS RWY 23, Amdt. 18
Brookings, SD, Brookings Muni, VOR or GPS RWY 12, Amdt. 10
Brookings, SD, Brookings Muni, VOR or GPS RWY 30, Amdt. 9
Centerville, TN, Centerville Muni, VOR/DME or GPS RWY 2, Amdt. 2
Greeneville, TN, Greeneville Muni, NDB or GPS RWY 5, Amdt. 4
Lexington, TN, Franklin Wilkins, VOR or GPS RWY 33, Amdt. 9
Morristown, TN, Moore-Murrell, NDB or GPS RWY 5, Amdt. 4
Pulaski, TN, Abernathy Field, VOR/DME or GPS RWY 33, Orig. A
Pulaski, TN, Abernathy Field, NDB or GPS RWY 15, Amdt. 4
Savannah, TN, Savannah-Hardin County, NDB or GPS RWY 18, Amdt. 3A
Brady, TX, Curtis Field, NDB or GPS RWY 17, Amdt. 2
Carrizo Springs, TX, Dimmit County, NDB or GPS RWY 31, Amdt. 2
Carthage, TX, Panola County-Sharpe Field, NDB or GPS RWY 35, Orig.
Houston, TX, Andrau Airpark, NDB or GPS RWY 16, Amdt. 16
Houston, TX, David Wayne Hooks Memorial, RNAV or GPS RWY 35L, Amdt. 3
Houston, TX, David Wayne Hooks Memorial, RNAV or GPS RWY 17R, Amdt. 3
Houston, TX, William P. Hobby, VOR/DME or GPS RWY 35, Amdt. 2
Houston, TX, William P. Hobby, VOR/DME or GPS RWY 30L, Amdt. 16
Houston, TX, William P. Hobby, VOR/DME or GPS RWY 4, Amdt. 17
Houston, TX, William P. Hobby, VOR or GPS RWY 12R, Amdt. 18
Houston, TX, William P. Hobby, VOR/DME or GPS RWY 22, Amdt. 23A
Jacksonville, TX, Cherokee County, VOR/DME or GPS RWY 13, Amdt. 2
McKinney, TX, McKinney Muni, VOR/DME or GPS–A, Amdt. 3
Mineral Wells, TX, Mineral Wells, VOR or GPS RWY 31, Amdt. 9A
Olney, TX, Olney Muni, NDB or GPS RWY 17, Amdt. 3
Paris, TX, Cox Field, VOR/DME or GPS RWY 35, Amdt. 10
Plainview, TX, Hale County, VOR or GPS RWY 4, Amdt. 8
Snyder, TX, Winston Field, NDB or GPS RWY 35, Amdt. 1
Sonora, TX, Sonora Muni, NDB or GPS RWY 18, Amdt. 3
Van Horn, TX, Culberson County, NDB or GPS RWY 21, Amdt. 1
Waco, TX, Waco Regional VOR/DME or GPS RWY 32, Amdt. 13
Waco, TX, Waco Regional VOR or GPS RWY 14, Amdt. 20
Waco, TX, Waco Regional NDB or GPS RWY 19, Amdt. 17
Salt Lake City UT, Salt Lake City Intl, VOR/DME or TACAN or GPS RWY 34, Amdt. 6
Salt Lake City UT, Salt Lake City Intl, VOR or TACAN or GPS RWY 16, Amdt. 22
Salt Lake City UT, Salt Lake City Intl, VOR or TACAN or GPS RWY 17, Amdt. 10
Culpeper, VA, Culpeper County, NDB or GPS–B, Orig.
Culpeper, VA, Culpeper County, VOR or GPS–A, Amdt. 4
Culpeper, VA, Culpeper County, VOR/DME RNAV or GPS RWY 22, Amdt. 1
South Boston, VA, William M. Tuck, VOR or GPS–A, Amdt. 6
Wakefield, VA, Wakefield Muni, NDB or GPS RWY 20, Amdt. 4
Wise, VA, Lonesome Pine, RNAV or GPS RWY 24, Amdt. 2
Burlington/Mount Vernon, WA, Skagit Regional/Bay View, NDB or GPS RWY 10, Amdt. 2
Renton, VA, Renton Muni, NDB or GPS RWY 15, Amdt. 2
Seattle, WA, Seattle-Tacoma Intl, VOR or GPS RWY 34L/R, Amdt. 8
Seattle, WA, Seattle-Tacoma Intl, VOR or GPS RWY 16L/R, Amdt. 12
Clintonville, WI, Clintonville Muni, NDB or GPS RWY 32, Amdt. 6
Fort Atkinson, WI, Fort Atkinson Muni, VOR or GPS–A, Orig.
Manitowish Waters, WI, Manitowish Waters, NDB or GPS RWY 32, Orig.
Manitowoc, WI, Manitowoc County, VOR or GPS RWY 35, Amdt. 12
Manitowoc, WI, Manitowoc County, VOR or GPS RWY 17, Amdt. 13
Platteville, WI, Grant County, VOR/DME RNAV or GPS RWY 25, Amdt. 6
Sturgeon Bay, WI, Door County Cherryland, NDB or GPS RWY 1, Amdt. 9
West Bend, WI, West Bend Muni, VOR or GPS RWY 24, Amdt. 2
West Bend, WI, West Bend Muni, RNAV or GPS RWY 13, Amdt. 5
West Bend, WI, West Bend Muni, NDB or GPS RWY 31, Amdt. 10
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, VOR or GPS–A, Amdt. 11
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, NDB or GPS–18, Amdt. 15
Parkersburg, WV, Wood County Airport Gill Robb Wilson Field, VOR or GPS RWY 21, Amdt. 14
Big Piney, WV, Big Piney-Marbleton, VOR or GPS RWY 31, Amdt. 3
Riverton, WY, Riverton Regional, VOR or GPS RWY 28, Amdt. 8
Riverton, WY, Riverton Regional, VOR or GPS RWY 10, Amdt. 8

The following are corrected procedure titles adding "or GPS." published in Transmittal Letter 94–09.

Hot Springs, AR, Memorial Field, VOR or GPS–2 RWY 5, Amdt. 3

Bedford, IN, Virgil I. Grissom Muni, VOR/DME or GPS RWY 13, Amdt. 9
Manistee, MI, Manistee County-Blacker, VOR or GPS RWY 9, Amdt. 11
Manistee, MI, Manistee County-Blacker, VOR or GPS RWY 27, Amdt. 11
Alexandria, MN, Chandler Field, VOR or GPS RWY 22, Amdt. 14
Laconia, NH, Laconia Muni, NDB or GPS RWY 8, Amdt. 8
Las Vegas, NV, McCarran Intl, VOR/DME or GPS RWY 1R, Orig.
Aberdeen, SD, Aberdeen Regional, VOR/DME or GPS RWY 13, Amdt. 11

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 7

National Institute of Standards and Technology

15 CFR Part 285

[Docket No. 930103–4017]

RIN 0693–AB15

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The Director of the National Institute of Standards and Technology, United States Department of Commerce, is today issuing a final rule making changes to regulations previously found at 15 CFR part 7 pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). The NVLAP procedures are redesignated as part 285 of title 15 of the Code of Federal Regulations, and are revised to expand the procedures to include accreditation of calibration laboratories; update the procedures for compatibility with conformity assurance and assessment concepts; assure consistency with relevant International Organization for Standardization (ISO) documents (e.g., ISO Guides 25, 38, 43, 58, and 9000); and facilitate and promote acceptance of calibration and test results between countries to avoid barriers to trade. Provisions in this regard will facilitate cooperation between laboratories and other bodies to assist in the exchange of information and experience, harmonize standards and procedures, and establish the basis for bi-lateral and multi-lateral agreements.

EFFECTIVE DATE: This rule is effective June 2, 1994.

ADDRESSES: Albert D. Tholen, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899, telephone number (301) 975–4016.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Chief, National Voluntary Laboratory Accreditation Program, (301) 975–4016.

SUPPLEMENTARY INFORMATION: The Director of the National Institute of Standards and Technology, (NIST) is today issuing a final rule making changes to regulations previously found at 15 CFR Part 7 pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). NVLAP provides an unbiased third party evaluation and recognition of laboratory performance, as well as expert technical assistance to upgrade that performance, by accrediting calibration laboratories and testing laboratories found competent to perform specific tests or calibrations.

Competence is defined as the ability of a laboratory to meet the NVLAP conditions set out in the NVLAP regulations and to conform to the criteria in NVLAP publications for particular calibration and test methods. Specifically, NVLAP accreditation indicates that a laboratory's quality system, staff, facilities and equipment, calibration protocols, methods and procedures, records and reports have been evaluated and found to meet NVLAP criteria.

Accreditation is granted following successful completion of a process which includes submission of an application and payment of fees by the laboratory, an on-site assessment, resolution of any deficiencies identified during the on-site assessment, participation in proficiency testing, technical evaluation, and administrative review. The accreditation is formalized through issuance of a Certificate of Accreditation and Scope of Accreditation and is publicized by announcement in various government and private media. NVLAP accreditation does not imply any guarantee or certification of laboratory performance or test/calibration data; it is solely a finding of laboratory competence.

NVLAP accreditation is available to commercial laboratories, manufacturers' in-house laboratories, university laboratories, and federal, state and local government laboratories. Foreign-based laboratories may also be accredited if they meet the same requirements as domestic laboratories and pay any additional fees required for travel expenses.

NVLAP is comprised of a series of laboratory accreditation programs (LAPs) which are established on the basis of requests and demonstrated need. Each LAP includes specific calibration and/or test standards and related methods and protocols assembled to satisfy the unique needs for accreditation in a field of testing, field of calibration, product or service.

Description of the Changes

The NVLAP procedures are redesignated as part 285 of title 15 of the Code of Federal Regulations; expanded to include accreditation of calibration laboratories; updated for compatibility with conformity assurance and assessment concepts; made consistent with relevant International Organization for Standardization (ISO) documents (e.g., ISO Guides 25, 38, 43, 58, and 9000); revised to facilitate and promote acceptance of calibration and test results between countries to avoid barriers to trade; and to eliminate references to the NVLAP advisory committee. Section D has been replaced with language essentially identical to ISO Guide 25. Provisions in this regard will facilitate cooperation between laboratories and other bodies to assist in the exchange of information and experience, harmonize standards and procedures, and establish the basis for bi-lateral and multi-lateral agreements.

Summary of Comments

On July 27, 1993, the National Institute of Standards and Technology published a notice of proposed rulemaking in the **Federal Register** (58 FR 40087). A total of 11 letters were received: Four trade associations, three manufacturers, one government agency, one laboratory accrediting organization, one testing laboratory, and one consultant commented. All eleven supported the proposal, especially the changes in procedures that will result in achieving compatibility with international standards and guides and broadening the scope of NVLAP to include accreditation of calibration laboratories.

Other than recommendations to strengthen the national and international recognition of NVLAP accredited laboratory data, the comments covered a wide range of suggestions made by only one or two of the respondents. Recommendations are addressed below with a summary "Recommendation" and a "Response" for each.

Comment. One accreditation organization and one consultant

suggested that NVLAP clarify § 285.24 Denying, Suspending, and revoking accreditation, to specify the conditions for making a suspension decision vis-a-vis a revocation decision.

Response. Section 285.24 (e) clearly states that invoking suspension or revocation "will depend on the nature of the violation(s)". It is very difficult to be prescriptive because of the vast possible combinations of laboratory operations and deficiencies. Selecting suspension action implies the expectation that deficiencies can be resolved before actual suspension is invoked; additionally, if suspension is invoked, the expectation is that it will be rather short lived. Revocation, in contrast, is clearly used in cases of more serious deficiencies that are not likely to be resolved. The return of the Certificate and Scope of Accreditation are required under revocation; it is expected that suspension will be short lived, therefore return of the Certificate and Scope are not required.

Comment. One manufacturer and one laboratory suggested that NVLAP procedures should provide for an "office of government liaison" to work toward reduction of redundant accreditation programs in the United States to save laboratories the expense of paying for multiple programs.

Response. Although redundant programs and multiple audits cause confusion and added expense to accredited laboratories, NVLAP has no authority to add a provision regarding redundant programs and/or multiple audits. The NVLAP process is designed so that NVLAP itself does not offer a LAP that duplicates one that exists or could be offered by a public sector accreditor.

Comment. One consultant suggested that although a definition is provided for the term "Certificate of Accreditation", a definition is needed for the term "Certificate" as used in the definition of "Reference material".

Response. See NIST Special Publication 260, "Standard Reference Materials Catalog", for definition and discussion of the term "certificate" as it applies to Standard Reference Materials. Defining the term in the NVLAP procedures would be confusing and out of context with its use.

Comment. One manufacturer suggested that part 285 should be referenced in § 285.6 NVLAP documentation.

Response. Section 285.6 (a) will be changed to include such a reference.

Comment. One trade association suggested that NVLAP modify the definition for Authorized Representative in § 285.5 Definitions to provide an organization with more flexibility in naming an Authorized Representative.

Response. This section will be reworded to provide additional flexibility by stating that the Authorized Representative of an accredited laboratory may be an individual who is authorized by the laboratory or the parent organization.

Comment. One manufacturer suggested adding a definition for Competent to § 285.5 Definitions.

Response. The definition of Competence will be added as "the ability of a laboratory to meet the NVLAP conditions and to conform to the criteria in NVLAP publications for specific calibration and test methods".

Comment. One manufacturer suggested modifying the definition of NVLAP in § 285.5 Definitions to include its relationship to NIST.

Response. Agree. The definition for NVLAP will be changed to state that NVLAP "is an Office within the National Institute of Standards and Technology".

Comment. One trade association suggested changing the definition of Traceability of the accuracy—in § 285.5 Definitions by changing "primary" standard to "reference" standard.

Response. The definition is correct as written. Traceability follows a path which may include the "reference standard" in the laboratory but, as the definition states, must be traceable "ultimately to a primary standard".

Comment. One trade association suggested that § 285.33 (k) Certificates and reports identify the type of laboratory issuing the certificate and report (e.g., independent, manufacturer's, etc.). It is the belief of the writer of this comment that "in-house" laboratories can not necessary produce "unbiased" results.

Response. No change is needed. Information describing the type of laboratory accredited is provided by the laboratory in its application and included in the NVLAP data base. However, the type of laboratory has no bearing on the accreditation decision; rather, the accreditation decision is based on the judgment (using results from on-site assessments, proficiency testing, and monitoring visits) that the laboratory meets all of the criteria established for a particular Laboratory Accreditation Program (LAP), independent of the "organizational" association of the laboratory.

Comment: One consultant suggested revision of § 285.23(a) Granting and renewing accreditation to remove decisions based on variations of compliance.

Response: Full compliance results in accreditation action. Less than full compliance can result in accreditation or other actions depending on variation from full compliance in terms of deficiencies and the expectations of corrective action.

Comment: One consultant suggested that § 285.23(b)(3) Granting and renewing accreditation should contain a stronger statement than "reminding" laboratories of their legal obligations.

Response: NVLAP has no responsibility or authority to do more than remind laboratories of this fact.

Comment: One trade association and one laboratory suggested that §§ 285.32(a)(10) and 285.33(b)(2)(ii) and (iii) be either deleted or limited to ensure that the requirement for laboratories to avoid undue or coercive commercial or financial pressures on staff are not applied to the normal course of employer-employee and independent contractor relationships of a manufacturer's in-house laboratory.

Response: These Sections clearly avoid undue interference by limiting the requirement to "pressures which might adversely affect the quality of the work." Accreditation of a laboratory depends on NVLAP's confidence that the laboratory will provide accurate test and calibration services. These services must no be degraded by pressures of any kind. NVLAP cannot deal with degrees or types of pressure, only with the accuracy of data provided to customers.

Comment: One trade association suggested that NVLAP needs to clarify its policy for addressing the recognition of foreign-based laboratories based on accreditation by a foreign government or accrediting organization.

Response: The policy will be clarified by adding to § 285.11 Requesting a LAP a new paragraph (f) which states that "consistent with applicable laws and regulations, the Director may negotiate and conclude agreements with the governments of other countries for NVLAP recognition of foreign laboratories. At a minimum, any agreement must provide that accredited foreign laboratories meet conditions for accreditation comparable to and consistent with those set out in these requirements".

Comment: One manufacturer suggested deleting the requirement in § 285.26 Change in status of laboratory for laboratories to advise NVLAP of any change in location and/or configuration of its facilities.

Response: NVLAP must get this information prior to the laboratory making any changes. The fact of moving or reconfiguration of a laboratory could

significantly affect the quality of its testing or calibration activities.

Comment: One trade association suggested revising § 285.32(a)(6) Conditions for accreditation, to limit the services that a laboratory offers to customers to NVLAP accredited areas.

Response: NVLAP accreditation does not limit the freedom of laboratories to offer services outside the scope of accreditation. NVLAP only limits laboratories from claiming accreditation for services not included on their Scopes of Accreditation issued to the laboratories.

Comment: One trade association asked that the regulation be made more specific in defining the meaning of "staffing" in § 285.26., stating that it is too broad.

Response: NVLAP believes that there are so many possibilities regarding staffing changes that the reference needs to be general so that an objective opinion can be made on the specific change proposed or made. NVLAP focuses on staffing changes that could affect the quality of the testing or calibration work.

Comment: One trade association suggested changing § 285.33 (1) Subcontracting of calibration or testing to limit subcontracting to accredited laboratories only.

Response: This section is in full conformity with international requirements which do not impose such a restriction. This is partly based on the fact that no other accredited laboratory may be geographically available or willing to provide the services needed. NVLAP believes that its procedures for subcontracting will ensure that the data provided by the subcontractor will meet the established quality standards.

Comment. Two trade associations and one Government agency stated that NVLAP procedures need to be more explicit regarding coordination with the private and public sectors in defining the contents of a LAP, especially when the LAP will be addressing regulatory responsibilities of other agencies.

Response. NVLAP invites the participation of all interested parties in the determination of need and in the design of a new accreditation program (§§ 285.15 and 285.16). The **Federal Register**, public workshops, news releases, direct mailings to organizations and associations, and participation in industry and professional meetings are all mechanisms used in order to encourage such participation.

Comment. A trade association, a Government agency and an accreditation organization commented that § 285.12(b)(3) LAP development decision does not adequately prevent a conflict of interest for NIST in making LAP development decisions that could be in competition with private sector accreditation programs.

Response. The conditions under which NVLAP establishes and operates accreditation programs is explicit and addresses the conflict of interest question. NVLAP believes that the requirements followed in making a development decision are adequate and that NVLAP has guarded against establishment of programs already existing or that could be offered by private sector accreditors.

Comment. A trade association, a Government agency and an accreditation organization commented that § 285.18 Adding to or modifying an established LAP should be strengthened to require NVLAP to follow the same requirements for modifying a LAP as for establishing a new LAP. NVLAP should not add test methods without going through a full "need" analysis.

Response. Every LAP is established after an exhaustive process that includes the determination of need. Changes needed by a LAP sponsor, caused by standards updated by standards bodies, or due to revisions in regulatory requirements, must be made expeditiously so that the accreditation program continues to meet the needs of its sponsor.

Comment. One manufacturer and one government agency suggested that § 285.13 Request from a government agency be revised to contain all of the information required from a private sector organization requesting a LAP (§ 285.14).

Response. The procedures to be followed by private sector organizations and government agencies are, of necessity, different. Regulatory and public service program authorities are specified in laws and administrative procedures. Accreditation requirements established by government agencies may contain the conditions noted in § 285.14 and are automatically referenced in the specific authority establishing a laboratory accreditation program.

NVLAP, however, agrees that the procedures do need to explicitly address establishing or modifying NVLAP LAPs to meet the requirements mandated by the Federal Government including legislative action and/or intergovernmental understandings or agreements. Accordingly, section 285.1 is revised to state that NVLAP will operate to accredit both calibration laboratories and testing laboratories "in response to (a) Mandates by the Federal government through legislative or administrative action; (b) Requests from a government agency (§ 285.13); and (c) Requests from a private section organization (§ 285.14)".

In addition, § 285.11, Requesting a LAP, is revised to provide that following receipt of the identification of a mandate for a LAP based on legislative or administrative action, the Director must publish a Federal Register notice (1) stating the purpose of the LAP including the national or international need; (2) describing the general scope of the LAP; (3) identifying government agencies having oversight; and (4) providing information to any interested party wishing to be on the NVLAP mailing list to receive routine information on the development of the LAP. In addition, § 285.12 is revised to provide that the Director of NIST shall establish all LAPs on the basis of need; and that a mandate to develop a LAP by NVLAP will be interpreted as a defacto decision to develop the specified LAP, and a LAP will be developed (or existing LAPs modified, if practical) following these procedures.

Comment. In the context of the establishment of LAPs at the request of Government agencies, one manufacturer stated that the proposed change to the NVLAP procedures does not cover: (1) Requirements for factory inspections as a part of certification; (2) certification organizations; and (3) the need for a public review of the findings. Further, the changes would allow the use of subcontractors who are not independent of manufacturers, employers, and distributors.

Response. No changes are made. The comments reflect some of the conditions of accreditation required by a government agency. These kinds of conditions are normally addressed in gathering information leading to a decision whether or not to develop a new LAP. The NVLAP procedures can not be complete in anticipation of any and all possible conditions required by a sponsor.

Comment. Three trade associations, two manufacturers, a Government agency, an accreditation organization and a consultant each commented on the need for more specifics regarding international trade, international recognition of testing and calibration data, and memoranda of understanding (MOUs) and mutual recognition agreements. Most letters contained some reference to these issues, either pointing out the need for explicit language recognizing international trade interests such as "reduction of non-tariff barriers"; working to "make the program more acceptable nationally and internationally"; stating that "it is of great interest to U.S. manufacturers to have U.S./EC recognized accreditation

for testing to European specifications"; and identifying the need to "promote the acceptance of calibration and testing results between countries to encourage international trade".

The comment was also made that the NVLAP revision should state that inquiries from other countries regarding memoranda of understandings (MOUs) and mutual recognition agreements (MRAs) will be referred to the appropriate U.S. agency to participate in any detailed negotiations.

Response. Other than a general statement, the proposed regulation did not specifically deal with these concerns.

Comment. One consultant suggested changing § 285.22 Assessing and evaluating a laboratory to eliminate the suggestion that NVLAP provides consulting or legal services.

Response. Regarding consulting services, communications with laboratories are in the context of these procedures, none of which provide for consulting services. NVLAP identifies the deficiencies noted; it is the responsibility of the laboratory, not NVLAP, to determine how deficiencies will be rectified. Regarding legal services, NVLAP provides guidance to the accredited laboratories on the conditions for referencing accredited status; this is procedural, not legal advice.

Comment. One consultant suggested that NVLAP expand and elaborate § 285.3 Description and goal of NVLAP to include additional information explaining methods for achieving the various objectives and goals in the section.

Response. The language in this section clearly defines the goals and objectives of NVLAP. Methods for achieving these goals and objectives are already contained in many other publications, including NIST administrative procedures and various NVLAP programmatic documents.

Comments. One trade association and one consultant suggested that NVLAP reword § 285.8 Referencing NVLAP accreditation, to remove the implication that laboratories must advertise accredited status, etc.

Response. Section 285.8(a) has been revised to make clear that advertising is voluntary.

Comment. One accreditation organization suggested that NVLAP should not make any changes to § 285.33 Criteria for accreditation in response to comments received as a result of the **Federal Register** notice because it is important that the NVLAP regulation remain compatible with the ISO Guide 25. It was recommended that such changes should be compiled for use in discussions at upcoming ISO meetings related to changing ISO Guide 25.

Response. NVLAP agrees, and is doing this.

Comment. One accreditation organization suggested that ASTM Standard E 1301 should be referenced instead of ISO Guide 38, which is "no longer a viable standard"; ISO Guide 43 should not be referenced because it is very general and being revised.

Response. Guides 38 and 43 served as reference to ensure that the NVLAP procedures meet all current international requirements. In fact, the NVLAP procedures are more robust than the procedures contained in either Guide 38 or Guide 43. NVLAP is committed to meeting international requirements for laboratory accreditation, therefore we reference the ISO guides and standards. We also know that ISO "equivalents" are published by other standards bodies. However, we do not plan to invest time in evaluating the equivalence of these standards in order to reference them in our procedures.

Comment. One accreditation organization suggested that the reference to ISO Series 9000 documents in § 285.4 References might imply that NVLAP accreditation also conveys ISO 9000 registration.

Response. Reference to the ISO Series 9000 does not imply that NVLAP is an ISO 9000 registrar. However, NVLAP accepts the statement in ISO Guide 25 that "laboratories meeting the requirements of the Guide comply with the relevant requirements of the ISO 9000 series of standards including those of the model described in ISO 9002".

Comment. One consultant suggested deleting reference to ISO 9004 because it is intended only as a guideline document for use by operators of quality management systems and not for regulatory adoption or referencing as being compatible.

Response. The entire ISO Series is referenced because of the strong relationship of this series with the quality systems criteria of ISO Guide 25.

Additional Information

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because (1) participation in NVLAP is entirely voluntary, and (2) the changes are primarily administrative, affecting the management of the program rather than laboratories seeking or holding accreditation. Further, the technical components of NVLAP, that is, the specific technical criteria that individual laboratories are accredited against, are not changed in any significant way by this proposal.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 0693–0003.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environment Policy Act of 1969.

List of Subjects in 15 CFR Part 285

Business and industry, Commerce, Laboratories, Measurement standards.

Dated: April 25, 1994.

Mary Good,

Under Secretary for Technology, Department of Commerce.

Dated: April 19, 1994.

Samuel Kramer,

Associate Director, NIST.

For reasons set forth in the preamble, Title 15 of the Code of Federal Regulations is amended as follows:

PART 7—[REDESIGNATED AS PART 285]

1. Part 7 is redesignated as part 285.

1a. The authority citation for part 285 is revised to read as follows:

Authority: 15 U.S.C. 272 *et seq.*

PART 285—[AMENDED]

2. The Table of Contents for Part 285 is revised to read as follows:

Subpart A—General Information

Sec.

285.1 Purpose.

285.2 Organization of procedures.

285.3 Description and goal of NVLAP.
285.4 References.
285.5 Definitions.
285.6 NVLAP Documentation.
285.7 Confidentiality.
285.8 Referencing NVLAP Accreditation.

Subpart B—Establishing a LAP

285.11 Requesting a LAP.
285.12 LAP development decision.
285.13 Request from a government agency.
285.14 Request from a private sector organization.
285.15 Development of technical requirements.
285.16 Coordination with federal agencies.
285.17 Announcing the establishment of a LAP.
285.18 Adding to or modifying an established LAP.
285.19 Termination of a LAP.

Subpart C—Accrediting a Laboratory

285.21 Applying for accreditation.
285.22 Assessing and evaluating a laboratory.
285.23 Granting and renewing accreditation.
285.24 Denying, suspending, and revoking accreditation.
285.25 Voluntary termination of accreditation.
285.26 Change in Status of Laboratory.

Subpart D—Conditions and Criteria For Accreditation

285.31 Application of accreditation conditions and criteria.
285.32 Conditions for accreditation.
285.33 Criteria for accreditation.

3. Section 285.1 is revised to read as follows:

§ 285.1 Purpose.

The purpose of part 285 is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates to accredit both calibration laboratories and testing laboratories in response to:

(a) Mandates by the Federal government through legislative or administrative action;

(b) Requests from a government agency (§ 285.13); and

(c) Requests from a private sector organization (§ 285.14).

Supplementary technical and administrative requirements are provided in supporting handbooks and documents as needed depending on the criteria established for specific Laboratory Accreditation Programs (LAPs).

4. Section 285.2 is revised to read as follows:

§ 285.2 Organization of procedures.

Subpart A describes considerations which relate in general to all aspects of NVLAP. Subpart B describes how new LAPs are requested, developed, and announced, and how LAPs are terminated. Subpart C describes procedures for accrediting laboratories. Subpart D sets out the conditions and criteria for NVLAP accreditation.

5. Section 285.3 is revised to read as follows:

§ 285.3 Description and goal of NVLAP.

(a) NVLAP is a system for accrediting calibration laboratories and testing laboratories found competent to perform specific tests or calibrations. Competence is defined as the ability of a laboratory to meet the NVLAP conditions (§ 285.32) and to conform to the criteria (§ 285.33) in NVLAP publications for specific calibration and test methods.

(b) NVLAP is a process which:

(1) Provides the technical and administrative mechanisms for national and international recognition for competent laboratories based on a comprehensive procedure for promoting confidence in calibration and testing laboratories that show that they operate in accordance with NVLAPs requirements;

(2) Provides laboratory management with documentation for use in the development and implementation of their quality systems;

(3) Identifies competent laboratories for use by regulatory agencies, purchasing authorities, and product certification systems;

(4) Provides laboratories with guidance from technical experts to aid them in reaching a higher level of performance resulting in the generation of improved engineering and product information; and

(5) Promotes the acceptance of calibration and test results between countries, and facilitates cooperation between laboratories and other bodies to assist in the exchange of information and experience, facilitating removal of non-tariff barriers to trade and promoting the harmonization of standards and procedures.

(c) NVLAP is comprised of a series of laboratory accreditation programs (LAPs) which are established on the basis of requests and demonstrated need. The specific calibration and test methods, types of calibration and test methods, products, services, or standards to be included in a LAP are determined by an open process during the establishment of the LAP (see § 285.11). The Director of the National Institute of Standards and Technology (NIST) does not unilaterally propose or decide the scope of a LAP. Communication with other laboratory accreditation systems is fostered to encourage development of common criteria and approaches to accreditation and to promote the domestic, foreign, and international acceptance of test data produced by the accredited laboratories.

6. Section 285.4 is revised to read as follows:

§ 285.4 References.

NVLAP is designed to be compatible with domestic and foreign laboratory accreditation programs to ensure the universal acceptance of test data produced by NVLAP-accredited laboratories. In this regard, these Procedures are compatible with:

(a) The most recent official publications of ISO Guides 2, 25, 30, 38, 43, 45, 49, 58, and Standards 8402, 9001, 9002, 9003, and 9004.

(b) International vocabulary of basic and general terms in metrology (VIM) and Guide to the expression of uncertainty in measurement, issued by International Bureau of Weights and Measures (BIPM), International Electrotechnical Commission (IEC), International Federation of Clinical Chemistry (IFCC), International Organization for Standardization (ISO), International Union of Pure and Applied Chemistry (IUPAC), International Union of Pure and Applied Physics (IUPAP), and International Organization of Legal Metrology (OIML).

7. Section 285.5 is revised to read as follows:

§ 285.5 Definitions.

Accreditation (of a laboratory): A formal recognition that a laboratory is competent to carry out specific tests or calibrations or types of test or calibrations.

Accreditation criteria: A set of requirements used by an accrediting body which a laboratory must meet in order to be accredited.

Approved Signatory (of an accredited laboratory): An individual who is recognized by NVLAP as competent to sign accredited laboratory calibration or test reports.

Assessment (of a laboratory): The on-site examination of a testing or calibration laboratory to evaluate its compliance with the conditions and criteria for accreditation.

Authorized Representative (of an accredited laboratory): An individual who is authorized by the laboratory or the parent organization to sign the NVLAP application form and commit the laboratory to fulfill the NVLAP requirements (The Authorized Representative may also be recommended by the laboratory as an Approved Signatory).

Calibration: A set of operations which establish, under specified conditions,

the relationship between values indicated by a measuring instrument or system, or values represented by a material measure, and the corresponding known values of a measurand.

Calibration method: A defined technical procedure for performing a calibration.

Certificate of Accreditation: A document issued by NVLAP to a laboratory that has met the criteria and conditions for accreditation. The Certificate of Accreditation may be used as proof of accredited status. A Certificate of Accreditation is always accompanied with a Scope of Accreditation.

Competence: The ability of a laboratory to meet the NVLAP conditions and to conform to the criteria in NVLAP publications for specific calibration and test methods.

Deficiency: The non-fulfillment of NVLAP conditions and/or criteria for accreditation.

Director of NIST: The Director of the National Institute of Standards and Technology or designate.

Laboratory: An organization that performs calibrations and/or tests. When a laboratory is part of an organization that carries out activities additional to calibration and testing, the term "laboratory" refers only to those parts of that organization that are involved in the calibration and testing process. The laboratory activities may be carried out at or from a permanent location, at or from a temporary facility, or in or from a mobile facility.

LAP: A laboratory accreditation program established and administered under NVLAP, consisting of test methods or calibrations relating to specific products or fields of testing or calibration.

NIST: The National Institute of Standards and Technology.

NVLAP: The National Voluntary Laboratory Accreditation Program. NVLAP is an Office within the National Institute of Standards and Technology.

Person: Associations, companies, corporations, educational institutions, firms, government agencies at the federal, state and local level, partnerships, and societies—as well as divisions thereof—and individuals.

Product: A type or a category of manufactured goods, constructions, installations, and natural and processed materials, or those associated services whose characterization, classification, or functional performance is specified by standards or test methods.

Proficiency testing: The determination of laboratory performance by means of comparing and evaluating calibrations or tests on the same or similar items or materials by two or more laboratories in accordance with predetermined conditions.

Quality manual: A document stating the quality policy, quality system, and quality practices of an organization. The quality manual may reference other laboratory documentation.

Quality system: The organizational structure, responsibilities, procedures, processes, and resources for implementing quality management.

Reference material: A material or substance one or more properties of which are sufficiently well established to be used for the calibration of an apparatus, the assessment of a measurement method, or for assigning values to materials. A "certified reference material" means that one or more of the property values of the reference material are certified by a technically valid procedure, accompanied by or traceable to a certificate or other documentation which is issued by a certifying body.

Reference standard: A standard, generally of the highest metrological quality available at a given location, from which measurements made at that location are derived.

Scope of accreditation: A document issued by NVLAP which lists the test methods or services, or calibration services for which the laboratory is accredited.

Sub-facility: A laboratory operating under the technical direction and quality system of a main facility that is accredited.

Test: A technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

Test method: A defined technical procedure for performing a test.

Testing laboratory: A laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of products or materials.

Traceability of the accuracy of measuring instruments: A documented chain of comparison connecting the accuracy of a measuring instrument to other measuring instruments of higher accuracy and ultimately to a primary standard.

8. Section 285.6 is revised to read as follows:

§ 285.6 NVLAP documentation.

NVLAP publications are available for information and use by staff of accredited laboratories, those seeking accreditation, other laboratory accreditation systems, and others needing information on the requirements for accreditation under the NVLAP program. Accredited laboratories will be sent revised publications routinely. Publications include:

(a) The Procedures and General Requirements, (15 CFR part 285);

(b) Handbooks containing the administrative and operational procedures and technical requirements of specific LAPs;

(c) A directory of accredited laboratories published annually and updated periodically; and

(d) Policy Guides that provide changes to the Procedures and General Requirements and Handbooks between formal revisions of those publications.

9. Section 285.7 is revised to read as follows:

§ 285.7 Confidentiality.

To the extent permitted by applicable laws, NVLAP will seek to ensure confidentiality of all information obtained relating to the application, on-site assessment, proficiency testing, evaluation, and accreditation of laboratories.

10. Section 285.8 is added to read as follows:

§ 285.8 Referencing NVLAP accreditation.

To become accredited and maintain accreditation, a laboratory shall agree in writing to:

(a) Follow NVLAP guidance when advertising its accredited status (including the use of the NVLAP logo) on letterheads, brochures, test reports, and professional, technical, trade, or other laboratory services publications.

(b) Inform its clients that the laboratory's accreditation or any of its calibration or test reports in no way constitutes or implies product certification, approval, or endorsement by NIST.

11. Section 285.11 is amended by revising paragraphs (a), (b)(1), (b)(3)(ii) and (c) and adding paragraphs (e) and (f) to read as follows:

§ 285.11 Requesting a LAP.

(a) A request to establish a LAP must be made to the Director of NIST.

(b) * * *

(1) The scope of the LAP in terms of products, calibration services, or testing services proposed for inclusion;

* * * * *

(3) * * *

(ii) Evidence of a national need to accredit calibration or testing laboratories for the specific scope beyond that served by an existing

laboratory accreditation program in the public or private sector;

* * * * *

(c) NVLAP may request clarification of the information submitted according to paragraph (b) of this section.

* * * * *

(e) Following receipt of the identification of a mandate for a LAP based on legislative or administrative action, the Director shall publish a **Federal Register** notice:

(1) Stating the purpose of the LAP including the national or international need;

(2) Describing the general scope of the LAP;

(3) Identifying government agencies having oversight; and

(4) Providing information to any interested party wishing to be on the NVLAP mailing list to receive routine information on the development of the LAP.

(f) Consistent with applicable laws and regulations, the Director may negotiate and conclude agreements with the governments of other countries for NVLAP recognition of foreign laboratories. At a minimum, any agreement must provide that accredited foreign laboratories meet conditions for accreditation comparable to and consistent with those set out in these requirements.

12. Section 285.12 is amended by revising paragraphs (a) and (b)(6) to read as follows:

§ 285.12 LAP development decision.

(a) The Director of NIST shall establish all LAPs on the basis of need.

(1) A mandate to develop a LAP by NVLAP will be interpreted as a de facto decision to develop the specified LAP, and a LAP will be developed (or existing LAPs modified, if practical) following these procedures.

(2) Government agencies may document the need by using § 285.13, and private sector organizations by using § 285.14.

(b) * * *

(6) The economic and technical feasibility of accrediting laboratories for the calibration or test methods, types of calibration or test methods, products, services, or standards requested; and

* * * * *

13. Section 285.13 is amended by revising paragraphs (a) and (c) to read as follows:

§ 285.13 Request from a government agency.

(a) Any Federal, state or local agency responsible for regulatory or public service programs established under statute or code, which has determined a need to accredit laboratories within the context of its programs, may request the Director of NIST to establish a LAP.

* * * * *

(c) NVLAP may request clarification of the information required by § 285.11(b).

* * * * *

14. Section 285.14 is amended by revising paragraphs (a) introductory text and (c) to read as follows:

§ 285.14 Request from a private sector organization.

(a) Any private sector organization which has determined a need to accredit laboratories for specific products, calibrations, or testing services, may request the Director of NIST to establish a LAP if it uses procedures meeting the following conditions:

* * * * *

(c) NVLAP may request clarification of the information required by § 285.11(b).

* * * * *

15. Section 285.15 is amended by revising paragraphs (a) and (c) to read as follows:

§ 285.15 Development of technical requirements.

(a) Technical requirements for accreditation are specific for each LAP. The requirements tailor the criteria referenced in § 285.33 to the calibration or test methods, types of calibration or test methods, products, services, or standards covered by the LAP.

* * * * *

(c) NVLAP shall make every reasonable effort to ensure that the affected calibration or testing community within the scope of the LAP is informed of any planned workshop. Summary minutes of each workshop will be prepared. A copy of the minutes will be made available for inspection and copying at the NIST Records Inspection Facility.

16. Section 285.17(c) is revised to read as follows:

§ 285.17 Announcing the establishment of a LAP.

* * * * *

(c) NVLAP shall establish fees in amounts that will enable it to recover its full costs, and shall, from time to time as necessary, revise the fees for this purpose.

17. Section 285.18 is revised to read as follows:

§ 285.18 Adding to or modifying an established LAP.

(a) Established or developing LAPs may be added to, modified, or realigned based on either a written request from any person wishing to add or delete specific standards, calibration or test methods, or types of calibration or test methods or a need identified by NIST.

(b) NVLAP may choose to make the additions or modifications available for accreditation under a LAP when:

(1) The additional standards, calibration or test methods, or types of calibration or test methods requested are directly relevant to the LAP;

(2) It is feasible and practical to accredit calibration or testing laboratories for the additional standards, calibration or test methods, or types of calibration or test methods; and

(3) It is likely that laboratories will seek accreditation for the additional standards, calibration or test methods, or types of calibration or test methods.

18. Section 285.19(a) is revised to read as follows:

§ 285.19 Termination of a LAP.

(a) The Director of NIST may terminate a LAP when the Director of NIST determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. In the event that the Director of NIST proposes to terminate a LAP, a notice will be published in the **Federal Register** setting forth the basis for that determination.

* * * * *

19. Section 285.21 is amended by revising paragraphs (a) and (c) to read as follows:

§ 285.21 Applying for accreditation.

(a) A laboratory may complete and remit an application for accreditation in any of the established LAPs.

* * * * *

(c) Accreditation of laboratories outside of the United States may require:

(1) Translation of laboratory documentation into English; and

(2) Payment of additional traveling expenses for on-site assessments and proficiency testing.

20. Section 285.22 is revised to read as follows:

§ 285.22 Assessing and evaluating a laboratory.

(a) Information use to evaluate a laboratory's compliance with the conditions for accreditation set out in § 285.32, the criteria for accreditation set out in § 285.33, and the technical requirements established for each LAP will include (not necessarily in this order):

(1) Application and other material submitted by the laboratory (§ 285.32(b));

(2) On-site assessment reports;
(3) Laboratory performance on proficiency tests;
(4) Laboratory responses to identified deficiencies; and
(5) Technical evaluation.
(b) NVLAP shall arrange the assessment and evaluation of applicant laboratories in such a way as to minimize potential conflicts of interest.
(c) NVLAP shall inform each applicant laboratory of any additional action(s) that the laboratory must take to qualify for accreditation.

21. Section 285.23 is amended by removing paragraph (d), and by revising paragraphs (a) and (b) to read as follows:

§ 285.23 Granting and renewing accreditation.

(a) NVLAP will take action to: (1) Grant initial accreditation, or (2) renew, suspend, or propose to deny or revoke accreditation of an applicant laboratory, based on the degree to which the laboratory complies with the specific NVLAP requirements.
(b) If accreditation is granted or renewed, NVLAP shall:
(1) Provide a Certificate of Accreditation and a Scope of Accreditation to the laboratory;
(2) Provide guidance on referencing the laboratory's accredited status, and the use of the NVLAP logo by the laboratory and its clients, as needed; and
(3) Remind the laboratory that accreditation does not relieve it from complying with applicable federal, state, and local laws and regulations.

* * * * *

22. Section 285.24 is revised to read as follows:

§ 285.24 Denying, suspending, and revoking accreditation.

(a) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.
(b) The laboratory will have 30 days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within that 30-day period.
(c) If NVLAP finds that an accredited laboratory has violated the terms of its accreditation or the provisions of these procedures, NVLAP may, after consultation with the laboratory, suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation. If accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated.
(d) A laboratory whose accreditation has been denied, revoked, terminated, or expired, or which has withdrawn its application before being accredited, may reapply and be accredited if the laboratory:
(1) Completes the assessment and evaluation process; and
(2) Meets the conditions and criteria for accreditation that are set out in §§ 285.32 and 285.33.
(e) Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test or calibration reports during the suspension period. The determination of NVLAP whether to suspend or to propose revocation of a laboratory's accreditation will depend on the nature of the violation(s) of the terms of its accreditation.

23. Section 285.26 is added to read as follows:

§ 285.26 Change in status of laboratory.

Accreditation of a laboratory is based on specific conditions and criteria including the laboratory ownership, location, staffing, facilities, and configuration. Changes in any of these conditions or criteria could result in loss of accreditation. NVLAP must be informed if any of the conditions or criteria for accreditation are changed so that a determination can be made concerning the status of the accreditation.

24. Section 285.31 is revised to read as follows:

§ 285.32 Application of accreditation conditions and criteria.

To become accredited and maintain accreditation, a laboratory must meet the conditions for accreditation set out in § 285.32, the criteria set out in § 285.33, and the guidance provided in the Handbooks for specific LAPs.

25. Section 285.32 is revised to read as follows:

§ 285.32 Conditions for accreditation

(a) To become accredited and maintain accreditation, a laboratory shall agree in writing to:
(1) Be assessed and evaluated initially and on a periodic basis;
(2) Demonstrate, on request, that it is able to perform the calibrations or tests representative of those for which it is seeking accreditation;
(3) Pay all fees;
(4) Participate in proficiency testing as required;
(5) Be capable of performing the calibrations or tests for which it is accredited according to the latest version of the calibration or test method within one year after its publication or within another time limit specified by NVLAP;
(6) Limit the representation of the scope of its accreditation to only those calibrations, tests or services for which accreditation is granted;
(7) Resolve all deficiencies;
(8) Limit all its work or services of clients to those areas where competence and capacity are available;
(9) Maintain records of all actions taken in response to complaints for a minimum of one year;
(10) Maintain an independent decisional relationship between itself and its clients, affiliates, or other organizations so that the laboratory's capacity to render calibration or test reports objectively and without bias is not adversely affected;
(11) Report to NVLAP within 30 days any major changes involving the location, ownership, management structure, authorized representative, approved signatories, or facilities of the laboratory; and
(12) Return to NVLAP the Certificate of Accreditation and the Scope of Accreditation for revision or other action should it:
(i) Be requested to do so by NVLAP;
(ii) Voluntarily terminate its accredited status; or
(iii) Become unable to conform to any of these conditions, the applicable criteria of § 285.33, and related technical requirements.
(b) To become accredited and maintain accreditation, a laboratory shall supply, upon request, the following information:
(1) Legal name and full address;
(2) Ownership of the laboratory;
(3) Organization chart defining relationships that are relevant to performing testing and calibrations covered in the accreditation request;
(4) General description of the laboratory, including its facilities and scope of operation;
(5) Name, address, and telephone and FAX number of the authorized representative of the laboratory;
(6) Names or titles and qualifications of laboratory staff nominated to serve as approved signatories of calibration or test reports that reference NVLAP accreditation;

(7) The laboratory Quality Manual; and

(8) Other information as may be needed for the specific LAP(s) in which accreditation is sought.

26. Section 285.33 is revised to read as follows:

§ 285.33 Criteria for accreditation.

(a) *Scope.* (1) This section sets out the general requirements in accordance with which a laboratory has to demonstrate that it operates, if it is to be recognized as competent to carry out specific calibrations or tests.

(2) Additional requirements and information which have to be disclosed for assessing competence or for determining compliance with other criteria may be specified by NVLAP, depending upon the specific character of the task of the laboratory.

(3) This section is for use by calibration and testing laboratories in the development and implementation of their quality systems. It may also be used by accreditation bodies, certification bodies and others concerned with the competence of laboratories.

(b) *Organization and management.* (1) The laboratory shall be legally identifiable. It shall be organized and shall operate in such a way that its permanent, temporary and mobile facilities meet these requirements.

(2) The laboratory shall:

(i) Have managerial staff with the authority and resources needed to discharge their duties;

(ii) Have policies to ensure that its personnel are free from any commercial, financial and other pressures which might adversely affect the quality of their work;

(iii) Be organized in such a way that confidence in its independence of judgement and integrity is maintained at all times;

(iv) Specify and document the responsibility, authority and interrelation of all personnel who manage, perform or verify work affecting the quality of calibrations and tests;

(v) Provide supervision by persons familiar with the calibration or test methods and procedures, the objective of the calibration or test and the assessment of the results. The ratio of supervisory to non-supervisory personnel shall be such as to ensure adequate supervision;

(vi) Have a technical manager (however named) who has overall responsibility for the technical operations;

(vii) Have a quality manager (however named) who has responsibility for the quality system and its implementation. The quality manager shall have direct access to the highest level of management at which decisions are taken on laboratory policy or resources, and to the technical manager. In some laboratories, the quality manager may also be the technical manager or deputy technical manager;

(viii) Nominate deputies in case of absence of the technical or quality manager;

(ix) Have documented policy and procedures to ensure the protection of clients' confidential information and proprietary rights;

(x) Where appropriate, participate in interlaboratory comparisons and proficiency testing programs.

(c) *Quality system, audit and review.* (1) The laboratory shall establish and maintain a quality system appropriate to the type, range and volume of calibration and testing activities it undertakes. The elements of this system shall be documented. The quality documentation shall be available for use by the laboratory personnel. The laboratory shall define and document its policies and objectives for, and its commitment to, good laboratory practice and quality of calibration or testing services. The laboratory management shall ensure that these policies and objectives are documented in a quality manual and communicated to, understood, and implemented by all laboratory personnel concerned. The quality manual shall be maintained current under the responsibility of the quality manager.

(2) The quality manual, and related quality documentation, shall state the laboratory's policies and operational procedures established in order to meet the requirements of procedures. The quality manual and related quality documentation shall also contain:

(i) A quality policy statement, including objectives and commitments, by top management;

(ii) The organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts;

(iii) The relations between management, technical operations, support services and the quality system;

(iv) Procedures for control and maintenance of documentation;

(v) Job descriptions of key staff and reference to the job descriptions of other staff;

(vi) Identification of the laboratory's approved signatories;

(vii) The laboratory's procedures for achieving traceability of measurements;

(viii) The laboratory's scope of calibrations and/or tests;

(ix) Arrangements for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work;

(x) Reference to the calibration, verification and/or test procedures used;

(xi) Procedures for handling calibration and test items;

(xii) Reference to the major equipment and reference measurement standards used;

(xiii) Reference to procedures for calibration, verification and maintenance of equipment;

(xiv) Reference to verification practices including interlaboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes;

(xv) Procedures to be followed for feedback and corrective action whenever discrepancies are detected, or departures from documented policies and procedures occur;

(xvi) The laboratory management policies for departures from documented policies and procedures or from standard specifications;

(xvii) Procedures for dealing with complaints;

(xviii) Procedures for protecting confidentiality and proprietary rights;

(xix) Procedures for audit and review.

(3) The laboratory shall arrange for audits of its activities at appropriate intervals to verify that its operations continue to comply with the requirements of the quality system. Such audits shall be carried out by trained and qualified staff who are, wherever possible, independent of the activity to be audited. Where the audit findings cast doubt on the correctness or validity of the laboratory's calibration or test results, the laboratory shall take immediate corrective action and shall immediately notify, in writing, any client whose work may have been affected.

(4) The quality system adopted to satisfy the requirements of this section shall be reviewed at least once each year by the management to ensure its continuing suitability and effectiveness and to introduce any necessary changes or improvements.

(5) All audit and review findings and any corrective actions that arise from them shall be documented. The person responsible for quality shall ensure that these actions are discharged within the agreed timescale.

(6) In addition to periodic audits the laboratory shall ensure the quality of results provided to clients by implementing checks. These checks shall be reviewed and shall include, as appropriate but not be limited to:

(i) Internal quality control schemes using whenever possible statistical techniques;

(ii) Participation in proficiency testing or other interlaboratory comparisons;

(iii) Regular use of certified reference materials and/or in—house quality control using secondary reference materials;

(iv) Replicate testings using the same or different methods;

(v) Re-testing of retained items;

(vi) Correlation of results for different characteristics of an item.

(d) *Personnel.* (1) The testing laboratory shall have sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions.

(2) The testing laboratory shall ensure that the training of its personnel is kept up-to-date.

(3) Records on the relevant qualifications, training, skills and experience of the technical personnel shall be maintained by the laboratory.

(e) *Accommodation and environment.* (1) Laboratory accommodation, calibration and test areas, energy sources, lighting, heating and ventilation shall be such as to facilitate proper performance of calibrations or tests.

(2) The environment in which these activities are undertaken shall not invalidate the results or adversely affect the required accuracy of measurement. Particular care shall be taken when such activities are undertaken at sites other than the permanent laboratory premises.

(3) The laboratory shall provide facilities for the effective monitoring, control and recording of environmental conditions as appropriate. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic interference, humidity, voltage, temperature, and sound and vibration levels, as appropriate to the calibrations or tests concerned.

(4) There shall be effective separation between neighboring areas when the activities therein are incompatible.

(5) Access to and use of all areas affecting the quality of these activities shall be defined and controlled.

(6) Adequate measures shall be taken to ensure good housekeeping in the laboratory.

(f) *Equipment and reference materials.* (1) The laboratory shall be furnished with all items of equipment (including reference materials) required for the correct performance of calibrations and tests. In those cases where the laboratory needs to use equipment outside its permanent control it shall ensure that the relevant requirements of this section are met.

(2) All equipment shall be properly maintained. Maintenance procedures shall be documented. Any item of equipment which has been subjected to overloading or mishandling, or which gives suspect results, or has been shown by verification or otherwise to be defective, shall be taken out of service, clearly identified and wherever possible stored at a specified place until it has been repaired and shown by calibration, verification or test to perform satisfactorily. The laboratory shall examine the effect of this defect on previous calibrations or tests.

(3) Each item of equipment including reference materials shall, when appropriate, be labelled, marked or otherwise identified to indicate its calibration status.

(4) Records shall be maintained of each item of equipment and all reference materials significant to the calibrations or tests performed. The records shall include:

(i) The name of the item of equipment;

(ii) The manufacturer's name, type identification, and serial number or other unique identification;

(iii) Date received and date placed in service;

(iv) Current location, where appropriate;

(v) Condition when received (e.g. new, used, reconditioned);

(vi) Copy of the manufacturer's instructions, where available;

(vii) Dates and results of calibrations and/or verifications and date of next calibration and/or verification;

(viii) Details of maintenance carried out to date and planned for the future;

(ix) History of any damage, malfunction, modification or repair.

(g) *Measurement traceability and calibration.* (1) All measuring and testing equipment having an effect on the accuracy or validity of calibrations or tests shall be calibrated and/or verified before being put into service. The laboratory shall have an established program for the calibration and verification of its measuring and test equipment.

(2) The overall program of calibration and/or verification and validation of equipment shall be designed and operated so as to ensure that, wherever applicable, measurements made by the laboratory are traceable to national standards of measurement where available. Calibration certificates shall wherever applicable indicate the traceability to national standards of measurement and shall provide the measurement results and associated uncertainty of measurement and/or a statement of compliance with an identified metrological specification.

(3) Where traceability to national standards of measurement is not applicable, the laboratory shall provide satisfactory evidence of correlation of results, for example by participation in a suitable program of interlaboratory comparisons or proficiency testing.

(4) Reference standards of measurement held by the laboratory shall be used for calibration only and for no other purpose, unless it can be demonstrated that their performance as reference standards has not been invalidated.

(5) Reference standards of measurement shall be calibrated by a body that can provide traceability to a national standard of measurement. There shall be a program of calibration and verification for reference standards.

(6) Where relevant, reference standards and measuring and testing equipment shall be subjected to in-service checks between calibrations and verifications.

(7) Reference materials shall, where possible, be traceable to national or international standards of measurement, or to national or international standard reference materials.

(h) *Calibration and test methods.* (1) The laboratory shall have documented instructions on the use and operation of all relevant equipment, on the handling and preparation of items and for calibration and/or testing, where the absence of such instructions could jeopardize the calibrations or tests. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be maintained up-to-date and be readily available to the staff.

(2) The laboratory shall use appropriate methods and procedures for all calibrations and tests and related activities within its responsibility (including sampling, handling, transport and storage, preparation of items, estimation of uncertainty of measurement and analysis of calibration and/or test data). They shall be consistent with the accuracy required, and with any standard specifications relevant to the calibrations or tests concerned.

(3) Where methods are not specified, the laboratory shall, wherever possible, select methods that have been published in international or national standards, those published by reputable technical organizations or in relevant scientific texts or journals.

(4) Where it is necessary to employ methods that have not been established as standard, these shall be subject to

agreement with the client, be fully documented and validated, and be available to the client and other recipients of the relevant reports.

(5) Where sampling is carried out as part of the test method, the laboratory shall used documented procedures and appropriate statistical techniques to select samples.

(6) Calculations and data transfers shall be subject to appropriate checks.

(7) Where computers or automated equipment are used for the capture, processing, manipulation, recording, reporting, storage or retrieval of calibration or test data, the laboratory shall ensure that:

(i) The requirements of these procedures are complied with;

(ii) Computer software is documented and adequate for use;

(iii) Procedures are established and implemented for protecting the integrity of data; such procedures shall include, but not be limited to, integrity of data entry or capture, data storage, data transmission and data processing;

(iv) Computer and automated equipment is maintained to ensure proper functioning and provided with the environmental and operating conditions necessary to maintain the integrity of calibration and test data;

(v) It establishes and implements appropriate procedures for the maintenance of security of data including the prevention of unauthorized access to, and the unauthorized amendment of, computer records.

(8) Documented procedure shall exist for the purchase, reception and storage of consumable materials used for the technical operations of the laboratory.

(i) *Handling of calibration and test items.* (1) The laboratory shall have a documented system for uniquely identifying the items to be calibrated or tested, to ensure that there can be no confusion regarding the identity of such items at any time.

(2) Upon receipt, the condition of the calibration or test item, including any abnormalities or departures from standard condition as prescribed in the relevant calibration or test method, shall be recorded. Were there is any doubt as to the item's suitability for calibration or test, where the item does not conform to the description provided, or where the calibration or test required is not fully specified, the laboratory shall consult the client for further instruction before proceeding. The laboratory shall establish whether the item has received all necessary preparation, or whether the client requires preparation to be undertaken or arranged by the laboratory.

(3) The laboratory shall have documented procedures and appropriate facilities to avoid deterioration or damage to the calibration or test item, during storage, handling, preparation, and calibration or test; any relevant instructions provided with the item shall be followed. Where items have to be stored or conditioned under specific environmental conditions, these conditions shall be maintained, monitored and recorded where necessary. Where a calibration or test item or portion of an item is to be held secure (for example, for reasons of record, safety or value, or to enable check calibrations or tests to be performed later), the laboratory shall have storage and security arrangements that protect the condition and integrity of the secured items or portions concerned.

(4) The laboratory shall have documented procedures for the receipt, retention or safe disposal of calibration or test items, including all provisions necessary to protect the integrity of the laboratory.

(j) *Records.* (1) The laboratory shall maintain a record system to suit its particular circumstances and comply with any applicable regulations. It shall retain on record all original observations, calculations and derived data, calibration records and a copy of the calibration certificate, test certificate or test report for an appropriate period. The records for each calibration and test shall contain sufficient information to permit their repetition. The records shall include the identity of personnel involved in sampling, preparation, calibration or testing.

(2) All records (including those listed in § 285.33(f)(4) pertaining to calibration and test equipment), certificates and reports shall be safely stored, held secure and in confidence to the client.

(k) *Certificates and reports.* (1) The results of each calibration, test, or series of calibrations or tests carried out by the laboratory shall be reported accurately, clearly, unambiguously and objectively, in accordance with any instructions in the calibration or test methods. The results should normally be reported in a calibration certificate, test report or test certificate and should include all the information necessary for the interpretation of the calibration or test results and all information required by the method used.

(2) Each certificate or report shall include at least the following information:

(i) A title, e.g., "Calibration Certificate", "Test Report" or "Test Certificate";

(ii) Name and address of laboratory, and location where the calibration or test was carried out if different from the address of the laboratory;

(iii) Unique identification of the certificate or report (such as serial number) and of each page, and the total number of pages;

(iv) Name and address of client, where appropriate;

(v) Description and unambiguous identification of the item calibrated or tested;

(vi) Characterization and condition of the calibration or test item;

(vii) Date of receipt of calibration or test item and date(s) of performance of calibration or test, where appropriate;

(viii) Identification of the calibration or test method used, or unambiguous description of any non-standard method used;

(ix) Reference to sampling procedure, where relevant;

(x) Any deviations from, additions to or exclusions from the calibration or test method, and any other information relevant to a specific calibration or test, such as environmental conditions;

(xi) Measurements, examinations and derived results, supported by tables, graphs, sketches and photographs as appropriate, and any failures identified;

(xii) A statement of the estimated uncertainty of the calibration or test result (where relevant);

(xiii) A signature and title, or an equivalent identification of the person(s) accepting responsibility for the content of the certificate or report (however produced), and date of issue;

(xiv) Where relevant, a statement to the effect that the results relate only to the items calibrated or tested;

(xv) A statement that the certificate or report shall not be reproduced except in full, without the written approval of the laboratory.

(3) Where the certificate or report contains results of calibrations or tests performed by sub-contractors, these results shall be clearly identified.

(4) Particular care and attention shall be paid to the arrangement of the certificate or report, especially with regard to presentation of the calibration or test data and ease of assimilation by the reader. The format shall be carefully and specifically designed for each type of calibration or test carried out, but the headings shall be standardized as far as possible.

(5) Material amendments to a calibration certificate, test report or test certificate after issue shall be made only in the form of a further document, or data transfer including the statement "Supplement to Calibration Certificate for Test Report or Test Certificate), serial

number * * * for as otherwise identified]", or equivalent form of wording. Such amendments shall meet all the relevant requirements of § 285.33(j).

(6) The laboratory shall notify clients promptly, in writing, of any event such as the identification of defective measuring or test equipment that casts doubt on the validity of results given in any calibration certificate, test report or test certificate of amendment to a report or certificate.

(7) The laboratory shall ensure that, where clients require transmission of calibration or test results by telephone, telex, facsimile or other electronic or electromagnetic means, staff will follow documented procedures that ensure that the requirements of these procedures are met and that confidentiality is preserved.

(l) *Subcontracting of calibration or testing.* (1) Where a laboratory subcontracts any part of the calibration or testing, this work shall be placed with a laboratory complying with these requirements. The laboratory shall ensure and be able to demonstrate that its subcontractor is competent to perform the activities in question and complies with the same criteria of competence as the laboratory in respect of the work being subcontracted. The laboratory shall advise the client in writing of its intention to subcontract any portion of the calibration or testing to another party.

(2) The laboratory shall record and retain details of its investigation of the competence and compliance of its subcontractors and maintain a register of all subcontracting.

(m) *Outside support services and supplies.* (1) Where the laboratory procures outside services and supplies, other than those referred to in these procedures, in support of calibrations or tests, the laboratory shall use only those outside support services and supplies that are of adequate quality to sustain confidence in the laboratory's calibrations or tests.

(2) Where no independent assurance of the quality of outside support services or supplies is available, the laboratory shall have procedures to ensure that purchased equipment, materials and services comply with specified requirements. The laboratory should, wherever possible, ensure that purchased equipment and consumable materials are not used until they have been inspected, calibrated or otherwise verified as complying with any standard specifications relevant to the calibrations or tests concerned.

(3) The laboratory shall maintain records of all suppliers from whom it obtains support services or supplies required for calibrations or tests.

(n) *Complaints.* (1) The laboratory shall have documented policy and procedures for the resolution of complaints received from clients or other parties about the laboratory's activities. A record shall be maintained of all complaints and of the actions taken by the laboratory.

(2) Where a complaint, or any other circumstances, raises doubt concerning the laboratory's compliance with the laboratory's policies or procedures, or with the requirements of this section or otherwise concerning the quality of the laboratory's calibrations or tests, the laboratory shall ensure that those areas of activity and responsibility involved are promptly audited in accordance with this section.

[FR Doc. 94–10449 Filed 5–2–94; 8:45 am]

BILLING CODE 3510–13–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

April 26, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Correction to notice of consolidation of electronic bulletin board working groups.

SUMMARY: The Federal Energy Regulatory Commission is correcting its notice issued on April 19, 1994 (59 FR 19637, April 25, 1994) regarding the consolidation of the Electronic Bulletin Board Working Groups. The correction is to the name of the person representing the producer sector on the interim steering committee.

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.

On April 19, 1994, the Commission issued a Notice of Consolidation of Electronic Bulletin Board Working Groups. The member of the interim steering committee from the producer sector was incorrectly identified. The correct name and address is:

Randy D. Mills, Chevron USA Production, 1301 McKinney, Houston, TX 77252, Phone 713–754–2563, FAX 713–754–3840.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10531 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADA's) from SmithKline Beecham Animal Health to Solvay Animal Health, Inc.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1646.

SUPPLEMENTARY INFORMATION: SmithKline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA's 49-892, 126-232, and 140-909 to Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120. Accordingly, FDA is amending the regulations in 21 CFR 520.2260a, 520.2260b, and 520.2260c to reflect the change of sponsor.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2260a [Amended]

2. Section 520.2260a *Sulfamethazine oblets and boluses* is amended in paragraph (b)(1) by removing "053571" and adding in its place "053501".

§ 520.2260b [Amended]

3. Section 520.2260b *Sulfamethazine sustained-release boluses* is amended in paragraph (b)(1) by removing "053571" and adding in its place "053501".

§ 520.2260c [Amended]

4. Section 520.2260c *Sulfamethazine sustained-release tablets* is amended in paragraph (a) by removing "053571" and adding in its place "053501".

Dated: April 22, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94-10458 Filed 5-2-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 880, 881, and 883

[Docket No. R-94-1714; FR-3683-F-01]

Special Rent Adjustments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule is a technical amendment to HUD's regulations for certain Section 8 programs governed by 24 CFR parts 880 (New Construction), 881 (Substantial Rehabilitation), and 883 (State Housing Agencies) to conform the language to that used in section 8(c)(2)(B) of the U.S. Housing Act of 1937. The amendment will authorize rent adjustments for privately owned Section 8 projects to cover expenses that are not presently compensated for by annual rental adjustments.

EFFECTIVE DATE: June 2, 1994.

FOR FURTHER INFORMATION CONTACT: James Tahash, Director, Planning and Procedures Division, room 6280, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-0500; telephone: (voice) (202) 708-3944 and (TDD) (202) 708-4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This rule is a technical amendment to the Section 8 Housing Assistance Payments programs governed by 24 CFR parts 880 (New Construction), 881 (Substantial Rehabilitation), and 883 (State Housing Agencies). The amendment will conform the special rent adjustment regulations for those programs (§§ 880.609(b), 881.609(b) and 883.710(b)) to the language used in section 8(c)(2)(B), by adding the phrase "or similar costs" to the list of substantial increases in expenses, such as real property taxes and utility rates, that may result in the need for special rent adjustments. The "similar costs" language appears in other section 8 program regulations (parts 882, 884 and 886), but was never included in the regulations for those programs covered by parts 880, 881, and 883. This final rule will treat all section 8 programs comparably.

In accordance with its own regulations on rulemaking in 24 CFR part 10, the Department generally publishes a rule for public comment before issuing a rule for effect, unless to do so would be impracticable, unnecessary, or contrary to the public interest. This rule is being published as a final rule for effect because the Department believes that public comment is unnecessary. The amendments made by this rule are technical in nature, and conform the regulations to the statutory language.

Other Matters

An environmental assessment is unnecessary, since fair market rent schedules is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*), and rent adjustments are directly related to such rent schedules.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Any economic impact, whether on small entities or large, would be beneficial, in that it would seek to compensate property owners for extraordinary expenses incurred that are not compensated by the annual rent adjustments.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to private owners of Section 8 projects and do not impinge upon the relationship between the Federal government and State and local governments.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. Nothing in this rule changes the amount of rent paid by tenant families, which is based on the income of the family.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

2. Section 880.609 is amended by revising paragraph (b) to read as follows:

§ 880.609 Adjustment of contract rents.

* * * * *

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or similar costs, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

4. Section 881.609 is amended by revising paragraph (b) to read as follows:

§ 881.609 Adjustment of contract rents.

* * * * *

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates or similar costs, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

6. Section 883.710 is amended by revising paragraph (b) to read as follows:

§ 883.710 Adjustment of contract rents.

* * * * *

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or similar costs, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

* * * * *

Dated: April 25, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–10518 Filed 5–2–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS SIROCCO (PC 6) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval patrol craft. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: 1 April 1994.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SIROCCO (PC 6) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Rule 23(a)(ii), pertaining to display of a masthead light and a second (after) masthead light on vessels exceeding 50 meters in length; Annex I, paragraph 2(k), pertaining to the vertical distance between the forward and after anchor lights and the height of the forward anchor light above the hull; Rule 21(c), pertaining to location of the sternlight, without interfering with its special functions as a naval patrol craft. The Judge Advocate General of the Navy has also certified that the number of masthead lights displayed and the location of the other mentioned lights are in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and

701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the number and placement of lights on USS SIROCCO (PC 6) in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Three of 706.2 is amended by revising the column headings and adding the following ship:

TABLE 3

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
USS SIROCCO	PC 6	.....	.....	.....	.....	25.5 [1]	3.0	1.1 below.

[1] Only when towing.

Dated: April 1994.

R. B. Schiff,

Capt., JAGC, U.S. Navy, Acting.

[FR Doc. 94–10499 Filed 5–2–94; 8:45 am]

BILLING CODE 3810–AE–P

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Postal Service regulation which prohibits the disclosure to the public of information contained in Postal Service Form 1583, "Application for Delivery of Mail Through Agent." The amendment will authorize the disclosure of information from Form 1583 for the purpose of identifying addresses as Commercial Mail Receiving Agencies. The intended affect of this amendment is to provide an effective tool in combating credit card fraud and other types of consumer fraud.

DATES: This interim rule will become effective June 2, 1994. Comments are invited and must be received on or before June 17, 1994.

ADDRESSES: Comments may be mailed to Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., room 8831, Washington, DC 20260–5240, or delivered to the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Comments received may be inspected during the above hours in room 8831.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268–2924.

SUPPLEMENTARY INFORMATION: Commercial Mail Receiving Agencies (CMRAs) are private entities which receive mail on behalf of other persons. Both CMRAs and their customers are required to sign Postal Service Form 1583, "Application for Delivery of Mail Through Agent," a copy of which is filed with the postmaster responsible for the delivery address. Under 39 CFR 265.6(d)(10), the disclosure to the public of any information contained in Form 1583 has been prohibited.

The Postal Service, primarily through its law enforcement branch, the Postal Inspection Service, has been working with the credit card industry to prevent credit card fraud. One form of credit card fraud consists of submitting an application for a credit card under a fictitious name. Perpetrators of this type of fraud may use an address provided by a CMRA, which often appears to be a typical residential or business address, as a means of avoiding detection. Credit card companies have asked the Postal Service to help them detect such fraud by identifying CMRA addresses, and the Postal Service has concluded that the identification of CMRA addresses would be an effective tool in combating credit card fraud and other types of consumer fraud.

As amended by the interim rule, 39 CFR 265.6(d)(8) will authorize disclosure of information only for the purpose of identifying an address as belonging to a CMRA, and no other information concerning CMRAs or their customers will be disclosed pursuant to the regulation. Because the regulation will not authorize the disclosure of the identities of CMRA customers, disclosures under the regulation will not invade the legitimate privacy interests of persons who receive mail through CMRAs. The information will be disclosed primarily by means of annotations to the Postal Service's Delivery Sequence File (DSF). DSF data, the use of which is made available to the public through authorized licensees, contains delivery-point addresses, and it does not include the identities of individuals.

Copies of Form 1583 on file with the Postal Service are records protected by the Privacy Act of 1974, 5 U.S.C. 552a, and they are maintained in the Postal Service's Privacy Act system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents. In a separate notice published elsewhere in this issue of the **Federal Register**, the Postal Service is adding a routine use to system of records USPS 010.050 which will authorize the disclosure of the information that may be released pursuant to the interim rule.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written comments concerning the interim rule. These comments will be considered before a final rule is adopted.

List of Subjects in 39 CFR Part 265

Disclosure of information, Postal Service.

For the reasons set forth in this document, the Postal Service is amending 39 CFR Part 265 as follows:

PART 265—DISCLOSURE OF INFORMATION

1. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

2. Paragraph (d)(8) of § 265.6 is revised to read as follows:

§ 265.6 Availability of Records.

* * * * *

(d) * * *

(8) *Form 1583, Application for Delivery of Mail Through Agent.* Except as provided by this paragraph, information contained in Form 1583 may not be disclosed to the public. Information contained in Form 1583 may be disclosed to the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. The identities of persons on whose behalf agents receive mail may not be disclosed.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–10543 Filed 5–2–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA17–1–6339 and VA18–1–6340; FRL–4879–4]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—Disapproval of the Request to Redesignate the Richmond Ozone Nonattainment Area to Attainment and the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving the request to redesignate the Richmond ozone nonattainment area from moderate nonattainment to attainment and is also disapproving the associated maintenance plan as a State Implementation Plan (SIP) revision. The intended effect of this action is to retain the current designation for ozone nonattainment in the Richmond area. This action is being taken under sections 107 and 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule will become effective on June 2, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 597–1325.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1992, the Commonwealth of Virginia's Department of Environmental Quality (VDEQ) submitted a request to EPA to redesignate the Richmond moderate ozone nonattainment area from nonattainment to attainment, and to approve a maintenance plan for the Richmond area as a State Implementation Plan (SIP) revision.

On August 17, 1993, (59 FR 43609), EPA published a notice of proposed rulemaking (NPR) proposing approval of the Commonwealth's request to redesignate the Richmond moderate ozone nonattainment area to attainment and its associated maintenance plan SIP revision. EPA's rationale for its proposed approval was stated in that NPR and will not be restated here. However, on January 31, 1994, (59 FR 4263) EPA published a NPR withdrawing its August 17, 1993 proposed approval and proposing to disapprove the request to redesignate the Richmond ozone nonattainment area from moderate nonattainment to attainment and proposed to disapprove the maintenance plan as a SIP revision. EPA converted its proposed approval action to a proposed disapproval because review of the 1993 ambient air quality data monitored during the 1993 ozone season indicated that the Charles City County monitor, located in the Richmond nonattainment area, had registered a violation of the ozone national ambient air quality standards (NAAQS). The ambient data was quality assured in accordance with established procedures for validating such monitoring data. The VDEQ did not contest the registered data. Therefore, the Richmond area does not meet the statutory criteria for redesignation to attainment found in section 107(d)(3)(E) of the CAA. The maintenance plan SIP revision is not approvable because its demonstration of attainment and maintenance of the ozone NAAQS is based on a level of ambient ozone precursor emissions which was thought to represent an inventory of emissions that would provide for attainment and maintenance of the NAAQS, but which does not as evidenced by the ozone violations recorded during the 1993 ozone season.

II. Comments Received on EPA's January 31, 1994 Proposal

Letters of Public Comment: EPA received four comment letters concerning the January 31, 1994 action proposing to disapprove the request to redesignate the Richmond ozone nonattainment area from moderate nonattainment to attainment and proposing to disapprove the maintenance plan as a revision to the SIP. One comment letter supported EPA's proposal to disapprove both the request to redesignate the Richmond ozone nonattainment area and to disapprove the maintenance plan SIP revision. Three comment letters opposed EPA's proposed disapproval of the request to redesignate the Richmond area. The commenters opposing EPA's proposed disapproval stated that that even though exceedances of the ozone standard had been registered at the Charles City County monitor, the monitor is located in a rural location downwind of a more populated urban area. The commenters stated that, based on meteorological data, the recorded violations were caused by a small portion of the urban portion of the Richmond nonattainment area and are localized. The commenters stated that the rest of the Richmond ozone nonattainment area should not be economically penalized by the disapproval of the Richmond redesignation request.

EPA's Response: EPA's response to the latter comments is that EPA has determined that ozone is a regional pollutant driven by several factors including, but not restricted to, weather and climate changes and ozone precursors so that the effect of ozone emissions are not localized. In light of this, and the lack of evidence that the violations in the Richmond area are due only to localized emissions, EPA does not believe that it would be appropriate to redesignate as attainment portions of the Richmond ozone nonattainment area. Such an action would not be appropriate unless it were firmly established that, contrary to the bases underlying the establishment of the boundaries of the Richmond ozone nonattainment area following the 1990 Clean Air Act Amendments, certain portions of the Richmond ozone nonattainment area do not contribute to nonattainment of other portions of the Richmond ozone nonattainment area.

Final Action

EPA is disapproving both the request to redesignate the Richmond ozone nonattainment area to attainment and the associated maintenance SIP revision, both submitted on November 12, 1992 by VDEQ. This disapproval will have the effect of retaining the designations of Virginia for ozone found in 40 CFR part 81 (56 FR 56843) dated November 6, 1991.

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.

This action disapproving the request for redesignation of the Richmond moderate ozone nonattainment area and the associated maintenance plan SIP revision has been classified as a Table 2 action for signature by the Acting 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 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action disapproving the request to redesignate the Richmond moderate ozone nonattainment area to attainment and the associated maintenance plan SIP revision may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental cooperation, Ozone.

Dated: March 30, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2423 is amended by adding paragraph (k) to read as follows:

§ 52.2423 Approval status.

* * * * *

(k) The maintenance plan SIP revision, and request to redesignate the Richmond moderate ozone nonattainment area to attainment were submitted on November 12, 1992, by the Department of Environmental Quality. These requests are disapproved because review of the 1993 ambient air quality data monitored during the 1993 ozone season indicated that a violation of the ozone NAAQS occurred at the Charles City monitor in the Richmond nonattainment area . Because of the registered violation during the 1993 ozone season, the underlying basis of the Commonwealth's November 12, 1992 maintenance plan's demonstration is no longer valid.

[FR Doc. 94–10522 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 60

[FRL–4880–3]

New Source Performance Standards Supplemental Delegation of Authority to the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On December 8, 1993, the State of South Carolina, through the South Carolina Department of Health and Environmental Control, requested delegation of authority for the implementation and enforcement of additional categories of the New Source Performance Standards (NSPS). EPA's review of South Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, and EPA made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is February 2, 1994.

ADDRESSES: Copies of the request for the delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

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

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly designated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Bill Denman of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorize the Administrator to delegate his authority to implement and enforce the standards established in 40 CFR part 60, New Source Performance Standards (NSPS). After a thorough review of the categories requested for delegation, the Regional Administrator determined that such delegation was appropriate for these source categories with conditions set forth in the original delegation letter of October 19, 1976, and subsequent delegation letters of January 22, 1981, February 1, 1984, June 29, 1987, February 9, 1988, January 5, 1989, December 10, 1990, March 3, 1992, and March 8, 1993. EPA thereby delegated its authority for 40 CFR part 60, NSPS in a letter to the State of South Carolina on February 2, 1994, as follows.

40 CFR Part 60

Subpart RRR—Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, except § 60.703(e).

The Administrator retains the exclusive right to approve equivalent and alternative test methods, continuous monitoring procedures, and

reporting requirements. The EPA hereby notifies the public that it has delegated the authority over certain NSPS subparts to the State of South Carolina.

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

Authority: This action is issued under the authority of sections 101, 110, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Dated: April 18, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–10549 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 60

[FRL–4880–4]

New Source Performance Standards Supplemental Delegation of Authority to the State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On March 3, 1993, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, requested delegation of authority for the implementation and enforcement of additional categories of the New Source Performance Standards (NSPS). EPA's review of North Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, and the Agency made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is May 21, 1993.

ADDRESSES: Copies of the request for the delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

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

North Carolina Department of Health, Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly designated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: North Carolina Department of Health, Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Carol Kemker of the EPA Region IV Air Programs Branch at (404) 347–2864 and Region IV address above.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorize the Administrator to delegate his authority to implement and enforce the standards established in 40 CFR part 60, New Source Performance Standards (NSPS). After a thorough review of the categories requested for delegation, the Regional Administrator determined that such delegation was appropriate for these source categories with conditions set forth in the original delegation letter of November 24, 1976, and subsequent delegation letters of October 22, 1980, December 04, 1981, October 19, 1982, May 02, 1984, April 02, 1985, June 16, 1986, August 07, 1986, June 8, 1987, August 20, 1987, June 22, 1988, January 27, 1988, and August 29, 1989. EPA thereby delegated its authority for 40 CFR part 60, NSPS in a letter to the State of North Carolina on May 21, 1993, as follows.

40 CFR Part 60

Subpart Dc—Small Industrial-Commercial-Institutional Steam Generating Units (except § 60.48c(a)(4))

Subpart Ea—Municipal Waste Combustors

Subpart DDD—Volatile Organic Emissions from the Polymer Manufacturing Industry (except § 60.562–2(c))

The Administrator retains the exclusive right to approve equivalent and alternative test methods, continuous monitoring procedures, and reporting requirements. The EPA hereby notifies the public that it has delegated the authority over certain NSPS subparts to the State of North Carolina.

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

Authority: This action is issued under the authority of sections 101, 110, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Dated: April 18, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–10548 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF DEFENSE

48 CFR Part 217

Defense Federal Acquisition Regulation Supplement; Economy Act

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to define the role of the contracting officer in the approval process for intragency orders under the Economy Act.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

The Director of Defense Procurement issued a final rule on April 25, 1994, by Departmental Letter 94–007, which establishes an advisory role for the contracting officer in the approval of intragency orders under the Economy Act (31 U.S.C. 1535).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because the rule is not a significant revision within the meaning of Public Law 98–577. However, comments from small entities will be considered in accordance with Section 610 of the Act. Please cite DFARS Case 94–D303 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 217 is amended as follows:

1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR part 1.

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.500 is added to read as follows:

217.500 Scope of subpart.

Acquisitions from required sources, as described in FAR Part 8, are not orders under the Economy Act.

3. Section 217.502 is revised to read as follows:

217.502 General.

If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

217.503 [Removed]

4. Section 217.503 is removed.

[FR Doc. 94–10582 Filed 5–2–94; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 909268–9277; I.D. 042694B]

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has projected that the annual commercial quota for red snapper will be reached on April 27, 1994. This closure is necessary to protect the red snapper resource.

EFFECTIVE DATES: Closure is effective 12:01 a.m., local time, April 28, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 3.06 million lbs (1.39 million kg) for the current fishing year, January 1 through December 31, 1994 (50 CFR 641.25(a)).

Under 50 CFR 641.26, NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by publishing a document in the **Federal Register**. Based on current statistics, NMFS has projected that the commercial quota of 3.06 million lbs (1.39 million kg) for red snapper will be reached on April 27, 1994. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective 12:01 a.m., local time, April 28, 1994, through December 31, 1994, the end of the fishing year. A vessel with a valid reef fish permit having red snapper aboard must land and barter, trade, or sell such red snapper prior to 12:01 a.m., local time, April 28, 1994.

During the closure, the bag limit applies to all harvests of red snapper from the EEZ in the Gulf of Mexico. The daily bag limit for red snapper is seven per person. From 12:01 a.m., local time, April 28, 1994, through December 31, 1994, the purchase, barter, trade, or sale of red snapper taken from the EEZ is prohibited. This prohibition does not apply to trade in red snapper that were harvested, landed, and bartered, traded, or sold prior to 12:01 a.m., local time, April 28, 1994, and were held in cold storage by a dealer or processor.

Classification

This action is required by 50 CFR 641.26 and has been determined to be "not significant" for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 26, 1994.

David S. Crestin,

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

[FR Doc. 94–10462 Filed 4–26–94; 4:46 pm]

BILLING CODE 3510–22–P

50 CFR Part 651

[Docket No. 940421–4121; I.D. 042594B]

RIN 0648–AG64

Northeast Multispecies Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 1 to the Northeast Multispecies Fishery Management Plan (FMP). NMFS implemented parts of Amendment 5 to the FMP on March 1, 1994, but delayed implementation of some provisions, including the effort-reduction program, until May 1, to provide the industry and NMFS sufficient time to prepare for this unprecedented and far-reaching change to the regulations. The effect of this delay is that the first-year's effort reduction requirements are compressed into eight months with different impacts on different segments of the fleet. The adjustment in the fishing year implemented by this rule will establish May 1 through April 30 as the annual fishing year for the effort reduction program contained in Amendment 5.

EFFECTIVE DATE: May 1, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the final regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment #1 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, NMFS, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) submitted Amendment 5 to the NMFS on September 27, 1993, after spending more than 2 years on its development. The primary purpose of Amendment 5 is to eliminate the overfished condition of the primary stocks of the multispecies complex through an effort-reduction program. The effort-reduction program consists of annual reductions in the numbers of days that vessels are allowed to spend at sea as a method to limit fishing effort for groundfish. Vessels have a choice whether to fish under an individual allocation of days-at-sea (DAS), based on each vessel's history of fishing for groundfish, or to fish under the fleet DAS option, wherein vessels must declare blocks of time out of the fishery and lay over in port for a period proportional to the time fishing for groundfish.

NMFS published the proposed rule for Amendment 5 on October 27, 1993 (58 FR 57774), and informed the Council on January 3, 1994, that Amendment 5 had been approved. At that time, the Director, Northeast Region, NMFS (Regional Director) indicated that the expected implementation date for the amendment was to be March 1, 1994. The Council immediately realized that the

implementation of this comprehensive amendment would require NMFS' starting a number of new administrative programs. The Council acknowledged the procedural and administrative difficulties and stated that it wanted NMFS to implement the effort-reduction program only when the agency was ready. The Council also communicated its intent that Amendment 5's effort-reduction program be implemented on a full-year basis, rather than on a part-year basis for the first year, and initiated Framework Adjustment #1 on February 16 to adjust the final rule for Amendment 5.

The Council is making this adjustment to the final rule for Amendment 5 (59 FR 9872, March 1, 1994) under the framework abbreviated rulemaking procedure established by Amendment 5 and contained in 50 CFR part 651, subpart C. This procedure requires the Council, when making certain adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council provides the public with advance notice of both the proposals and the analysis and an opportunity to comment on them prior to and at the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Director that the measures of a given framework adjustment be published as a final rule, if certain conditions are met. The Regional Director may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

When the Council began developing Amendment 5, groundfish stocks were overfished and the prospects were dim for improvement without the effort-reduction program. Since then, the condition of the stocks has deteriorated to the point where NMFS, with Council support, implemented emergency regulations to protect haddock. Each new assessment of groundfish stocks underlines the urgency of implementing rigorous and effective management measures.

The Council designed the management program using annual incremental reductions in fishing effort. The result of implementing the effort-reduction program for less than 12 months in the first year is that vessels fishing under the individual allocation option would have their annual allocation compressed into eight months, while vessels under the fleet DAS would be required to meet the annual time-out requirement over eight months, instead of the full year. Since the vessels in the individual DAS category generally choose to be in that group because of their higher allocation of opportunity than under the fleet group, the conservation benefits of the first year's reductions in allocation would be negated if the same allocation were distributed over only 8 months, instead of 12.

On the other hand, vessels in the fleet DAS category would be disproportionately burdened if they were required to declare the same amount of time out of groundfishing over 8 months, that they would have to take over 12 months had Amendment 5 been implemented beginning on January 1. Many of the vessels in this category ordinarily would meet their time-out requirement during the first few months of the year when the weather limits fishing opportunity, or when they are in other winter fisheries such as northern shrimp.

A further need for Framework Adjustment #1 arises from the Amendment 5 requirement that all vessels declare one 20-day block out of groundfishing during the spawning months of March, April, and May. Since NMFS decided to implement the effort-reduction program on May 1, that requirement would be compressed into the month of May for the first year. As a result, at least two-thirds of the fleet would be required to be out of groundfishing at the same time, unless Framework Adjustment #1 were implemented. Many fishermen are unable to plan how to best use their time and resources during the required period out of groundfishing given the relatively short notice, and the substantial impact that the sudden loss of two-thirds of the domestic supply of groundfish might have on the processing sector and the market.

This final rule will adjust the rule implementing the effort-reduction program so that each allocation of DAS (fleet or individual) is done on a 365-day program year beginning with the first full year of implementation of Amendment 5.

Comments and Responses

During the period following the approval of Amendment 5 and preceding the Council's formal initiation of the framework adjustment, a number of individual fishermen, interested members of the public, and industry association representatives commented on the problems with the current effort-reduction program implementation schedule. Since the comment period had not begun, these comments were not tabulated; however, all comments were in support of the Council's expeditiously making the adjustment that is contained in this rule.

During the comment period spanning the two required Council meetings, the Council received written comments from one individual and two associations—the Provincetown Draggermen's Association and the Seafood Harvester's Association of New York. Oral comments were submitted by three individuals. All of the public comments supported the Council's action and urged expeditious implementation. No negative comments were received on the proposed action during or outside the comment period.

The Council requested publication of the management measures as a final rule after considering the required factors stipulated under the Framework Measures in Amendment 5 and providing supporting analysis for each factor considered. The Assistant Administrator for Fisheries, NOAA (AA) determined that the framework adjustments to the FMP that this rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The AA, in making that determination, has taken into account the information, views, and comments received during the two public hearings and comment period under the FMP's framework adjustment mechanism as specified in 50 CFR 651.40. Considering the opportunity for public comment at Council meetings on January 12 through 13, February 16 through 17, March 17, and April 6 through 7, and Groundfish Committee meetings on February 2 through 3 and February 24, and considering the need for immediate resource protection for the groundfish stocks, the provisions for continuing evaluation of the adjusted measures, and the timing of the rule relative to the requirement that all vessels take twenty days out of the fishery during May, 1994, the AA has waived for good cause the proposed rules and additional comment period.

Classification

This final rule has been determined to be "not significant" for purposes of E.O. 12866.

The AA finds there is good cause to waive prior notice under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA). Prior notice is impracticable and contrary to the public interest because it would cause undue burdens on some members of the groundfish fishing industry and would further delay full implementation of conservation measures intended to replenish groundfish stocks. Further, the AA finds that the public meetings held by the

Council to discuss designation of beginning and ending dates for the fishing year for this fishery provided opportunity for public comment to be considered. The AA finds that under section 553(d) of the APA the need to have this regulation in place by May 1, 1994, is good cause to waive the 30-day delay in effectiveness of this regulation.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 27, 1994.

Rolland A. Schmitten,

Assistant Administrator National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is revised as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. Section 651.2 is amended by adding the definition of "fishing year", in alphabetical order, to read as follows:

§ 651.2 Definitions.

* * * * *

Fishing year means the 12-month period beginning May 1 and extending through April 30 of the following year.

* * * * *

3. Section 651.22 is amended by revising paragraphs (b)(1)(i), the first sentence of (b)(3)(i), paragraphs (b)(3)(ii), (b)(3)(iv), (b)(7), (c)(1)(i) heading, (c)(1)(i)(A), (c)(1)(i)(E) and (c)(1)(i)(F) to read as follows:

§ 651.22 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) Beginning on May 1, 1994, any vessel that is greater than 45 ft (13.7 m) in length and eligible for a limited access permit, except a combination vessel, may elect to fish under the Individual DAS program by making such election at the time of application for or renewal of a limited access permit. For fishing year 1996 and thereafter, the vessel must remain in the DAS program assigned to it in fishing year 1995.

* * * * *

(3) * * *

(i) Each vessel participating in the Individual DAS program shall be allocated, for each fishing year, the maximum number of days at sea it may fish in the multispecies finfish fishery according to the criteria and table specified in paragraph (b)(3)(ii) of this section. * * *

(ii) *Annual DAS allocations.* Vessels fishing under the Individual DAS program will receive and be subject to annual allocations of DAS based on a fishing year as specified in the following table. These allocations are determined by reducing the vessel's Individual DAS as calculated under paragraph (b)(2) of this section by 10 percent each fishing year, including the first year, for the first 5 fishing years of the effort reduction program. Each fishing year shall begin on May 1 and extend 12 months through April 30 of the following year.

INDIVIDUAL-DAS ALLOCATION=X DAYS

Fishing year	Annual allocation
1994	x – 10% days.
1995	x – 20% days.
1996	x – 30% days.
1997	x – 40% days.
1998	x – 50% days.

* * * * *

(iv) All vessels fishing under the Individual DAS program must declare out of the multispecies finfish fishery for at least one 20-day period between May 1 and May 31, or between March 1 and April 30, of each fishing year using the notification requirements specified under § 651.29(a). If a vessel owner has not declared, or taken, the period of time required between May 1 and May 31 or between March 1 and April 10, of each fishing year on or before April 11 of each such year, the vessel is subject to the possession limit specified under § 651.27(a) during the period April 11 through April 30, inclusive.

* * * * *

(7) *Status of vessels pending appeal of DAS allocations.* All vessels, while appealing their Individual-DAS allocation, may fish under the Fleet-DAS program and are subject to all requirements applicable to the Fleet-DAS program unless otherwise exempted, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for multispecies finfish shall be counted against the Individual-DAS allocation that the vessel may ultimately receive. If before this appeal is decided, a vessel exceeds the number of days it is finally allocated after appeal, the excess days will be subtracted from the vessel's allocation of days in fishing year 1995.

* * * * *

(c) * * *

(1) * * *

(i) *Days in which a vessel may not possess more than 500 lbs (226.8 kg) of regulated species.*

(A) During each fishing year, beginning with 1994, vessel owners of all such vessels must declare periods of time out of the multispecies fishery totaling at least the minimum number of days listed for each such fishing year in the following schedule. Each period of time declared must be at least 20 consecutive days. At least one 20-consecutive-day period must be declared or taken between May 1 and May 31, or between March 1 and April 10, of each fishing year. Each fishing year shall begin on May 1 and extend 12 months through April 30 of the following year.

Fishing year	Days out of multispecies fishing
1994	80
1995	80
1996	128
1997	165
1998	200
1999	233

* * * * *

(E) If a vessel owner has not declared, or taken, the period of time required between May 1 and May 31, or between March 1 and April 10, of each fishing year on or before April 11 of each such year, the vessel is subject to the possession limit specified under § 651.27(a) during the period April 11 through April 30, inclusive.

(F) If a vessel owner has not declared, or taken, any or all of the remaining periods of time required under paragraph (c)(1)(i) of this section, by the last possible date to meet the requirement, the vessel is subject to the possession limit specified under § 651.27(a) from that date through the end of the fishing year.

[FR Doc. 94–10521 Filed 4–28–94; 4:06 pm]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 042294A]

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 Greenland turbot in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands

management area (BSAI). This action is necessary to prevent exceeding the Greenland turbot total allowable catch (TAC) in that subarea.

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

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, 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 Greenland turbot TAC for the AI was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) and subsequent apportionment of reserve (59 FR 21673, April 26, 1994) as 2,333 metric tons (mt).

In accordance with § 675.20(a)(8), the Director of the Alaska Region, NMFS (Regional Director), has established a directed fishing allowance of 1,400 mt, with consideration that 933 mt will be taken as incidental catch in directed fishing for other species in the AI. In accordance with § 675.23(f), this fishery begins at 12 noon, A.l.t., May 1, 1994. Because of the low directed fishing allowance and high interest in the fishery, there will be insufficient time to collect and analyze catch data and take appropriate action to ensure the directed fishing allowance is not exceeded. Therefore, based on the best available data, the Regional Director has determined that the Greenland turbot directed fishing allowance in the AI will be reached by 12 noon, A.l.t., May 4, 1994. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the AI, effective from 12 noon, A.l.t., May 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 26, 1994.

David S. Crestin,

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

[FR Doc. 94–10492 Filed 5–2–94; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 59, No. 84
Tuesday, May 3, 1994

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

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 94–49]

RIN 1550–AA74

Conversions From Mutual to Stock Form; Mutual Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations governing mutual to stock conversions and stock issuances by savings association subsidiaries of mutual holding companies (MHC stock offerings). The proposed amendment requires the OTS, in connection with its review of conversion applications and MHC stock offering applications, to consider the extent to which the transaction will affect the convenience and needs of the communities to be served by the applicant. Under the proposal, in determining whether to approve these types of applications, the OTS will consider the applicant's record of compliance with the Community Reinvestment Act (CRA) and other factors relating to the convenience and needs of the communities served by the applicant.

DATES: Comments must be received on or before July 17, 1994.

ADDRESSES: Interested parties are invited to submit written comments on this proposal to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 94–49. These submissions may be hand-delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days, or may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Michael P. Vallely, Senior Attorney (202) 906–6241, Kevin A. Corcoran, Assistant Chief Counsel, (202) 906–6962, Corporate and Securities Division, Chief Counsel's Office; Diana L. Garmus, Deputy Assistant Director, (202) 906–5683, Corporate Activities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OTS recently has undertaken a comprehensive review of its conversion regulations. By Order No. 94–48, dated April 7, 1994, the OTS adopted significant amendments to its mutual to stock conversion regulations, 12 CFR part 563b, and mutual holding company regulations, 12 CFR part 575, to revise, update and clarify the regulations in a number of areas. In connection with its review of the conversion regulations, one of the issues the OTS considered was whether the convenience and needs of the local communities should be a factor in determining whether to approve these conversions.

The reasons for mutual associations' conversion to stock form have changed over the years. During the 1980s, most mutual savings associations were marginally capitalized and many were insolvent. During this period, conversion transactions were a primary method for undercapitalized savings associations to raise capital and avoid being closed by the regulators. The conversion enabled an association to stay in business and continue to serve the community's credit needs.

Now, however, most mutual associations are healthy. While a relatively small number of capital deficient mutual associations undertake conversions primarily to recapitalize, most healthy mutual thrifts now convert for other reasons. These reasons include financing the expansion of their operations and taking advantage of the benefits available to a public company, such as the ability to establish stock benefit plans for management and employees.

The OTS is aware that account holders and consumer groups recently have voiced significant concerns regarding the conversion of well-capitalized associations, particularly in light of the compensation and stock benefits that management typically receives in such transactions. Such groups also have expressed concerns regarding the proper deployment of conversion proceeds, *i.e.*, the extent to which the capital raised in such transactions should be used to support credit and loan programs and related services tailored to the community's credit needs. In addition, management of many well-capitalized converting associations recently have expressed concern to the OTS that their institutions do not need—or are unable efficiently to deploy—substantial amounts of the capital required to be raised under current regulations.[1] Managers of such associations also have voiced concern about the negative impact of what they view as "excess capital" on the price/earnings ratio of the converted association's stock.

The OTS is responding to these concerns by issuing an interim final regulation that, among other things, restricts management benefit plans and requires converting institutions to file with the OTS a business plan that adequately addresses the deployment of conversion proceeds.[2] The interim rule, which appears elsewhere in this issue of the **Federal Register**, solicits public comment on the conversion regulations, both as to the amendments adopted there and the issues on which comment is specifically sought, and as to any other current provisions of the conversion regulations as they relate to the interim rule.

As noted in the interim final rule, a convenience and needs standard has not, to date, been applied to mutual stock conversions of savings associations. Similarly, a convenience and needs standard generally has not been applied to MHC stock offerings.[3]

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[1] The conversion regulations require that stock be sold in the amount of the converting association's *pro forma* market value. *See* 12 CFR 563b.7(f).

[2] See OTS Order No. 94–48.

[3] A convenience and needs standard is already being applied to mutual holding company reorganizations because these transactions require the OTS's approval under the Bank Merger Act (BMA). See 58 FR 44105 (August 19, 1993) (adopting part 575 governing mutual holding company reorganizations and related stock issuances). The BMA requires that the responsible agency consider the convenience and needs of the community to be served in acting on any BMA application. See 12 U.S.C. 1828(c)(5). Because mutual holding company reorganizations and stock

Upon review of this area, however, the OTS is proposing to apply a convenience and needs standard to these transactions for the reasons discussed below.

First, the OTS has broad authority under sections 5(i)(1) and 5(i)(2) of the Home Owners' Loan Act (HOLA) to regulate mutual to stock conversions by savings associations, and under section 10(o)(7) of the HOLA to regulate mutual holding companies.[4] These authorities give the agency considerable discretion in reviewing a conversion application or MHC stock offering application. For example, the OTS has exercised this authority to determine whether a transaction is in the best interests of depositors, the association and the Savings Association Insurance Fund.[5] The OTS believes that inherent in this broad grant of authority is the ability to assess the impact of a proposed transaction on the convenience and needs of the communities to be served by a savings association.

Second, section 4(a)(3) of the HOLA supports the adoption of the proposed regulations addressing housing credit needs.[6] Section 4(a)(3) of the HOLA provides that the Director "shall exercise all powers granted to the Director under this chapter so as to encourage savings associations to provide credit for housing safely and soundly." The powers granted to the Director include the general regulatory authority under sections 5(i)(1), 5(i)(2), and 10(o)(7) of the HOLA mentioned above. Because savings associations are predominantly housing lenders, the admonition in section 4(a)(3) of the HOLA that the Director use his or her statutory powers to encourage savings associations to provide credit for housing provides a substantial additional basis for the Director to assess community needs when reviewing applications.

Third, the OTS believes it is appropriate to apply a convenience and needs standard to conversion transactions and MHC stock offerings as a part of the OTS's responsibility to consider the ongoing CRA performance of savings associations. The CRA expresses Congress's judgment that regulated financial institutions must demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business and that regulated financial institutions have continuing and affirmative obligations to help meet the credit needs of those local communities.[7]

In this regard, the federal banking agencies recently conducted a comprehensive review of their CRA regulations in order to provide clearer guidance to financial institutions on the nature and extent of their CRA obligations, the methods by which their performance will be assessed, and the manner in which the CRA will be enforced. This review was undertaken in response to the President's July 1993 request that the federal financial institution supervisory agencies reform the CRA examination and enforcement system. The President asked, among other things, that in undertaking this effort, the regulators seek to promote consistency and even-handedness, to improve CRA performance evaluations and to institute more effective sanctions against institutions with consistently poor CRA performance.[8] The addition of a convenience and needs factor to the mutual to stock conversion standards and the standards for MHC stock offerings is wholly consistent with the larger Presidential and regulatory initiatives on the CRA.[9] The OTS's assessment of the CRA performance record of each association that is subject to the regulations promulgated under sections 5(i) and 10(o) of the HOLA furthers its responsibility under section 4(a)(3) of the HOLA to encourage thrifts to provide housing credit safely and soundly.[10]

The proposed convenience and needs standard, like the convenience and needs standards governing transactions subject to the Bank Merger Act,[11] certain holding company applications,[12] and certain non-routine corporate transactions under current OTS regulations,[13] is intended to encourage savings associations to devote their resources to lending programs and related customer services that are designed to address the credit needs of their local communities, including low- and moderate-income communities, consistent with safety and soundness. Such programs and services are an integral part of a mutual association's traditional role of providing "credit for housing," as envisioned by section 4(a)(3) of the HOLA. Thus, the OTS believes the proposed regulations will enhance the OTS's ability to ensure that savings associations undertaking these transactions recognize their responsibility to consider their community's credit needs.

Proposed Amendments

The proposal would add a new § 563b.11 to the OTS conversion regulations that would require the OTS, in reviewing a conversion application, to examine the extent to which the proposed conversion will affect the convenience and needs of the communities to be served by the converted savings association.

As part of this examination, the OTS will review the applicant's record under the CRA regulations at 12 CFR part 563e and related CRA policies. Under the proposal, the OTS would give substantial weight to an applicant's previous CRA record, consistent with the long-standing policy of the OTS.[14] For example, if an applicant in its most recent CRA examination received a rating of "substantial noncompliance,"[15] the OTS likely would not approve the application.

Under the proposal, the OTS also would scrutinize the business plans of the applicant. Applicants must demonstrate that their plans for deployment of proceeds will help meet the credit and lending needs of the communities served by the applicant. Under the proposed convenience and needs standard, where an applicant's business plan does not adequately address this issue, the OTS may deny the application or impose additional conditions of approval. While commitments in an applicant's business plan to allocate resources to community

issuances to date generally have been effected simultaneously as a two part transaction, the OTS has, as a practical matter, reviewed the entire transaction under a convenience and needs standard.

[4] See 12 U.S.C. 1464(i)(1), 1464(i)(2) and 1467a(o)(7). See also *Charter Federal S. & L. Ass'n. v. Office of Thrift Supervision*, 912 F.2d 1569 (11th Cir. 1990).

[5] See *Charter Federal; York v. Fed. Home Loan Bank Bd.*, 624 F.2d 495 (4th Cir. 1980), *cert. denied*, 449 U.S. 1043 (1980).

[6] 12 U.S.C. 1463(a)(3).

[7] 12 U.S.C. 2901.

[8] To implement the President's initiative, the four agencies held a series of seven public hearings across the country, and amendments to the agencies' CRA regulations were proposed on December 21, 1993. See 58 FR 67466 (December 21, 1993).

[9] In connection with its review of the CRA and its implementing regulations, the OTS also concluded that the CRA, by its terms, requires the OTS to consider the CRA record of an association proposing to convert from mutual to *federal* stock form because the association must receive a new federal stock charter to replace its previous mutual charter. See 12 U.S.C. 2902(3)(A) and 2903 and 12 CFR 563e.8(a) (1993).

[10] See also section 5(a) of the HOLA, 12 U.S.C. 1464(a). Section 5(a) of the HOLA provides that the lending and other powers conferred on federal savings associations under section 5 are intended to encourage provision of credit for housing safely and soundly.

[11] See 12 U.S.C. 1828(c).

[12] See 12 U.S.C. 1467a(e)(2).

[13] See 12 CFR 563.22(c) and 571.5(b)(4) (1993).

[14] See 54 FR 13742 (April 5, 1989) (joint CRA policy statement of the federal financial supervisory agencies).

[15] See 55 FR 18163 (May 1, 1990) (adopting revised CRA guidelines and assessment rating system).

development projects or credit-related programs generally indicate responsiveness to the convenience and needs of the community, the OTS will not necessarily view such commitments as remedying CRA-related deficiencies. Performance under those commitments, however, would be considered in evaluating the association's CRA record. The OTS also will consider other relevant factors relating to the association's performance in meeting the convenience and needs of the community.

The proposal also would add a new § 575.7(a)(7) to the OTS's mutual holding company regulations, and renumber current § 575.7(a)(7) as 575.7(a)(8). The proposed new section would set forth an additional approval requirement for stock issuances by a savings association subsidiary of a mutual holding company, requiring that the transaction meet the convenience and needs standard of proposed § 563b.11.

Solicitation of Comments

The OTS solicits comment on all aspects of the proposed regulations. The OTS particularly invites comments on whether the proceeds from conversions or MHC stock offerings should be directed to specific types of activities and, if so, what portion should be used for what types of activities.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12866

The OTS has determined that this rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Director of the OTS hereby proposes to amend parts 563b and 575, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1. The authority citation for part 563b is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

2. Section 563b.11 is added to subpart A to read as follows:

§ 563b.11 Convenience and needs considerations.

In reviewing an application under this subpart, the Office will examine the extent to which the conversion will affect the convenience and needs of the communities to be served by the converted savings association. The Office will review the applicant's record under part 563e of this subchapter. In addition, the Office will scrutinize the business plan of the applicant. Each applicant must demonstrate that the proposed deployment of proceeds contained in its business plan will help meet the credit and lending needs of the communities served by the applicant. Also, the Office will consider other relevant factors relating to the association's performance in meeting the convenience and needs of the community. Based on an assessment of the applicant's record under part 563e of this subchapter, the applicant's business plan and other relevant factors, the Office may approve the application, deny the application, or approve the application on the condition that the applicant improve certain aspects of its CRA performance record or address particular credit or lending needs of the communities that it serves.

PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

3. The authority citation for part 575 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

4. Section 575.7 is amended by redesignating paragraph (a)(7) as paragraph (a)(8), and by adding a new paragraph (a)(7) to read as follows:

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

(a) *Approval requirements.* * * *

* * * * *

(7) The proposed stock issuance would fail to meet the convenience and needs standard of § 563b.11 of this subchapter.

* * * * *

Dated: April 8, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–9980 Filed 5–2–94; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–95; Notice No. SC–94–2–NM]

Special Conditions: Learjet Inc., Model 45 Airplane, Lightning and High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This document proposes special conditions for the Learjet Inc. (Lear) Model 45 airplane. This new airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before June 17, 1994.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–95, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–95. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, or telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–95." The postcard will be date stamped and returned to the commenter.

Background

On January 27, 1992, Learjet Inc. (Lear), 8220 West Harry Street, Wichita, KS 67209–2942, P.O. Box 7707, Wichita, KS 67277–7707, applied for a new type certificate in the transport airplane category for the Model 45 airplane. The Learjet Model 45 is a T-tail, low wing, medium sized business jet powered by two Garrett TFE 731–20 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 3,500 lbs. thrust (3,650 lbs. thrust with auto performance reserve). The airplane will be capable of operating with two flight crewmembers and a maximum of ten passengers (standard is eight passengers).

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Learjet must show, except as provided in § 25.2, that the Model 45 meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–75. In addition, the proposed certification basis for the Model 45 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 45 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 45 incorporates new avionic/electronic installations, including primary flight displays, an electronically controlled braking system, digital electronic engine controls, an engine indication and crew alerting system (EICAS), multifunction display, and a digital autopilot/flight director system. These systems may be vulnerable to lightning and high-intensity radiated fields external to the airplane.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic and electronic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Lear Model 45, which would require that new technology electrical and electronic systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

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

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

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

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

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

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

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

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

These components are defined by the following double exponential equation:

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

where:

t = time in seconds,

i = current in amperes, and

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

This equation produces the following characteristics:

i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11}	1.4×10^{11}	0.7×10^{11}	2.0×10^{11}
	=	@t=0+sec	@t=0+sec	@t=0+sec	@t=0+sec
(di/dt), (amp/sec)	=	1.0×10^{11}	1.0×10^{11}	0.5×10^{11}	
	=	@t=.5μs	@t=.25μs	@t=.25μs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	0.0625×10^6	

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30

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

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

As discussed above, the proposed special conditions would be applicable initially to the Learjet Model 45. Should Learjet apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Learjet Model 45 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

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

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

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Learjet Model 45 series airplanes.

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

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

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

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

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

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

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

Darrell M. Pederson,

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

[FR Doc. 94–10381 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–ANE–11]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6–45/–50/–80A series turbofan engines, that currently requires a one-time ultrasonic and eddy current inspection of the high pressure compressor rotor (HPCR) stage 3–9 spool for cracks. This action would retain the inspection requirements of the current AD, but would accelerate the inspection schedule, and introduce a repetitive inspection requirement. This proposal is prompted by a review of the inspection results to date, which indicate that the crack occurrence rate is higher than initially projected. The actions specified by the proposed AD are intended to prevent an uncontained HPCR stage 3–9 spool failure, which could result in damage to the aircraft.

DATES: Comments must be received by June 2, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–11, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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–ANE–11." 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–11, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 25, 1991, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 91–20–01, Amendment 39–8035 (56 FR 55230), to require a one-time ultrasonic and eddy current inspection of the high pressure compressor rotor (HPCR) stage 3–9 spool for cracks. That action was prompted by two reports of spools found cracked in service. That condition, if not corrected, could result in an uncontained HPCR stage 3–9 spool failure, which could result in damage to the aircraft.

Since the issuance of that AD, the FAA has received reports of five additional spools found cracked in service. Investigation indicates that the cracks initiated in sub-surface origins in the stage 9 bore region of the spool. These cracks form from metallurgical anomalies that result from reduced forging work associated with the sixteen inch billet material used in the manufacture of certain HPCR stage 3–9 spools.

Based on the investigation findings, and the higher than projected crack occurrence rates, the FAA has determined that the inspection schedule in the current AD should be accelerated, and a repetitive inspection requirement be implemented.

The FAA has reviewed and approved the technical contents of GE CF6–50 Service Bulletin (SB) No. 72–1000, Revision 2, dated September 9, 1993, and GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, which describe procedures for the ultrasonic and eddy current inspection of the HPCR stage 3–9 spool.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–20–01, would retain the one-time ultrasonic and eddy current inspection of the HPCR stage 3–9 spool for cracks as required in the current AD, but would accelerate the inspection schedule, and introduce a repetitive ultrasonic and eddy current inspection requirement.

There are approximately 462 GE CF6–45/–50/–80A series engines of the affected design in the worldwide fleet. The FAA estimates that 67 engines installed in aircraft of U.S. registry would be affected by the proposed AD, that it would take approximately 584 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $127,412 per engine. Based on these figures, and assuming that 3 of the inspected spools will require replacement, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,534,276.

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 "major rule" under Executive Order 12291; (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 removing Amendment 39–8035 (56 FR 55230; October 25, 1991) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. 94–ANE–11. Supersedes AD 91–20–01, Amendment 39–8035.

Applicability: General Electric Company (GE) CF6–45/–50/–80A series turbofan engines installed on, but not limited to, Airbus A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained high pressure compressor rotor (HPCR) stage 3–9 spool failure, which could result in damage to the aircraft, accomplish the following:

(a) Eddy current and ultrasonic inspect GE CF6–45/–50 HPCR stage 3–9 spools, Part Number (P/N) 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G08, 9253M85G01, 9253M85G02, 9273M14G01, and 9331M29G01, with serial numbers (S/N) listed in Table 2 of GE CF6–50 Service Bulletin (SB) No. 72–1000, Revision 2, dated September 9, 1993, as follows:

(1) For spools that have not been previously inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, or Revision 4, or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2, inspect in accordance with paragraph 2.C of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at the next engine shop visit, or by 30 days after the effective date of this AD, whichever occurs earlier.

(2) For spools that have been inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, or Revision 2, inspect in accordance with paragraph 2.D of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at the next engine shop visit, or by December 31, 1994, whichever occurs earlier.

(3) For spools that have been inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, or Revision 2, and GE CF6–50 SB No. 72–1008, Original, inspect in accordance with paragraph 2.D of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at the next piece-part exposure, or within 3,500 cycles in service (CIS) since inspected in accordance with GE CF6–50 SB No. 72–1008, Original, whichever occurs earlier.

(4) For spools that have been inspected in accordance with GE CF6–50 SB No. 72–888, Revision 3, or Revision 4, or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2, inspect in accordance with paragraph 2.D of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at the next piece-part exposure, or within 3,500 CIS since inspected in accordance with, GE CF6–50 SB No. 72–888, Revision 3, or Revision 4, or GE CF6–50 SB No. 72–1000, Original,

Revision 1, or Revision 2, whichever occurs earlier.

(b) Thereafter, for spools that have been inspected in accordance with paragraph (a) of this AD, reinspect in accordance with paragraph 2.D of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at intervals not to exceed 3,500 CIS since the last inspection.

(c) Eddy current and ultrasonic inspect GE CF6–80A HPCR 3–9 spool, P/N 9136M89G10, with S/N's listed in Table 2 of GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, as follows:

(1) For spools that have not been previously inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, or Revision 4, or GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4, inspect in accordance with paragraph 2.C of GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, at the next engine shop visit, or by 30 days after the effective date of this AD, whichever occurs earlier.

(2) For spools that have been previously inspected in accordance with GE CF6–80A SB No. 72–500, Revision 3, or Revision 4, or GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4, inspect in accordance with paragraph 2.D of GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, at the next piece-part exposure, or within 3,500 CIS since inspected in accordance with GE CF6–80A SB No. 72–500, Revision 3, or Revision 4, or GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4, whichever occurs earlier.

(d) Thereafter, for spools that have been inspected in accordance with paragraph (c) of this AD, reinspect in accordance with paragraph 2.D of GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, at intervals not to exceed 3,500 CIS since the last inspection.

(e) Remove from service prior to further flight HPCR stage 3–9 spools that meet or exceed the reject criteria established in Section 2.C and 2.D, as applicable, of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, and GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, as appropriate.

(f) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of any major flange.

(g) For the purpose of this AD, piece-part exposure is defined as disassembly and removal of the stage 3–9 spool from the HPCR rotor.

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

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

(i) Special flight permits may be issued, in accordance with 14 CFR 21.197 and 21.199, to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 26, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10503 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–23–AD]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Airplanes, Equipped With Flight Equipment and Engineering Limited Model 121 Series Seats

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 Saab Model SAAB SF340A and SAAB 340B airplanes. This proposal would require repetitive inspections to detect cracking of the tray stop spindle and backrest spindle bosses on the inboard sections of certain seats; and replacement of the inboard sections, if necessary. This proposal would also require repair and identification of the modification plate, which would terminate the requirement to inspect repetitively. This proposal is prompted by reports of fatigue cracking in the vicinity of the tray stop spindle and backrest spindle bosses, which could lead to excessive movement and eventual failure of the backrest on these seats during aft loading. The actions specified by the proposed AD are intended to prevent failure of the backrest on these seats, which could inhibit emergency egress.

DATES: Comments must be received by June 27, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–23–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 Flight Equipment and Engineering Limited, Technical Manager, Nissen House, Grovebury Road, Leighton Buzzard, Bedfordshire, LU7 8TB, United Kingdom. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

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–23–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–23–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Flight Equipment and Engineering Limited (FEEL) Model 121 series seats that are installed on Saab

Model SAAB SF340A and SAAB 340B airplanes. The CAA advises that several operators of Saab Model SAAB SF340A and SAAB SF340B airplanes found fatigue cracking in the vicinity of the tray stop spindle and backrest spindle bosses. Cracking in this area may weaken the machined component that attaches the backrest of the seats to the main spars of the airplane and may lead to excessive movement and eventual failure of the backrest on these seats during aft loading. This condition, if not corrected, could result in failure of the backrest of these seats, which could inhibit emergency egress.

FEEL has issued Service Bulletin 25–20–1287, Revision 3, dated March 1993, that describes procedures for a detailed visual inspection to detect cracking of the tray stop spindle and backrest spindle bosses on the inboard section of certain Model 121 series seats; replacement of the inboard section with a section having the same part number, if necessary, and repetitively inspecting; and identification of the newly installed section.

FEEL has also issued Service Bulletin 25–20–1294, Revision 1, dated May 1993, that describes procedures for repair by replacing the inboard section of certain Model 121 series seats with a newly designed, stronger inboard section, and replacing the front beam with a serviceable beam, if necessary; and identification of the newly installed section. This repair and identification procedure would eliminate the need to inspect the inboard sections repetitively.

The CAA classified these service bulletins as mandatory and issued CAA Airworthiness Directives 006–03–93 and 017–03–93 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 a detailed visual inspection to detect cracking of the tray stop spindle and backrest spindle bosses on the inboard section of certain Model 121 series seats; replacement of the inboard sections with sections having the same part number and repetitively inspecting, if necessary; and identification of the newly installed section. This proposal would require repair (including the installation of stronger inboard sections) and identification of the stronger inboard sections (accomplishment of the actions specified in FEEL Service Bulletin 25–20–1294), which would terminate the requirement to inspect repetitively. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours (1 work hour per seat to inspect and 1 work hour per seat to replace, with 34 seats per airplane) to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $273,020, or $3,740 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:

SAAB Aircraft AB: Docket 94–NM–23–AD.

Applicability: Model SAAB SF340A airplanes having serial numbers 004 through 159 inclusive, and Model SAAB 340B airplanes having serial numbers 160 through 330 inclusive; equipped with Flight Equipment and Engineering Limited (FEEL) Model 121 series seats listed in FEEL Service Bulletin 25–20–1294, Revision 1, dated May 1993, or FEEL Service Bulletin 25–20–1287, Revision 3, dated March 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the backrest on these seats, which could inhibit emergency egress, accomplish the following:

(a) Within 28 days after the effective date of this AD, perform a detailed visual inspection to detect cracking of the tray stop spindle and backrest spindle bosses of the inboard section of the seat, in accordance with FEEL Service Bulletin 25–20–1287, Revision 3, dated March 1993.

(1) If no cracking is found, or if cracking is found that does not penetrate the shear web, repeat the inspection of that seat thereafter at intervals not to exceed 150 hours time-in-service until the requirements or paragraph (b) of this AD are accomplished.

(2) If any cracking is found that penetrates the shear web, prior to further flight, replace the inboard section (up to issue 12), and identify the modification plate with "25–20–1287A," in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 150 hours time-in-service until the requirements of paragraph (b) of the AD are accomplished.

(b) Within 6 months after the effective date of this AD, repair and identify the modification plate with "25–20–1294," in accordance with FEEL Service Bulletin 25–20–1294, Revision 1, dated May 1993. Accomplishment of the actions required by

this paragraph constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 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 26, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10508 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–33965; File No. S7–3–94]

RIN 3235–AG03

Recordkeeping and Reporting Requirements for Trading Systems Operated by Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the date by which comments must be received on proposed rule 17a–23 under the Securities Exchange Act of 1934 ("Act") from April 19, 1994 to May 19, 1994. The proposed rule would establish recordkeeping and reporting requirements for broker-dealer sponsors of certain automated securities trading systems ("broker-dealer trading systems" or "BDTSs").

DATES: Comments should be received on or before May 19, 1994.

ADDRESSES: Comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–9, Washington D.C. 20549. Comment letters should refer to File No. S7–3–94. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Special Counsel, Sheila C. Slevin, Branch Chief, or Kristen N. Geyer, Attorney Advisor, 202/942–0794 or 202/942–0792.

SUPPLEMENTARY INFORMATION: On February 9, 1994, the Commission published proposed rule 17a–23 under the Act.[1] The proposal would establish a uniform recordkeeping and reporting structure for broker-dealer sponsors of broker-dealer trading systems, requiring those broker-dealer sponsors to make available to the Commission and the appropriate self-regulatory organization ("SRO"), system-specific information about activity occurring in those systems. The Commission is extending the comment period on the proposal from April 19, 1994 to May 19, 1994 in order to receive the benefit of comments from the greatest possible number of interested persons.

The proposal raises a number of complex issues with respect to the regulation of broker-dealer trading systems, including the consistency of the proposal with the policies underlying the Act and the appropriate scope of the requirements imposed under the proposal. The Commission has received only two comments on the proposal to date. Accordingly, the Commission is concerned that the current comment period may not permit interested persons sufficient time to address these issues in a thorough manner.[2] Moreover, the lack of a sufficient volume of comments to comprise an adequate record potentially undermines the quality of any determination the Commission ultimately may make with respect to the proposal.[3] Accordingly, in order to receive the benefit of comments from the greatest possible number of interested persons, the Commission is extending the comment period on the proposal from April 19, 1994 to May 19, 1994.

Dated: April 26, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10540 Filed 5–2–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 33605 (February 9, 1994), 59 FR 8368 (February 18, 1994).

[2] A number of potential commenters have called the staff to inquire whether the Commission will extend the comment period.

[3] The Commission's experience with proposed rule 15c2–10 under the Act, which the Commission recently withdrew (Securities Exchange Act Release No. 33621 [February 14, 1994], 59 FR 8379), indicates that an extension of time may assist interested persons in formulating their views and help ensure that the Commission is provided with an adequate record. Proposed rule 15c2–10 would have established a comprehensive regulatory framework for certain automated securities trading systems that are not operated as facilities of national securities exchanges or associations. The Commission twice extended the comment period on proposed rule 15c2–10, for a total of 45 days (from June 19 to August 2, 1989). The Commission received 17 comments on its proposal. However, only five of those 17 comments were received during the initial comment period; the remaining 12 comments were submitted during the subsequent 45-day extended period. If the same pattern holds with respect to the current proposal, extension of the comment period could provide the Commission with a substantial number of additional comments upon which to base its determination.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–34–93]

RIN 1545–AR64

Definition of Sewage Facilities for Tax-exempt Bond Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the definition of sewage facilities. The proposed regulations reflect changes to the law made by the Tax Reform Act of 1986 and affect taxpayers who seek tax-exempt bond financing for sewage facilities. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for 10 a.m. on July 26, 1994, must be received by July 5, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–34–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–34–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

The public hearing will be held in the Commissioner's Conference Room, Internal Revenue Building, room 3313, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Joanne E. Johnson at (202) 622–3110; concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 103(a) generally provides that the interest on obligations of a State or political subdivision thereof is excluded from gross income. Section 103(b)(1) provides, however, that section 103(a) does not apply to any private activity bond unless the bond is a qualified bond. Section 141(e) defines a qualified bond to include an exempt facility bond which, under section 142(a)(5), includes an issue at least 95 percent of the net proceeds of which are used to provide sewage facilities.

Until the Tax Reform Act of 1986 (1986 Act), both sewage disposal facilities and water pollution control facilities constituted exempt facilities under former sections 103(b)(4)(E) and 103(b)(4)(F), respectively, the predecessors to existing section 142. Section 1.103–8(f)(2)(i) defines sewage disposal facilities to mean any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage.

The 1986 Act eliminated the exempt facility exemptions for air and water pollution control facilities, while retaining the exemption for sewage disposal facilities (renamed sewage facilities by the 1986 Act) under section 142(a)(5). Neither section 142 nor the regulations issued under section 103(b)(4) define sewage. As a result, it has become important to define the facilities eligible for private activity bond financing as sewage facilities under section 142(a)(5).

Explanation of Provisions

Definition of Sewage Facility

The proposed regulations define a sewage facility for purposes of section 142(a)(5). A facility may satisfy the definition of a sewage facility regardless whether wastewater originates from a domestic, a commercial, or an industrial source. The proposed regulations, in effect, generally distinguish between sewage treatment facilities and water pollution control facilities. The proposed regulations define sewage facilities by reference to the operations historically performed at most publicly-owned treatment works (POTW). On the other hand, because toxic, priority, and nonconventional pollutants are more in the nature of water pollutants, the regulations consider treatment of these pollutants as ordinarily not performed in sewage facilities.

The proposed regulations provide that sewage facilities include property used for the secondary treatment of wastewater but only to the extent the treatment is for wastewater having an average daily raw wasteload concentration of biochemical oxygen demand (BOD) that does not exceed 350 milligrams per liter as oxygen. Thus, to the extent the wastewater treated by the property has an average daily raw wasteload concentration of BOD exceeding 350 milligrams per liter as oxygen, then the property used for the secondary treatment of the excess is not a sewage facility. The limitation is intended to reasonably approximate the upper limit of the average daily raw wasteload concentration for most POTWs.

The proposed regulations further provide that any property used for the preliminary and/or primary treatment of wastewater used in connection with secondary treatment qualifies as a sewage facility. Sewage facilities also include related property used for the collection, storage, use, processing, or final disposal of wastewater or sewage sludge and property functionally related and subordinate to a sewage facility.

Generally, other treatment of wastewater is not sewage treatment. Thus, for example, sewage facilities, including functionally related and subordinate property, do not include property used for the pretreatment, advanced treatment, or tertiary treatment of wastewater, whether or not the treatment is necessary for preliminary, primary, or secondary treatment.

For property that has both a sewage treatment function and another function, such as pretreatment or, in certain cases, secondary treatment of wastewater having an average daily raw wasteload concentration of BOD in excess of 350 milligrams per liter as oxygen, the proposed regulations provide an allocation rule to permit the portion of the property allocable to sewage treatment to be financed as part of an exempt facility issue.

The IRS solicits comments on how best to address technological advances to wastewater treatment processes within the definition of sewage facilities.

Proposed Effective Dates

The regulations are proposed to apply to issues of bonds issued 60 days after publication of the final regulations in the **Federal Register**.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 26, 1994, at 10 a.m., in the Commissioner's Conference Room, Internal Revenue Building, room 3313, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 5, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Joanne E. Johnson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.142(a)(5)–1 is added to read as follows:

§ 1.142(a)(5)–1 Exempt facility bonds: Sewage facilities.

(a) *In general.* Under section 103(a), a private activity bond is a tax-exempt bond only if it is a qualified bond. Qualified bonds include exempt facility bonds, defined as any bond issued as part of an issue 95 percent or more of the net proceeds of which are used to provide a facility specified in section 142. One type of facility specified in section 142(a) is a sewage facility. This section defines the term *sewage facility* for purposes of section 142(a).

(b) *Definitions*—(1) *Sewage facility defined.* A sewage facility is property—

(i) Used for the secondary treatment of wastewater but, for property treating wastewater reasonably expected to have an average daily raw wasteload concentration of biochemical oxygen demand (BOD) that exceeds 350 milligrams per liter as oxygen, only to the extent the treatment is for wastewater having an average daily raw wasteload concentration of BOD that does not exceed 350 milligrams per liter as oxygen (see paragraph (d) of this section regarding permissible allocations of costs);

(ii) Used for the preliminary and/or primary treatment of wastewater but only to the extent used in connection with secondary treatment (without regard to the BOD limitation described in paragraph (b)(1)(i) of this section);

(iii) Used for the collection, storage, use, processing, or final disposal of—

(A) Wastewater, which property is necessary for such preliminary, primary, or secondary treatment; or

(B) Sewage sludge removed during such preliminary, primary, or secondary treatment; and

(iv) Functionally related and subordinate to property described in this paragraph (b)(1).

(2) *Other applicable definitions*—(i) *Advanced or tertiary treatment* generally means the treatment of wastewater after secondary treatment. Advanced or tertiary treatment ranges from biological treatment extensions to physical-chemical separation techniques such as denitrification, ammonia stripping, carbon adsorption, and chemical precipitation.

(ii) *Nonconventional pollutants* are any pollutants that are not listed in 40 CFR 401.15, 401.16, part 423, app. A.

(iii) *Preliminary treatment* generally means treatment that removes large extraneous matter from incoming wastewater and renders the incoming wastewater more amenable to subsequent treatment and handling.

(iv) *Pretreatment* means processes that equalize flow and loadings, or that precondition wastewater to neutralize or remove toxic, priority, nonconventional pollutants, and other wastes that could adversely affect sewers or inhibit preliminary, primary, or secondary treatment operations.

(v) *Primary treatment* means treatment that removes material that floats or will settle, usually by screens or settling tanks.

(vi) *Priority pollutants* are those pollutants listed in 40 CFR part 423, app. A.

(vii) *Secondary treatment* means the stage in sewage treatment in which a bacterial process (or an equivalent process) consumes the organic parts of wastes, usually by trickling filters or an activated sludge process.

(viii) *Sewage sludge* means sludge as defined in 40 CFR 122.2.

(ix) *Toxic pollutants* are those pollutants listed in 40 CFR 401.15.

(c) *Other property not included in the definition of a sewage facility.* Property other than property described in paragraph (b)(1) of this section is not a sewage facility. Thus, for example, property is not a sewage facility, or functionally related and subordinate property, if the property is used for pretreatment, advanced treatment, or tertiary treatment of wastewater (whether or not this treatment is necessary to perform preliminary, primary, or secondary treatment), or the related collection, storage, use, processing, or final disposal of the wastewater. In addition, property used to treat, process, or use wastewater subsequent to the time the wastewater can be discharged into navigable waters is not a sewage facility.

(d) *Allocation of costs.* In the case of property that has both a use described in paragraph (b)(1) of this section (a sewage treatment function) and a use other than sewage treatment, only the portion of the cost of the property allocable to the sewage treatment function is taken into account as an expenditure to provide sewage facilities. The portion of the cost of property allocable to the sewage treatment function is determined by allocating the cost of that property between the property's sewage treatment function and any other uses by any method which, based on all the facts and circumstances, reasonably reflects a separation of costs for each use of the property.

(e) *Effective date.* This section applies to issues of bonds issued 60 days after publication of the final regulations in the **Federal Register.**

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–10584 Filed 5–2–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 16–18, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Barcelo Washington Hotel, 2121 P Street NW., Washington, DC, (202) 293–3100.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant Secretary for Postsécondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4082, ROB–3), Washington, DC 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also

established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The Advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the Direct Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following items:

—School participation requirements
—Selection criteria
—Application process
—Loan origination requirements

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, Room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: April 26, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–10498 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–M

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34 CFR Chapter VI

Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the date and location of the forthcoming meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 19–20, 1994 from 9:00 am to 5:00 pm.

ADDRESSES: The Barcelo Washington Hotel, 2121 P Street NW., Washington, DC (202) 293–3100.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant for Postsecondary Education U.S. Department of Education, 400 Maryland Avenue SW (room 4082, ROB–3), Washington, DC 20202–5100 Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee is established by sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 USC 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 USC 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing advances for reserve funds of State and nonprofit private loan insurance programs. These standards, criteria, procedures and regulations will implement Section 422 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 beginning with the academic year 1995–1996 (20 U.S.C. 1072).

The meeting is open to the public. The agenda will include the following items:

—Complete definition of reserve funds and assets
—Negotiate standard for unnecessary reserves
—Negotiate definition of improper expenditures

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9:00 am and 5:00 pm weekdays, except Federal holidays.

Dated: April 26, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–10516 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH31–1–6092; FRL–4880–5]

Approval and Promulgation of Implementation Plans; Ohio; Reopening of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: USEPA is reopening the comment period for a proposed rule published on March 4, 1994 (59 FR 10349). On this date, USEPA proposed to disapprove Ohio's submittal for the review of new sources and modifications of existing sources in nonattainment areas in the State. Pursuant to a request from the Ohio Environmental Protection Agency, USEPA is extending the comment period for an additional sixty days.

DATES: Comments regarding the proposed disapproval of the Ohio new source review program must be received by June 3, 1994.

ADDRESSES: Written comments should be sent to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6798.

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6067.

Dated: April 18, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–10550 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 59

[FRL–4877–6]

Field Citation Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Clean Air Act, as amended (the Act), authorizes EPA to

implement a field citation program, as part of the Agency's recently-granted authority for the administrative assessment of civil penalties.

The Act authorizes EPA to issue field citations for appropriate minor violations, defined in todays proposal as those violations determined to be minor in nature after consideration of various specified factors. EPA also proposes a maximum penalty of $5,000 per day for each violation cited, and a maximum cumulative penalty in the range of $15,000 to $25,000 per citation.

Upon receipt of a field citation, a respondent must either pay the proposed penalty or submit a request for a hearing. Hearing procedures are also proposed in this document.

EPA expects to implement this program such that in the great majority of cases the issuance of a field citation will lead to a quick correction of a clear violation and a payment of the assessed penalty.

DATES: *Comments:* Comments must be received on or before July 5, 1994. A public hearing will be held on June 8, 1994 from 1 p.m. to 4 p.m.

If a written request for a public hearing is received by the Agency before June 2, 1994, the Agency will hold a hearing on June 8, 1994 from 1 p.m. until 4 p.m.

ADDRESSES: Written comments should be submitted in duplicate (if possible) to: U.S. Environmental Protection Agency (6102), Attention: Air Docket Number A–91–63, 401 M Street, SW., Washington, DC 20460.

Comments received on this proposed rule will be available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Room M–1500, First Floor Waterside Mall, at 401 M Street, SW., Washington, D.C. A reasonable fee may be charged by the Agency for copying docket materials, pursuant to 40 CFR part 2. The docket control number for the field citation rulemaking is A–91–63. All written comments on this rule must be identified with this number

Public Hearing Information. If requested, a public hearing will be held at the EPA Education Center Auditorium, which is located on the northwest corner of the First Floor of Waterside Mall at 401 M Street, SW., Washington, DC. Oral and written statements will be accepted during the hearing. However, a person who wishes to make an oral presentation must:

(i) Notify the Agency in writing, and

(ii) Bring a written copy of the complete comments for inclusion in the official record.

Written requests to schedule or speak at a public hearing shall be addressed to: Jane Engert, Field Citation Public Participation Officer, Stationary Source Compliance Division (6306W), Office of Air and Radiation, US EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jane Engert, Stationary Source Compliance Division (6306W), Office of Air and Radiation, US EPA, 401 M Street, SW., Washington, DC 20460, (703) 308–8677.

SUPPLEMENTARY INFORMATION:

I. Introduction

This preamble discusses the major issues raised by today's proposed action, and EPA's justification for each proposed provision. Sections II and III, which follow this introduction, contain a brief outline of the proposals statutory authority and background. Section IV outlines the major program considerations and the rationale for EPA's proposal on each, while Section V presents a section-by-section analysis of the proposed rule. The final section in this preamble, Section VI, outlines specific regulatory impact analyses.

II. Statutory Authority

Today's rule is proposed under authority of sections 113(d) and 301(a) of the Act (42 U.S.C. 7413(d) and 7601(a)).

III. Background of Proposed Rule

Prior to the passage of the Clean Air Act Amendments of 1990,[1] EPA enforced Clean Air Act provisions through civil or criminal judicial enforcement actions and the issuance of administrative orders for compliance.[2] The 1990 Amendments expanded EPA's range of enforcement tools by authorizing EPA to issue administrative penalty orders (section 113(d)(1) of the Act) and to administratively assess civil penalties through field citations issued for minor violations (section 113(d)(3) of the Act). EPA expects that these new enforcement options will enhance the Agency's ability to enforce the Act. Where appropriate, EPA will be able to respond quickly to a violation by issuing an administrative penalty order or a field citation, rather than commencing a civil judicial enforcement action for penalties. While civil and criminal judicial enforcement actions will remain an important component of EPA's enforcement program, EPA's new administrative authorities will enable it to effectively pursue a broad range of violations without the expenditure of resources associated with judicial action.

Section 113(d)(3) of the Act authorizes EPA to implement a field citation program to enforce the Act through regulations which establish appropriate minor violations for which field citations may be issued. The Act requires that the Agency consult with the Attorney General and the States, that the maximum civil penalty for a minor violation not exceed $5,000 per day of violation, and that field citations be issued only by EPA officers or employees designated by the Administrator.

Section 113(d)(3) of the Act also provides that any person to whom a field citation is issued may elect either to pay the proposed penalty or to request a hearing in accordance with procedures specified in the regulations. It further provides that the penalty assessed in the field citation becomes final if a request for a hearing is not made within the time specified in the implementing regulations. The Act specifies that hearings shall not be subject to the requirements of the Administrative Procedure Act (APA), 5 U.S.C. 554 or 556, but shall provide a reasonable opportunity to be heard and to present evidence.

The Act also specifies that payment of a field citation penalty shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the Act, if the violation continues.

IV. Program Considerations

A. Appropriate Minor Violations for Issuance of Field Citations

EPA expects the field citation program to exhibit several important characteristics. First, field citations should be issued for violations that are clear cut and truly minor in nature. Second, field citations should, in general, be issued shortly after a violation is discovered, if not upon discovery. Third, the amount of the penalty assessed and other aspects of the program should induce quick correction of the violation and payment of the penalty. As required by section 113(d)(3), EPA is proposing a definition of minor violation for which field citations may be issued. This definition is designed to help implement these goals.

EPA considered several regulatory options for establishing appropriate minor violations as directed in the statute. One option was inclusion in the rule of a comprehensive list of all

[1] Pub. L. No. 101–549, 104 Stat. 2399 (1990)

[2] See CAA sections 113 (c)(1), (c)(2), and (b), prior to their amendment in 1990.

possible violations suitable for field citations. This approach would appear to have several advantages. Explicitly listing each minor violation in the rule would provide clear, objective criteria for the issuance of field citations, thereby limiting inspector discretion. An inspector would need only check the list of appropriate minor violations to determine whether a field citation could be issued. This approach would appear to both streamline the program and help to achieve national consistency in its application.

A major problem with this option became clear, however, when attempts were made to develop such a list of "minor violations." Almost any violation might be considered significant or minor depending on the circumstances. A regulatory list of all or nearly all possible minor violations would therefore be too long to be of any real use, or in the alternative, would exclude violations which, given the right circumstances, would properly be considered minor.

In addition, it became clear that an exercise of discretion was almost unavoidable in determining whether a violation was minor. This was inherent in the view that the specific circumstances, along with the kind of violation, were critical in determining whether or not it was minor.

Thus, the option of listing all or nearly all minor violations in the regulations would result in a list that was either too long or too short to be of significant value. It would also not provide a mechanism for channeling the exercise of discretion that appears inherent in the decision on whether a violation is minor, and consequently would not appear to foster national consistency.

A second option considered by EPA would define as minor those violations limited to particular categories of regulatory requirements (e.g., recordkeeping, reporting, labeling, monitoring, workpractice standards, etc.). This option, however, exhibits the same basic problems as the first option. Here again, violations within these broad categories could be considered significant or minor depending on the circumstances. This second approach still did not provide a method for determining when a violation in one of the broad categories would be considered minor.

Given the importance of the specific circumstances of a violation in categorizing it as significant or minor, EPA considered and is today proposing a third option. In todays proposal a minor violation would be defined as one that is minor in nature, in light of a list of factors that must be considered as a whole. This list contains such factors as whether the violation is readily recognizable by an officer or employee of EPA; the risk and degree of environmental harm resulting from the violation; the time, effort, or expense required to correct the violation; the frequency and duration of the violation; and the importance of the violated requirement to the regulatory program. For example, determinations that the violation is manifest; that it poses little risk of environmental harm; that it has not been identified in a previous enforcement action against the respondent; that it occurred once or only for a short period of time; or that correcting it should require little time, effort, or expense would be indicators of the minor nature of a violation.

EPA recognizes that this list is not exhaustive of all factors that may be relevant to whether a violation is minor in nature. Therefore, the definition includes a provision for consideration of other appropriate factors. However, the list is indicative of the types of factors that EPA will consider in determining whether a violation is minor.

While EPA considers these factors as relevant to determining whether or not a violation is minor in nature, information may not be available on all of these factors when decisions are made regarding the propriety of issuing a field citation. If information is not available for any of the factors noted in the proposed list of factors, then that factor would be treated as neutral on the issue of whether a violation is minor in nature. In addition, EPAs proposal calls for evaluating the factors as a whole. Specific requirements are not proposed for each of the factors individually, i.e., EPA has not proposed a specific time requirement for "duration of violation" or a dollar amount for "expense required to correct a violation." The specific circumstances of the violation would be considered in light of all of these factors taken as a whole.

A final factor has been added to the definition of minor violation to make clear that EPA reserves all rights to determine the appropriate enforcement response to a violation. A violation is not a minor violation under the definition proposed today unless it is minor in nature as described above, and unless the Agency, in its descretion, decides to address it as a minor violation. This is to make it clear that the field citation regulations proposed today do not provide a basis for respondents to claim that an alleged violation is minor in nature and therefore EPA's only available enforcement mechanism is issuance of a field citation. Today's proposed regulations are not intended to limit in any way EPA's ability to fully exercise its enforcement discretion. The Agency reserves the right to determine what, if any, enforcement approach is appropriate in a specific case. EPA believes this is consistent with Congressional intent for the field citation program, as section 113(d)(3) provides that "[t]he Administrator may implement * * * a field citation program through regulations establishing appropriate minor violations for which field citations * * * *may* be issued by officers or employees designated by the Administrator." (emphasis supplied)

It is important to note that there are circumstances under which EPA might conclude that a field citation is not the most appropriate enforcement response. For example, if a person or source is the subject of an ongoing EPA investigation or if a person or source has an aggregation of many minor violations, each of which, if considered individually, would be suitable for a field citation, EPA may appropriately decide to address those violations through its section 113(d) administrative penalty authority or through its section 113(b) civil judicial authority. A more detailed description of the process for determining whether a violation is minor will be presented in the guidance document to be developed for implementing this rule.

B. Maximum Penalty

Under section 113(d)(3), civil penalties assessed in a field citation may not exceed "$5,000 per day of violation." EPA proposes to interpret this provision such that the maximum $5,000 penalty applies for each day, for each separate violation cited in the field citation. This interpretation is consistent with the statutory text and structure of section 113, and is supported by its legislative history.

EPA's proposed interpretation of the phrase "per day of violation" as used in section 113(d)(3) is quite reasonable, given EPA's long history of interpreting an identical penalty provision in this manner, the civil penalty provision of section 113(b) as it stood prior to enactment of the 1990 amendments.[3] That prior interpretation has found

[3] Prior to revision in 1990, section 113(b) stated that "[t]he Administrator shall [for owners or operators of major stationary sources], and may, in the case of any other person, commence a civil action * * * to assess and recover a civil penalty of not more than $25,000 per day of violation * * *"

support in several judicial decisions.[4] By using the same language as previously found in section 113(b), Congress clearly authorized EPA to continue this interpretation for purposes of the new field citation program.

This interpretation is also consistent with Congress' apparent objectives for the field citation program as indicated by various provisions in section 113 relating to field citations. Congress limited the field citation program to "appropriate minor violations," established a maximum penalty amount of "$5,000 per day of violation," provided a right to a non-APA hearing, and required that penalties in this program be assessed after consideration of the penalty assessment criteria of section 113(e). These provisions indicate that Congress wanted to provide EPA with a flexible enforcement tool that would focus on the less significant, presumably simpler and less complex violations, with assessment of significantly lower penalties than expected through two other civil penalty provisions of section 113, administrative penalty orders (section 113(d)(1)) and judicial civil penalty actions (section 113(b)).

EPA's proposed interpretation of the maximum penalty amount for the field citation program, $5,000 per day for each violation, will lead to significantly lower penalty assessments in comparison to these other two programs, primarily because of the large reduction in the maximum penalty from $25,000 to $5,000, the minor nature of the violations, and the penalty assessment criteria in section 113(e). Interpreting "per day of violation" to mean per day for each violation allows EPA to fairly and flexibly implement a field citation program in a manner consistent with Congress' apparent objectives for this program. While a more restrictive interpretation, such as $5,000 per day of violation no matter how many different violations on a specific day, might lead to even lower penalty assessments in certain cases, Congress' apparent objectives for the field citation program can be met without adopting this approach. In fact, a more restrictive interpretation might hinder implementation of these goals.

First, an interpretation that "per day of violation" in section 113(d)(3) imposes a maximum penalty of $5,000 not withstanding the number of violations in a day would in certain cases minimize if not remove the Agency's ability to fully account for important differences between violators when assessing penalties under this program. Two violators with different numbers of minor violations on the same day would both face the same maximum penalty, possibly removing EPA's ability to reflect this difference in the amount of penalty imposed. This would appear to run counter to the requirement in section 113(e) that EPA consider such differences when assessing penalties under section 113(d)(3). Second, in that situation there would be an incentive for EPA to issue an administrative penalty order in lieu of a field citation, to avoid the apparent unfairness resulting from the limitation in discretion embodied in the more restrictive interpretation.

It is unlikely that Congress intended either of these results, and EPA's proposed interpretation avoids them without in any way sacrificing full implementation of Congress' goals for this program. The Agency will be able to fully consider all the factors required under section 113(e), including the number of violations, and the field citation program will still involve significantly lower penalty amounts than the other civil penalty programs in section 113.

EPA's interpretation is supported by the legislative history in section 113(d)(3). The field citation provisions finally adopted by Congress originated in the House of Representatives. While an early version of the provision called for a maximum penalty of "$5,000 per day for each violation," this was changed without explanation to a maximum penalty of "5,000 per day of violation."[5] While the House Committee Report fails to explain this change in language, it is important to note that the phrase "per day of violation" had long been interpreted by the Agency as establishing a maximum civil penalty for each day, for each separate violation. Various judicial decisions were consistent with this interpretation.[6] Congress' adoption of language with a long-standing Agency interpretation is strong evidence that despite the difference in language between section 113(a) and section 113(d)(3), Congress did not preclude EPA's proposed interpretation but instead authorized the Agency to adopt the same interpretation for the field citation program that EPA had long employed for the maximum penalty provision found in the pre-1990 version of section 113(a).

The legislative history in the Senate also makes it clear that Congress intended to authorize EPA's proposed interpretation. In the Senate, the bill reported out by the Senate Committee on Environment and Public Works authorized a field citation program with a maximum civil penalty of "$5,000 per day for each violation."[7] The bill passed by the Senate contained a very different provision, establishing a $5,000 maximum "per inspection."[8] In conference, the Senate's clear mandate for a maximum dollar amount, no matter the number of violations, was rejected in favor of the version passed by the House. This indicates that Congress did not intend to mandate a similar interpretation for the field citation program.

Finally, EPA's interpretation is supported by the legislative history of title II's enforcement provisions. As reported out of the Senate Committee on Environment and Public Works, sections 211(d)(1) and 205(c) of the Act authorized administrative assessment of civil penalties of no more than "$25,000 per day of violation."[9] In describing this authority, the Committee Report states that "[t]his section of the bill changes the section 211(d) penalty amount * * * to a maximum penalty of $25,000 per day of violation. This penalty amount applies to *each day for each violation*." (emphasis supplied)[10] This shows that when Congress used the term "per day of violation" in amending section 113 it had no intention of barring an EPA interpretation that such term meant "per day for each violation."

On a separate issue, EPA considered several different ways to structure the field citation program so that as clear a line as possible would be drawn indicating when it was appropriate to issue a field citation, and when one of

[4] *U.S.* v. *SCM Corp.*, 667 F. Supp. 110 (D. Md. 1987); *United States* v. *Chevron U.S.A., Inc.*, 639 F. Supp. 770 (W.D. Tex. 1985).

[5] As originally introduced, the field citation program contained a limit of $5,000 "per day for each violation." H.R. 3030, 101st Cong., 1st Sess. 283 (1989). A similar provision was employed for civil judicial penalties under § 113(b) and the new authority for administrative penalty orders under § 113(d)(1). The Subcommittee on Health and the Environment of the Committee on Energy and Commerce retained this provision for judicially imposed civil penalties, but for the field citations program limited field citations to $5,000 "per day of violation," adopting language from the judicial civil penalty provision in the then current Clean Air Act. House Subcommittee on Health and the Environment, 101st Cong., 1st Sess. Amendment in the Nature of a Substitute of H.R. 3030 at 309 (Comm. Print, November 9, 1989). This version of the field citation penalty provision was later reported out by the Committee, adopted by the House and finally included in the Clean Air Act Amendments of 1990. Pub. L. No. 101–549, 104 Stat. 2399 (1990).

[6] Supra n. 2.

[7] S. Rep. No. 101–228, 101st Cong., 1st Sess. 550 (1989).

[8] S. 1630, 101st Cong., 2d Sess. (1990).

[9] S. Rep. No. 101–228, 101st Cong., 1st Sess. 636 (1989).

[10] S. Rep. No. 101–228, 101st Cong., 1st Sess. 126 (1989).

the other civil penalty authorities would be more appropriate. This is important, among other things, given the decentralized nature of this program and the authority to issue citations in the field. One option considered was issuance of internal Agency guidance on this point. As discussed in section D of this notice, EPA does intend to issue guidance on a wide variety of matters related to this program, and an important component of this will include guidance on when to issue a citation and when to employ other enforcement tools open to the Agency.

EPA also considered and is proposing establishing a maximum cumulative dollar amount that may be assessed in an individual citation. This would have the advantage of providing an objective indication in the regulations themselves that a more serious compliance problem exists and other, more stringent enforcement mechanisms would generally be more appropriate. This maximum penalty amount could be reached by, for example, a combination of many violations (whether occurring on the same or separate days), with low amounts per violation, or a smaller number of violations combined with larger penalty amounts per violation. Either of these circumstances would serve to indicate that a stronger enforcement approach may well be appropriate. While such a cap could be included in internal Agency guidance, a regulatory cap will provide greater structure for this program, at least initially.

As a variation on the above, EPA considered establishing a maximum number of violations that could be included in an individual citation. This option, however, might preclude issuance of a field citation where the number of violations exceeded the maximum, even if the violations were all very minor and would receive a low penalty assessment. For this reason EPA is not currently proposing this form of a cap.

EPA is proposing that the maximum cumulative penalty in an individual citation not exceed a dollar amount in the range of $15,000 to $25,000. EPA invites comment on this range, and whether such a dollar cap should be in the regulations or in Agency guidance. EPA is also considering and invites comment on whether the penalty cap should "sunset" after a pre-set time period, ranging from one or two years to a longer period. Before the cap expired of its own terms, EPA would reevaluate whether it should continue, and if appropriate, would revise the regulations to extend the cap or some more useful version thereof.

C. Penalty Assessment Policy

The regulations proposed today define minor violation, establish the maximum penalty amount per violation, and address matters concerning hearings to contest assessment of a civil penalty through a field citation. EPA plans to develop detailed guidance that will address many of the other issues concerning implementation of the field citation program. The following section discusses important aspects of EPA's planned guidance on the penalty amounts to be assessed by field citations.

Penalty assessment under the field citation program will be designed to achieve expeditious compliance with the applicable Clean Air Act requirements. Although only minor violations of the Act will be subject to the program, the penalties must be significant enough to deter violations and to ensure a high rate of compliance. On the other hand, penalties will generally be significantly lower than amounts that could be assessed through other enforcement means. EPA plans to incorporate these objectives into a field citation penalty assessment policy, which will become a component of the Agency's Clean Air Act civil penalty assessment policy.

The penalty assessment guidance will explain how the Agency intends to evaluate the penalty assessment criteria in section 113(e) of the Act when determining penalty amounts. The Agency is considering assigning standardized penalty amounts to specific categories of violations. These standard amounts might then be modified by means of a penalty matrix, which would take into account such factors as the seriousness of the violation; the degree of environmental harm; or other appropriate criteria.

EPA expects that its penalty assessment guidance will limit the discretion of inspectors and others in setting penalty amounts. For example, any matrix approach as described above would constrain the person issuing the field citation to operate within the limits of the matrix. In addition, EPA expects the guidance will establish that where the amount of a penalty would be based on specific characteristics of the violation and the person issuing the citation has not obtained evidence relating to one of the characteristics, then that characteristic would be treated as neutral for purposes of penalty assessment.

D. Program Implementation

In addition to guidance on the penalty amounts assessed through the field citation program, EPA plans to issue guidance addressing a wide variety of other implementation issues. This guidance would be carefully designed to spell out and restrict the day-to-day practice under this program. EPA believes this approach will facilitate achievement of the goals for this program, and still provide the flexibility necessary for an enforcement program designed to address a wide variety of factual circumstances. This section describes EPA's current ideas on certain elements of this program guidance.

Field citations may be issued either in the field or from an EPA office. Violations of reporting requirements, for example, will typically involve desk issuance since discovery of these violations normally occurs not in the field, but in an office designated to receive such reports. Even where a violation is discovered in the field, an inspector may elect to return to the office for further review or discussion with management prior to issuing a field citation. In order to promote consistency, inspectors will be encouraged to return to the office for clarification whenever there is any doubt regarding the nature of a violation or the appropriate penalty amount. During the initial phase of program implementation, the Agency anticipates that most field citations will be issued from an EPA office, based on field inspections. After a suitable period of experience with the program, it is expected that the majority of inspection-based citations will be issued on-site. The Agency will then establish guidelines for particular situations in which office-only issuance would still be recommended, e.g., based on penalties exceeding a specified dollar amount, or for other relevant considerations. Although State and local employees may not issue federal field citations pursuant to this regulation, EPA employees may rely on information gathered during State and local inspections as a basis for issuing field citations.

Following discovery of a minor violation and issuance of a field citation, the respondent will have thirty days in which to either pay the assessed penalty or to request a hearing. EPA reserves the right to revoke a field citation, in whole or in part, at any time prior to payment of the assessed penalty.

EPA believes this authority is a necessary safeguard in this program. It will allow a reevaluation, before the process has gone very far, of whether a citation should have been issued. For example, this could involve a reevaluation of whether a filed citation

is the most appropriate enforcement tool, or could involve the early resolution of a citation issued in error.

As noted above, EPA will prepare detailed guidance for the implementation of the field citation program. The guidance will cover such broad areas as coordination of inspections with State and local agencies, desk issuance as opposed to field issuance, determination of whether a violation is minor, and calculation of penalty amounts. The guidance will also cover such issues as how to revoke a field citation, and how field citations will be recorded and tracked. Finally, the guidance will include procedures for determining appropriate penalty amounts, and an actual sample of the design and format of the field citation.

E. Field Citations as Distinguished From Other Enforcement Authorities

Under section 113(b) of the Act, the Agency is authorized to commence civil judicial enforcement actions against certain violators to assess and recover civil penalties of up to $25,000 per day for each violation, and/or to seek temporary or permanent injunctions. Civil actions under section 113(b) are most advantageous when:

(1) A compliance schedule or other injunctive relief is necessary and an administrative compliance order under section 113(a) is either unavailable or inappropriate;

(2) The violator's compliance history indicates that the compliance schedule should be subject to court supervision and contempt remedies; or

(3) Substantial civil penalties are appropriate.

In 1990, Congress amended section 113 of the Act, providing new authority for the Administrator to issue administrative penalty orders under section 113(d)(1). These administrative penalty orders, which may assess civil penalties of up to $25,000 per day of violation, may be issued where:

(1) The total penalty sought does not exceed $200,000; and

(2) The first alleged date of violation occurred no more than twelve months prior to initiation of the administrative action. The Administrator and the Attorney General may, however, jointly determine that an administrative penalty action is appropriate for either a larger penalty or a longer period of violation.

Administrative penalties under section 113(d)(1) are most advantageous where:

(1) The violator does not have a compliance history of multiple or repeat violations; and

(2) Court-supervised injunctive relief is not appropriate. Additionally, civil judicial action is preferred over administrative action where extensive post-filing discovery will be necessary to fully develop the circumstances associated with one or more violations, and where new legal issues are presented by a case.

The field citation program under section 113(d)(3) is another new enforcement authority provided by the November 15, 1990 Amendments. As indicated elsewhere in this preamble, the field citation program involves the issuance of citations that assess civil penalties, not exceeding $5,000 per day of violation, for minor violations of the Act.

The focus of the field citation program will be to ensure compliance with regulatory requirements that often remain unaddressed due to limited Agency resources. The opportunity for streamlined, expedited enforcement to address minor violations should save Agency resources, reduce court backlogs, and send a clear enforcement message to violators that minor violations will not be overlooked.

F. Role of Inspectors

1. Issuance by Officers/Employees

Under the Act, field citations "may be issued by officers or employees designated by the Administrator." It is the Agency's position that section 113(d)(3) does not authorize delegation of section 113 field citation authority to State and local officials. The legislative history supports this interpretation.[11] Comments on the Agency's position, including any alternative legal analyses or interpretations of the statute, are invited.

2. Training and Guidance for Inspectors and Enforcement Officers

The success of the field citation program will depend on well-trained inspectors and enforcement officers, skilled at both recognizing minor violations and determining appropriate penalty amounts. Before implementing this program, EPA will offer a number of Regional inspector training sessions to ensure that inspectors and enforcement personnel are completely familiar with the program and understand the limits of its applicability. In particular, employees will be trained to identify minor violations based on the criteria set forth in this regulation. They will also be trained to identify circumstances in which particular violations might indicate a more serious compliance problem that should be handled through a more stringent enforcement action.

In addition to training, inspectors and enforcement officers will be given a detailed guidance document containing recommended penalty ranges associated with specific categories of violations. In this way, inspectors will have a ready reference if they are unsure about a particular violation. Moreover, the establishment of appropriate penalty amounts in guidance will help to ensure national consistency. Whenever there are doubts regarding how to characterize a suspected violation, inspectors will be directed to return to the office for further evaluation and consultation.

G. Rules Governing Hearings on Field Citations

In addition to authorizing EPA to implement a field citation program, section 113(d)(3) of the Act addresses certain basic procedural issues involving hearings on field citations. First, it provides that any person to whom a civil penalty is assessed through a field citation may elect either to pay the civil penalty or to request a hearing on the field citation. Any request for a hearing must be within the time period prescribed by the Administrator through regulation, and if a hearing is not requested within such time then the penalty assessment in the field citation becomes final. Second, this section explicitly provides that the hearing on a field citation shall not be subject to the Administrative Procedure Act (APA) provisions on formal adjudications (5 U.S.C. 554 or 556), but shall provide a reasonable opportunity to be heard and to present evidence.

EPA is proposing three distinct alternatives to implement these statutory provisions and establish fair and reasonable procedures to govern hearings on field citations. These alternatives are: (1) EPA's consolidated, APA penalty assessment procedures under 40 CFR part 22, with appropriate revisions; (2) EPA's proposed consolidated, non-APA penalty assessment procedures under 40 CFR part 28, with appropriate revisions; and (3) new streamlined administrative procedures contained in today's proposal. The following section discusses and evaluates each of these alternatives. The Agency requests comment on the propriety of each of these penalty assessment procedures.

Procedures for the assessment of field citation penalties must reasonably implement the requirements of section 113(d)(3), including providing a reasonable opportunity to be heard and

[11] "The citations are to be issued by Federal officers or employees designated by EPA." H.R. Rep. No. 101–490, 101st Cong., 2d Sess. 393 (1990).

to present evidence, and must also satisfy procedural due process considerations under the Constitution. Determining compliance with both of these requirements requires a close comparison between the proposed procedures, the factual and legal situations that are expected to arise under this program, and the interests at issue, both private and governmental.

Congress specifically limited field citations to minor violations, as defined by the Agency. While EPA's proposed definition of minor violation does not specify each and every violation that might be considered minor, it does set clear limits on the kinds of violations that will be considered minor violations. The many different kinds of violations that may meet the definition of minor violation will exhibit common features. For example, the typical minor violation will involve a clear and straightforward violation, both factually and legally, of limited frequency or duration and limited environmental impact. The factual and legal issues that EPA expects to arise in field citation assessments are, overall, expected to be simple and uncomplicated.

The basic private interest at stake is the assessment of civil penalties of up to a maximum of $5,000 per day for each violation, as well as the resources needed to contest such assessments where considered appropriate. The maximum penalty is significantly lower than the maximum administrative or judicial civil penalties authorized under sections 113, 205 and 211 of the Act. The primary governmental interest is implementation of a program that fairly fills a gap in EPA's enforcement programs, without undue drain on EPA's limited enforcement resources. EPA believes this interest is best served by addressing minor violations in a straightforward and direct manner, somewhat akin to a traffic enforcement program. The deterrence effect from this program will come in large part from the issuance of a citation immediately upon or shortly after detection of a violation, with final assessment of the penalty occurring shortly after issuance of the citation.

EPA has considered these and other factors in evaluating the three options proposed today for hearing procedures, and believes all three fully implement Congressional intent and satisfy due process requirements. The three options draw different balances between complexity and simplicity, formality and informality, but are all designed to implement a program aimed at simple and uncomplicated violations, involving penalties significantly lower than others authorized in the Act, and requiring straightforward, quick and fair adjudication to obtain the desired deterrent effect without undue drain on limited Agency resources.

1. Modified 40 CFR Part 22—Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits

Under the first Agency proposal, administrative hearings on field citations would be conducted pursuant to the procedures established by EPAs consolidated APA rules of practice for the administrative assessment of civil penalties, 40 CFR part 22. In a separate rulemaking, the Agency would propose to amend part 22, where appropriate, to make that regulation applicable to field citations.

Basis for Hearing Procedures

Although the Act explicitly indicates that hearings in field citation cases are not subject to the provisions for formal APA adjudication, it does not prohibit the Agency from exercising its discretion and providing such procedural rights. There are two primary benefits in using part 22 to govern hearings on field citations: (1) It would consolidate Clean Air Act administrative penalty hearings under one set of procedural rules, minimizing the need for the Agency and the regulated community to learn and become proficient in more than one set of procedures; and (2) it would use a penalty assessment procedure with which both the Agency and the regulated community have a great deal of experience.

The Act as amended in 1990 authorizes the Administrator to issue administrative penalty orders under section 113(d)(1). These administrative penalty orders, which may assess civil penalties of up to $25,000 per day of violation, are generally limited to situations where the total penalty sought does not exceed $200,000 and where the first alleged date of violation occurred no more than twelve months prior to initiation of the administrative action. Similar authority was provided under sections 205(c) and 211(d)(1) of the Act.

The penalties contained in administrative penalty orders issued under section 113(d)(1) are assessed pursuant to the part 22 procedures, as are administrative penalties assessed under sections 205(c) and 211(d)(1). Part 22 was amended to incorporate these provisions on February 4, 1992 (57 FR 4318). Thus, using part 22 to govern hearings on field citations issued under section 113(d)(3) would consolidate all of the Clean Air Act administrative penalty hearings under one set of procedures.

Additionally, the Agency has used part 22 for assessing administrative penalties under other environmental statutes since 1980. Consequently, both the regulated community and the Agency have considerable experience with these procedures, thereby simplifying the implementation of the field citation program. As discussed later, minor revisions to part 22 procedures would be adopted to account for certain statutory provisions in section 113(d)(3) and to account for the types of violations and penalties associated with field citations.

Proposed Hearing Procedures

Under part 22, the field citation would be issued by an EPA officer or employee as an administrative complaint. Within twenty days after service of the citation, the Respondent must file an answer. In the answer, the Respondent may contest the facts in the complaint, the size of the penalty, or claim that the Respondent is entitled to judgment as a matter of law. If requested by the Respondent, a hearing will be held on the issues raised in the citation and answer. The Presiding Officer has the discretion to allow the Respondent to amend his answer. A default order, which allows the full proposed penalty to be collected, may be issued upon motion if the Respondent fails to file an answer.

The Respondent may simultaneously pursue informal settlement and a hearing. During settlement negotiations, the parties may informally exchange information, if appropriate. For example, the Agency may supply copies of the documentation used to support its case and the Respondent might provide any evidence that would tend to disprove the allegations or to mitigate the penalty. A written Consent Agreement and a proposed Consent Order are submitted for approval by the Regional Administrator, if the parties reach a settlement of the claim.

Either party may file a preliminary motion for an accelerated decision if no genuine issues of material fact exist. The Respondent may file a motion for dismissal of the citation.

A mandatory prehearing conference is held to simplify issues; to limit the number of potential witnesses; and to address other matters that may expedite the hearing. An exchange of witness lists and documents occurs at the prehearing conference.

The hearing is held for the presentation of evidence and testimony concerning the facts relating to the

violation and to the size of the penalty. Except as otherwise provided by the Presiding Officer, witnesses are to be examined orally, under oath or affirmation, at the hearing. The parties have the right to cross-examine witnesses who testify at the hearing. The Presiding Officer may take notice of any matter judicially noticed in the Federal courts and of any facts falling within the specialized knowledge and expertise of the Agency.

At the hearing, the Agency has the burden of going forward and proving that the violation occurred and that the proposed penalty is appropriate. After a prima facie case is established, the Respondent has the burden of presenting and going forward with any defense to the allegations in the citation. The matters in controversy are determined by the Presiding Officer upon a preponderance of evidence.

The hearing must be transcribed. Within twenty days after the transcript is available, the parties may submit proposed findings of fact and conclusions of law with supporting briefs. Reply briefs are also authorized.

The Presiding Officer issues the initial decision, which consists of findings of fact, conclusions of law, and recommended civil penalty. In reaching an initial decision, the Presiding Officer is required to consider the statutory penalty assessment criteria listed in section 113(e), section 205(c) or section 211(d) of the Act, as appropriate. For section 113(e), these criteria include: The size of the business; the economic impact of the penalty on the business; the Respondent's full compliance history; the Respondent's good faith efforts to comply; the duration of the violation as established by any credible evidence; payment by the Respondent of penalties previously assessed for the same violation; the economic benefit of noncompliance; the seriousness of the violation; and such other factors as justice may require.

If the Presiding Officer recommends a penalty different from the one proposed by the citation, the initial decision must set forth the specific reasons for the increase or decrease. Either party may file a motion to reopen the hearing within twenty (20) days of service of the initial decision.

Unless a party appeals to the Environmental Appeals Board (the Board) within twenty (20) days of service, or unless the Board elects to review it *sua sponte*, the Presiding Officer's initial decision becomes a final order of the Board within forty-five (45) days after service. A final order of the Board shall adopt, modify or set aside the findings and conclusions of the initial decision. The Board is authorized to increase or decrease the assessed penalty, except in the case of a default order. A motion for reconsideration of the final order may be filed with the Board within ten (10) days after service of the final order.

Procedural Due Process

EPA analyzed the issue of procedural due process with its consolidated APA rules of practice when they were promulgated. See 52 FR 2922 (August 6, 1987) (NPRM) and 57 FR 4316 (February 4, 1992) (FRM). In that analysis EPA evaluated and balanced the three factors specified by the Supreme Court in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976) for determining whether the administrative procedure provided to an individual prior to the deprivation of a property interest meets the due process requirements of the Fifth Amendment: the magnitude and nature of the individual interest at stake, the risk of an erroneous deprivation of that interest and the benefit of additional procedures in reducing that risk, and the governmental interest in not providing such additional procedures.

EPA's APA style hearing procedures would certainly satisfy procedural due process considerations as well as statutory requirements if employed for hearings on field citations. By statute APA adjudication procedures are not required. The violations are by definition minor in nature and should involve simple and straightforward factual and legal situations. In fact, EPA believes these procedures provide significantly more process than required by the Fifth Amendment for hearings on field citations, and are proposed as an option not because of due process considerations but because of the expected benefits of having a single set of procedures governing all administrative penalty proceedings under the Clean Air Act.

EPA is also considering certain revisions to the Part 22 procedures to account for the minor nature of the violations at issue under the field citation program. First, EPA is considering using presiding officers that are not administrative law judges. As with other non-APA situations, the agency's presiding officers would conduct the hearings and take other actions. This would help to conserve the agency's administrative law judge resources for APA hearings, with no expected reduction in the accuracy of the hearing process. The Agency is also considering such revisions as making the prehearing conference optional and changing the deadline for default from twenty to thirty days following service.

In addition, EPA is considering limiting appeals from the presiding officer to the EAB. Appeals from the initial decision on a field citation would not be of right, but would be at the discretion of the EAB. For example, a party seeking an appeal from the initial decision would file a motion with the EAB seeking leave to appeal. There would only be an appeal to the EAB if they granted such motion, or reviewed the initial decision *sua sponte*. Absent such review by the EAB, the initial decision of the presiding officer would become the final order of the Agency. EPA expects that in the typical situation the EAB would not hear an appeal from either party given the expected nature of the minor violations. Appeals typically would be limited to cases with unique factual or legal circumstances. This would conserve the Agency's resources for hearing and deciding administrative appeals, and allow their use for APA cases and more complex cases. At the same time, where appropriate the EAB could hear an appeal. This would minimize the chance of an erroneous deprivation of an individual interest, and at the same time maximize the efficient use of scarce Agency resources.

2. Modified 40 CFR Part 28—Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties Under Various Statutes

Under the second option considered and proposed by the Agency, the hearings on field citations would be conducted pursuant to the procedures in EPAs proposed non-APA, consolidated rules of practice for the administrative assessment of penalties, with appropriate revisions to conform with the Clean Air Act. (See proposed 40 CFR part 28, 56 FR 29996 (July 1, 1991)). In a separate rulemaking, the Agency would propose to amend Part 28, where appropriate, to make that regulation applicable to field citations.

Basis for Hearing Procedures

The rules of procedure proposed as 40 CFR Part 28 are intended to consolidate under uniform rules of practice the following non-APA administrative penalty programs that are currently administered by the Agency: Class I administrative penalties under sections 309(g) and 311(b)(6) of the Clean Water Act, section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and section 325(b) of the Emergency Planning and Community Right-toKnow Act (EPCRA); and administrative penalties under section 1423(c) of the Safe Drinking

Water Act and sections 325 (c) and (d) of EPCRA.

Part 28 was proposed to consolidate and harmonize certain EPA procedural rules and guidance for the administrative assessment of civil penalties under various statutes, where Congress gave EPA authority to conduct non-APA hearings. In line with this Congressional intent, proposed part 28 is designed to provide streamlined administrative penalty procedures that are designed to assure the protection of basic constitutional rights. Section 113(d)(3) of the Act explicitly states that hearings on field citations are not subject to the APA provisions for hearings (5 U.S.C. 554), and that recipients of a field citation must be provided a reasonable opportunity to be heard and to present evidence.

The basic hearing requirements of the field citation program are therefore similar in structure to those programs proposed for inclusion under 40 CFR part 28.

Inclusion of hearings on CAA field citations in part 28 would be consistent with the goals stated by EPA when it proposed these consolidated rules for non-APA hearing procedures under various statutes—reduction of confusion by Agency decision makers and enforcement staffs, provision for the regulated community of an essentially uniform set of procedural rules, and conformity with Congress' and EPA's desire to employ expedited penalty assessment procedures. At the same time, the proposed part 28 procedures are designed to provide non-APA hearing procedures under a wide range of statutory provisions, involving civil penalties ranging from $5,000 for each day of violation to $25,000 per violation. This contrasts with the field citation program, involving no more than $5,000 per day of violation for minor violations of the Act or its implementing regulations. In addition, adoption of part 28 procedures for the field citation program would also involve two separate procedures for administrative assessment of civil penalties under the CAA, parts 28 and 22. Adding the field citation program to part 28, however, would promote a greater potential for non-APA multimedia enforcement actions by providing a common administrative forum. As with the part 22 option, the currently proposed part 28 procedures would be modified in certain ways to account for certain aspects of the field citation program. These are discussed later.

Proposed Hearing Procedures

Under the modified part 28, the field citation would be issued as an administrative complaint. Unlike proposed part 28, however, the field citation complaints would not require certification by an Agency attorney. Within thirty days after service of the citation, the Respondent must file a response requesting a hearing. A 90-day extension of time to respond may be granted by the complainant.

As in part 22 practice, the Respondent may simultaneously pursue informal settlement and a hearing. During settlement negotiations, the parties may informally exchange information, if appropriate. For example, the Agency may supply copies of the documentation used to support its case and the Respondent might provide any evidence that would tend to disprove the allegations or to mitigate the requested penalty.

EPA's experience has been that the great majority of its administrative penalty actions conclude by a settlement. Part 28 explicitly provides settlement procedures and, unlike part 22, would allow field citation cases to settle by the simple agreement of the parties in a consent order or, if the Respondent chooses, by the Respondent's payment of the amount requested by the Agency in the field citation itself (or in any superseding pleading). Under part 28, a settlement may be reached at any time, even before the deadline for a response has passed. In cases of settlement, there is no further administrative review, and the Respondent waives its rights to appeal the administrative penalty to the appropriate federal court. Pursuant to the language of the CAA, consent orders under the Part 28 field citation program would allow for the compromise, modification, or remission by the Agency, with or without conditions, of any penalty requested in the administrative complaint.

Part 28 would be revised such that failure of the Respondent to affirmatively request a hearing in the response would lead to assessment of the penalty proposed in the field citation. Under section 113(d)(3) of the Act, the penalty assessed by the field citation becomes final if the Respondent fails to request a hearing within the time required by the implementing regulation. Part 28 would also be revised to require Agency counsel to file a written explanation for the penalty imposed by the field citation no later than five days following a Respondent's default by failure to request a hearing. This would ensure an adequate administrative record for the penalty imposed.

Upon the request of a party, or on his own initiative, the Presiding Officer may make a summary adjudication of the allegations, without further proceedings, whenever he finds that there are no material facts in dispute and that a party is entitled to judgment as a matter of law. In the same manner, the Presiding Officer may accelerate the transmittal of his recommended decision to the Regional Administrator if there is no compelling need for additional fact-finding on remedy issues.

Either party may request a summary determination or an accelerated recommended decision at any time after service of the response, up until thirty days before the time set for a hearing. Alternatively, the Presiding Officer may summarily determine any of the allegations after the time for the exchange of information has run, and after he has examined the entire administrative record. The Presiding Officer may accelerate the transmittal of the recommended decision, upon finding liability in a summary determination or upon stipulation as to liability by the parties, if there is no need for further fact-finding as to remedy.

In reaching a recommended decision, the Presiding Officer is required to consider the statutory penalty assessment criteria listed in section 113(e) of the Act. These criteria include the size of the business; the economic impact of the penalty on the business; the Respondent's full compliance history; the Respondent's good faith efforts to comply; the duration of the violation as established by any credible evidence; payment by the Respondent of penalties previously assessed for the same violation; the economic benefit of noncompliance; the seriousness of the violation; and such other factors as justice may require. The Respondent is afforded the opportunity to provide evidence of the relevant statutory criteria, including evidence concerning the duration of the violation. Part 28 would be revised to incorporate these statutory penalty assessment criteria.

Other than by a motion for summary determination or by a motion for an accelerated recommended decision, a field citation may be settled preliminarily by a consent order. The consent order includes a penalty settlement which has the force and effect of a final order issued by the Regional Administrator, except that the consent order is not appealable. Part 28 would be revised to provide that, consistent with the authority under

section 113(d)(2)(B), the consent order may be issued with or without conditions.

Part 28 establishes deadlines to ensure that administrative cases do not languish.

Not later than thirty days following the Respondent's response, the Presiding Officer is required to hold a prehearing conference at which the parties meet to consider matters which may expedite the disposition of the proceedings. The Presiding Officer also sets the time and place for further proceedings and schedules an information exchange during the prehearing conference, if one is requested.

The authority to require discovery is limited to exchange of certain information. The required information that may be exchanged is limited to: (1) Documents intended to be introduced at the proceedings under Part 28 that have not already been filed with the Hearing Clerk; (2) witness lists, qualifications of expert witnesses and the subject matter of intended witness testimony; and (3) information known to the Respondent relating to the Respondent's inability to pay a civil penalty or relating to any economic advantage accruing to the Respondent as a result of his alleged violations of law. Part 28 would be revised to expand this last category, by allowing the Agency to include the Respondent's good faith efforts to comply with the applicable Clean Air Act requirements. Other forms of discovery, including interrogatories and the taking of depositions, are not permitted unless stipulated to by the parties.

Except for supplemental materials, the information exchange must conclude no later than sixty days following the prehearing conference. Since new information concerning witnesses or documents may develop after an information response deadline passes, the parties may supplement the original information, but not later than seven days prior to the hearing.

In order to provide the parties with incentives to cooperate during the discovery phase, there are both mandatory and discretionary sanctions for failure to comply with the information exchange requirements. For example, if a party fails to timely provide the name and all supporting information regarding any witness it intends to present at a hearing, such witness may not be presented. Similarly, if a party fails to timely produce a document it intends to introduce at such a hearing, that document may not be introduced to prove the truth of what it asserts. Part 28 would be revised to provide that if the Respondent fails to timely provide information regarding its good faith efforts to comply with the Act, then that information may not be used by the Respondent at the hearing. The Presiding Officer may also impose additional appropriate sanctions on a party that fails to fully comply with these requirements.

In conducting the hearing, the Presiding Officer may limit the number of witnesses and the scope and extent of both the direct examination and cross-examination. Cross-examination is limited to the scope of the direct examination. The Presiding Officer may take testimony in the form that is the most efficient under the circumstances. No matter what form of testimony is permitted, however, the Presiding Officer will make adequate provision to ensure that each party retains its right of cross-examination if the witness is available to testify or is subject to a subpoena.

The hearing is generally limited to resolving disputed allegations as to liability. Remedy issues are generally addressed in the parties' closing arguments, unless there is a compelling need for remedy testimony. Such need could arise where the underlying facts which are material to the statutory penalty assessment factors are disputed.

As is typical in administrative proceedings, strict adherence to the Federal Rules of Evidence is not required under part 28. Testimony or documentation that is "relevant, material or of significant probative value", including hearsay, is admissible, as long as the witness presenting the information is subject to cross-examination by any opposing party. The Presiding Officer has the discretion to take official notice of certain facts, exclusive either of facts relating to settlement or relating to a person's challenge to a final State or Agency action.

The proposed part 28 rules contemplate that each party will have an opportunity to make an opening statement (with the Agency making its opening statement first); that the Agency will put on its prima facie case; and that the Respondent thereafter will have an opportunity to present its defense.

Participants may present oral closing arguments at the discretion of the Presiding Officer, and such arguments may address both liability and remedy issues. The participants may submit supporting documentation regarding remedy. If the Presiding Officer does not allow oral closing arguments, the Agency anticipates that he would solicit the submission of written proposed recommended findings of fact and conclusions of law as to liability and remedy.

Under part 28, the Presiding Officer would be required to: (1) Certify the administrative record as complete and as being in compliance with the requirements of part 28; (2) make the administrative record available to the Regional Administrator; and (3) prepare and transmit a recommended decision to the Regional Administrator. The Presiding Officer's authority to prescribe a remedy would be limited to recommending the withdrawal of the field citation or recommending the issuance of an order.

The decision of the Regional Administrator must be based on applicable law and on the administrative record, which includes the recommended decision of the Presiding Officer. Upon receipt of the Presiding Officer's recommended decision, the Regional Administrator may either withdraw the field citation, if he concludes that the Agency has not sustained its burden of proof, or issue an order granting the requested relief, in whole or in part. Any decision by the Regional Administrator must be in writing, supported by clear reasons based on the administrative record and applicable law, and include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. If the Regional Administrator rejects the recommendation of the Presiding Officer, the explanation for that rejection must be in writing and made part of the administrative record.

The Regional Administrator's order must include a discussion of the applicable penalty factors which were considered in the assessment of a penalty under the Act, and set forth the penalty assessed. Part 28 would be revised to limit the Regional Administrator's authority to issue a default order by excluding those based on a default for failure to respond or to request a hearing (which would become final, pursuant to section 113(d)(3) of the CAA, by operation of law).

Any order issued by the Regional Administrator becomes effective thirty days after issuance, unless either the Environmental Appeals Board (the Board) suspends the implementation of the order pursuant to its *sua sponte* review authority, or a judicial appeal is taken pursuant to section 113(d)(4) of the Act. No person may stay the effective date of an administrative order by attempting to appeal it administratively.

The decision of the Regional Administrator to issue a final decision

constitutes final Agency action (subject to *sua sponte* review by the Board) on its effective date, for purposes of any judicial appeal. Withdrawal of the field citation, however, would not constitute final Agency action, unless it occurs without prejudice.

The Board, on behalf of the Administrator, is authorized to review part 28 rulings by Regional Administrators, *sua sponte*, on issues of law. The Board may not become involved in factfinding; second guess the penalty amount issued by the Regional Administrator; or review orders issued on consent. The Agency anticipates that this review authority will be exercised infrequently, but believes that the authority is necessary to ensure consistent Agency positions on the applicable law.

The Board may withdraw a Regional Administrator's order if it determines that the Agency lacks jurisdiction to assess a penalty, or if it determines that the Respondent is not liable under applicable law. The Board shall remand an administrative order if it determines that elements of the Respondent's liability are different from those found by the Regional Administrator. Under such a remand, the remedy should be conformed to the amended conclusions of law. The order shall also be remanded if the Board finds that the order fails to provide clear reasons for the decision. The Board shall allow the Regional Administrator's order to issue unchanged if it finds that the order is legally sufficient and it agrees with all material conclusions of law.

Parties are not permitted under part 28 to administratively appeal adverse rulings, either to the Regional Administrator or to the Environmental Appeals Board.

Procedural Due Process

EPA recognizes that the administrative imposition of penalties for minor violations of the Act may affect constitutionally protected interests of those against whom actions have been taken. Part 28 includes precautions to ensure that individuals subject to a finding of liability for a civil penalty will have all of the protections that due process of law requires. These precautions include an impartial Presiding Officer; the right to a hearing on liability, with a right of cross-examination; and a final Agency action based solely on the administrative record and applicable law. For a detailed due process discussion concerning part 28, see the July 1, 1991 proposal at 56 FR 29997 *et seq.*

The part 28 procedures provide all of the procedure necessary to meet constitutional due process requirements under the leading Supreme Court case, *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). In that case, the Supreme Court set out a three-part test for determining whether the administrative procedure provided to an individual prior to the deprivation of a property interest by the government meets the due process requirements of the Fifth Amendment. The *Mathews* test involves balancing the magnitude and nature of the individual interest at stake; the benefit of additional procedures in reducing the risk of erroneous deprivation of that interest; and the governmental interest in not providing such additional procedures. Although the part 28 procedures streamline the adjudicatory process provided for analogous administrative hearings under the APA, those procedures do not eliminate any of the constitutional elements of such hearings. The part 28 procedures grant the person receiving the field citation a full opportunity to review the evidence of minor violations, as well as address the propriety of the assessed penalty. Since these procedures allow for complete adjudication of liability issues, there would be little benefit to the Respondent in more extensive or attenuated procedures, and disproportionate cost to the Agency and to the public.

The field citation program will typically address violation and penalty issues that are simple and straightforward matters. Since these cases should not be complex, their resolution is well-suited to the expedited administrative penalty proceedings mandated by Congress and included in part 28. For these reasons as well as those noted in the July 1, 1991 proposal, EPA believes the proposed part 28 procedures would adequately provide for due process in the assessment of penalties under the field citation authority.

3. 40 CFR Part 59—Rules Governing Administrative Hearings on Field Citations

The third Agency proposal involves using new procedures for conducting administrative hearings requested by persons to whom field citations have been issued under section 113(d) of the Act.

Background

Section 113(d) of the Act provides that any person to whom a field citation is issued may either elect to pay the penalty assessment or to request a hearing, in accordance with procedures specified in the regulation which implements the field citation program. Section 113(d) further provides that the penalty assessed in the field citation becomes final unless the person to whom it is issued requests a hearing within the time specified in the implementing regulation. Section 113(d)(3) explicitly provides that the hearing is not subject to the requirements of a formal adjudicatory hearing under the Administrative Procedure Act (APA), 5 U.S.C. 554 or 556. Instead, the hearing must provide a reasonable opportunity to be heard and to present evidence.

Basis for Hearing Procedures

The Congressional intent to afford the Respondent a less formal, non-APA hearing is explicit in the legislation. Although such hearing must provide the Respondent with a reasonable opportunity to be heard and to present evidence, such hearing shall not be subject to the procedures under sections 554 or 556 of the APA.

On July 1, 1991, the Agency proposed non-APA consolidated rules of practice for the administrative assessment of civil penalties at 40 CFR part 28 (56 FR 29,996). Although the part 28 rules are intended to consolidate all other non-APA administrative penalty programs currently administered by the Agency under uniform rules of practice, the field citation program was excluded from those proposed rules. Programs covered by part 28 include Class I administrative penalties under section 309(g) of the Clean Water Act, section 109(a) of CERCLA, and section 325(b) of EPCRA; and administrative penalties under section 1423(c) of the Safe Drinking Water Act and sections 325(c) and (d) of EPCRA.

There are several compelling reasons for developing hearing procedures that are better suited to the field citation program than those provided either by proposed part 28 or the consolidated APA rules of practice promulgated at 40 CFR part 22, 45 FR 24363 (April 9, 1980). The part 28 rules provide many of the same procedural rights in part 22 that are designed to comport with APA requirements. These rights include prehearing conferences; subpoena authority; discovery rights; and cross-examination. The major differences between the two rules are that part 28 provides for a Presiding Officer instead of an Administrative Law Judge; imposes page limits on written submissions; and eliminates the right to appeal the decision of the Presiding Officer or Regional Administrator to the Administrator.

Under the part 28 procedures, resolution of an administrative penalty proceeding could take seven or eight

months. This lengthy time period would diminish the utility of the field citation program in addressing minor violations quickly and efficiently.

Most of the penalty programs covered by the part 28 procedures provide for maximum per day per violation penalties well in excess of the $5,000 limit authorized for field citations. Using the part 28 hearing procedures could result in spending more money to adjudicate field citation appeals than would be justified by the expected monetary recovery.

Based on the foregoing reasons, the Agency is considering using a more streamlined set of hearing procedures drafted specifically to apply to the field citation program.

Today's proposal relies on some of the part 28 provisions which ensure expedited proceedings. This proposed option also relies on the rules at 33 CFR subpart 1.07, 43 FR 54186 (November 20, 1978), which govern hearings on statutory penalties imposed by the Coast Guard.

Under section 311(b)(6) of the Clean Water Act, the Coast Guard is authorized to assess a civil penalty of up to $5,000 against any owner, operator or person in charge of a facility or vessel that discharges either oil or a hazardous substance. The violator may challenge the penalty assessment at a hearing governed by the subpart 1.07 procedures. The similarities between this program and the field citation program make the subpart 1.07 regulations an appropriate model for hearing procedures. These Coast Guard procedures were found to satisfy due process under the Constitution in *U.S. v. Independent Bulk Transport*, 480 F. Supp. 474 (1979).

The part 28 regulations were used as a model for the following major provisions of the proposed part 59 hearing procedures: the Presiding Officer's duties and responsibilities; consent orders; prehearing conference; information exchange; post-hearing submissions; and review of the Regional Administrator's decision by the Environmental Appeals Board.

The subpart 1.07 regulations were used as a model for the following provisions: certain preliminary matters; confidential business information; hearing procedures; and the scope of the Regional Administrator's authority for issuing a decision.

The relevant part 28 provisions were selected to ensure fundamental fairness while streamlining the procedures available to Respondents. The Presiding Officer under part 28 is authorized to exercise a great deal of discretion to expedite the presentation of evidence in administrative cases. In that regard, the most pertinent authority adopted from the part 28 regulations allows the Presiding Officer to limit the number of witnesses and the extent of direct examination and cross-examination.

The provisions adopted from subpart 1.07 further streamline the administrative process for penalty assessment, while guaranteeing fundamental rights. The Respondent is allowed under subpart 1.07 to submit written arguments and evidence in lieu of requesting a hearing. Such response allows the Presiding Officer to make a determination on the administrative record without the delays inherent in conducting the prehearing conference, information exchange, and hearing.

Additionally, the subpart 1.07 provisions allow the Presiding Officer to determine the appropriate form of testimony: oral; written; or recorded. Subpart 1.07 also simplifies the hearing process by allowing the Respondent to present facts, statements, documents and other relevant evidence. The relatively informal nature of the proceeding provides the opportunity for expedited penalty assessment.

Proposed Hearing Procedures

Under proposed part 59, the field citation would be issued during or shortly after an inspection by an EPA officer or employee. The citation is subsequently served upon the Respondent by first class mail or equivalent. Within thirty days after service of the citation, the Respondent must either request a hearing; provide written evidence and arguments in lieu of a hearing; or pay the penalty.

If the Respondent fails either to request a hearing or to submit evidence in lieu of a hearing, he would be in default under section 113(d)(3) of the Act. That section states that the penalty assessed by the field citation becomes final where the Respondent fails to request a hearing within the time required by the implementing regulation. In the case of a Respondent's default by failure to request a hearing, Agency counsel is required under this proposal to file, within ten days, a written justification for the penalty imposed by the field citation.

At any time prior to final Agency action, a disputed field citation may be settled by a consent order. The consent order may conclude the citation in whole or in part, and may contain conditions. Upon service, the consent order constitutes a final order that is not appealable. Additionally, the field citation may be revoked by the Agency, in whole or in part and without prejudice, prior to payment of the penalty.

Under the proposed part 59 procedures, the prehearing conference is optional. The purposes of the conference, which must be held no later than thirty days after the Respondent's response, are to simplify issues and to attempt to reach stipulations of fact. The Presiding Officer may also set the time and place for the hearing and schedule an information exchange during the prehearing conference. Within twenty days following the prehearing conference, the Presiding Officer may issue a written prehearing order to memorialize the rulings made at the conference.

Each party has the authority to require that the other provide it with certain information. The information that may be exchanged is limited to: (1) Documents intended to be introduced at the hearing that have not already been filed with the Hearing Clerk; (2) witness lists, qualifications of expert witnesses and the subject matter of intended witness testimony; and (3) information known to the Respondent relating to the Respondent's inability to pay a civil penalty, economic benefit of noncompliance; and good faith efforts to comply with the applicable Clean Air Act requirements.

The hearings on field citations will be conducted by an impartial Presiding Officer who, in most cases, will be the Judicial Officer or the Regional Judicial Officer. Such Judicial Officer will be an Agency employee who may perform other functions within the Agency, but who has no prior connection with the case being presided over.

The Presiding Officer and other officials involved in deciding the case are prohibited under today's rule from engaging in ex parte contacts with interested parties both inside and outside of the Agency. The prohibition applies to the Regional Administrator as well as to his advisors.

The Presiding Officer is required to schedule a hearing expeditiously. An extension of time for scheduling the hearing is only authorized for good cause and if no prejudice results.

The hearing procedures provide that the Respondent may be represented by counsel. The Agency representative initiates the hearing by introducing into evidence the field citation and the relevant material supporting its issuance. The Respondent or his counsel may then provide facts, statements, arguments, documents, testimony and other exculpatory evidence responding to the evidence presented. Although the Presiding Officer may limit the number of

witnesses and determine the appropriate form of testimony, either party has the right to cross-examine a witness who has provided direct testimony. The opportunity for rebuttal, and response to rebuttal, falls within the Presiding Officer's discretion.

Consistent with the informal nature of the proceedings, the Presiding Officer is not bound by the Federal Rules of Evidence. The Presiding Officer is, however, authorized to take administrative notice of pertinent matters.

Section 113(e) of the Act contains criteria that must be used in assessing whether the field citation penalty is appropriate. Under today's proposal, the Presiding Officer is required to consider these criteria when reviewing the assessed penalty. Those criteria include: The size of the business; the economic impact of the penalty on the business; the Respondent's full compliance history; the Respondent's good faith efforts to comply; the duration of the violation as established by any credible evidence; payment by the Respondent of penalties previously assessed for the same violation; the economic benefit of noncompliance; the seriousness of the violation; and such other factors as justice may require. Some or all of these criteria may be relevant to the issues presented in the case before the Presiding Officer. The burden of proof with respect to these criteria is assigned to the party with access to information concerning the particular factor. Consequently, the Agency must provide evidence regarding the duration and seriousness of the violation, and the Respondent must provide evidence regarding the other criteria.

EPA is considering adopting a similar approach where the penalty assessment becomes final under section 113(d)(3) of the Act because a respondent fails either to request a hearing or submit evidence in lieu of a hearing within the time required by the regulations. When such a default occurs, the penalty assessed by the field citation becomes final by operation of section 113(d)(3). As previously discussed, under the proposed procedures, Agency counsel would then submit a written justification for the record concerning the amount of the assessed penalty. EPA is considering adopting a regulatory presumption that in cases of such default the penalty assessed in the field citation would be presumed to be appropriate with respect to those penalty assessment criteria where the regulations would place the burden of going forward on the respondent if a hearing had been requested. The purpose of this presumption would be to clarify the requirements of section 113(e) in such a default situation, and at the same time, reflect the authority of the agency to establish reasonable presumptions based on the circumstances of a case.

The hearing will normally be tape recorded, unless the parties decide otherwise in the interests of preventing a serious delay in the proceedings. Tape recording the proceedings is desirable to develop a clear administrative record for later review. Transcription of the proceedings is not required, but may be made by a party, at its own expense, or may be ordered by the Presiding Officer. Any party causing a transcript to be made must provide copies to the other party and to the Presiding Officer. The transcript then becomes a part of the administrative record.

The parties are permitted to submit a written statement for the Presiding Officer's consideration within a reasonable time after the hearing. The written statements, which may only address matters raised at the hearing, may be in the form of proposed findings of fact and conclusions of law.

As soon as practicable after the hearing, the Presiding Officer is required to prepare a recommended decision in the case based on substantial evidence in the administrative record as a whole. The recommended decision will recommend either that the field citation be affirmed, modified or withdrawn. The recommended decision must be filed with the Regional Administrator. Within a reasonable time after receipt of the recommended decision, the Regional Administrator may either affirm, reverse, modify or remand the case to the Presiding Officer for further proceedings. The Regional Administrator may compromise, modify, or remit the penalty assessed by the field citation, with or without conditions.

The Regional Administrator must provide the legal and factual basis for any modification of the recommended decision. Withdrawal of the penalty assessment, which does not constitute final Agency action, occurs without prejudice to the Agency.

Any order issued by the Regional Administrator becomes effective thirty days after issuance, unless either the Environmental Appeals Board (the Board) suspends the implementation of the order pursuant to its *sua sponte* review authority, or a judicial appeal is taken pursuant to section 113(d)(4) of the Act.

The Board, on behalf of the Administrator, is authorized to review the decisions of Regional Administrators, *sua sponte*, on issues of law. The Board may not review fact-finding; second guess the penalty amount issued by the Regional Administrator; or overturn orders issued on consent.

The Board may withdraw a Regional Administrator's order if it determines that the Agency lacks jurisdiction to assess a penalty, or if it determines that the Respondent is not liable under applicable law. The Board shall remand an administrative order if it determines that elements of the Respondent's liability are different from those found by the Regional Administrator. Under such a remand, the remedy should be conformed to the amended conclusions of law. The order shall also be remanded if the Board finds that the order fails to provide clear reasons for the decision. The Board shall allow the Regional Administrator's order to issue unchanged if it finds that the order is legally sufficient and it agrees with all material conclusions of law.

Within thirty days after the penalty assessment becomes final, the Respondent may appeal to the appropriate United States District Court.

Procedural Due Process

As noted previously, *Mathews* v. *Eldridge* requires consideration of three factors in evaluating whether the proposed administrative procedures satisfy the Fifth Amendment's due process requirements. The relevant factors are: (1) The private interest that will be affected; (2) the risk of an erroneous deprivation of this interest and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest including the function involved and the fiscal or administrative burdens that the additional procedural requirements would entail.

The private interest at stake is payment of a civil penalty. The maximum amount that may be assessed, $5,000 per day of violation, is significantly less than the penalty that may be assessed under the other civil penalty authorities in the Act. In addition, EPA's proposed rules would establish a maximum amount that might be assessed in any one citation. It is also expected that the actual penalties assessed per violation will generally be less than the statutory maximum. The circumstances expected in the great majority of cases is a proper focus for assessing due process concerns. *Chemical Waste Management, Inc.* v. *U.S.E.P.A.*, 873 F.2d 1477, 1484 (D.C. Cir. 1989). In addition, the straightforward and simple hearing procedures proposed would minimize

the cost for private parties to contest assessment of a field citation.

The procedures proposed in this third option should minimize the risk of an erroneous deprivation of property. Under the proposed rules, a respondent would be served with a citation that clearly identified the alleged violation and provided a reasonable opportunity to request a hearing. If a hearing was requested, it would be presided over by a neutral agency official that had no prior connection with the action, including investigative or prosecutorial functions. The Presiding Officer also would have no interest in the outcome of the action. This offers the respondent a hearing before a neutral and unbiased tribunal, and clearly minimizes any risk of error from institutional or other bias.

The parties have the right to discover, before the hearing, all the information necessary to provide for a fair and adequate hearing. Parties may obtain the names of all witnesses that will be presented, along with a brief description of the witnesses qualifications and the subject matter of the testimony, and they may obtain each document that will be introduced by the other party. Since the violations involved will be minor in nature and are expected to typically involve simple and straightforward factual and legal circumstances, this should provide a respondent with all the information needed to adequately contest a citation. In addition, the citation would typically have been issued immediately upon or shortly after the violation is detected, providing respondents with ample opportunity to investigate the circumstances of an alleged violation. In these circumstances, additional discovery would not be expected to significantly advance the accuracy of the final decision.

The hearing allowed under the proposed rules would provide respondents with several options in presenting relevant evidence, limited by the authority of the Presiding Officer to determine the manner of testimony that is most efficient in resolving an issue. Written and oral testimony are both acceptable, as well as testimony provided by other means. Respondents may offer any facts, statements, explanations, documents, testimony or other exculpatory evidence that is relevant to issues at the hearing. A right of cross-examination is provided, although EPA is considering limiting cross-examination to situations determined appropriate by the Presiding Officer. This form of hearing clearly meets the requirements of section 113(d)(3), and provides respondents with a fair opportunity to present evidence and argument on relevant issues. Given the simple and straightforward nature of the minor violations expected in the program, additional procedures would not significantly reduce the risk of an erroneous imposition of a civil penalty. A right to cross-examine witnesses, as compared to limiting cross examination to situations where deemed appropriate by the Presiding Officer, would allow for additional cross-examination only where the Presiding Officer, a neutral official, had already determined it was inappropriate. A right to cross-examination would increase the accuracy of the hearing only in those limited cases where a Presiding Officer had mistakenly denied crossexamination. EPA expects this kind of mistake would occur infrequently, and a right to cross-examine, therefore, would not significantly increase the accuracy of the proceedings in the great bulk of cases.

The Presiding Officer is afforded substantial discretion to tailor the hearing procedures to the individual facts and circumstances of each case. The Presiding Officer, may, for example, hold prehearing conferences, regulate the course of the hearing, including the form and extent of testimony and crossexamination, take official notice of matters, and request a written statement from the parties post-hearing. This flexibility should increase the accuracy of the proceedings, and reduce the value of mandating additional procedures. See Chemical Waste Management, 873 F.2d at 1483.

After the hearing, parties may submit written statements to the Presiding Officer, such as recommended findings of fact and conclusions of law, at the discretion of the Presiding Officer. The Presiding Officer then prepares and transmits a recommended decision that is forwarded to the Regional Administrator for issuance of a final decision. There is no administrative appeal to the Administrator, except the Board may review a decision sua sponte. This provides for at least one level of review above the Presiding Officer, and in some cases a second level of review by the Board, establishing a clear mechanism to correct potential errors in the recommended decision. It should also promote consistency within a region, as well as national consistency if and when issues of national importance arise.[12]

[12] Given the minor nature of the violations at issue, EPA rarely expects review by the Board.

Additional procedures, such as a right to comment on the recommended decision, would not significantly add to the accuracy of these procedures. Respondents would already have had a full opportunity to present their position on the issues at the hearing, and could submit proposed findings and conclusions at the request of the Presiding Officer. All of this would be in the administrative record, and available to the Regional Administrator. Additional right to comment would not be expected to be of significant benefit, given the minor nature of the factual and legal issues involved.

The government's primary interest, as previously described, is to implement an effective citation program without an unnecessary drain on limited enforcement resources. An effective program calls for issuance of a citation immediately or shortly after detection of a violation, with a final resolution accomplished shortly after issuance of the citation. This will maximize the deterrent effect of the field citation program, and minimize the amount of resources necessary to achieve this goal. The proposed hearing procedures meet these objectives by using simplified and streamlined procedures, with a relatively limited time needed to complete all procedures necessary to a final decision on assessment of a penalty.

Since the field citation program fills a gap in EPA's enforcement program, it is reasonable to expect that a large number of citations will be issued in each region, addressing simple, easy to prove violations and assessing small monetary penalties. While the nature of the violations and the penalty should act to limit the number of hearings requested by respondents, it is reasonable to expect that a significant number of hearings may be requested if EPA issues a large number of citations. In that context, any additional procedures run the risk of significantly increasing the administrative burden and length of field citation proceedings. This could quickly make the program inefficient and a drain on government resources, given the small potential penalties and the limited environmental concerns involved for most minor violations.

EPA believes the proposed part 59 procedures faithfully implement Congressional intent for the field citation program, and satisfy procedural due process concerns. This belief is bolstered by judicial acceptance of similar procedures in a variety of related situations. See Chemical Waste Management, Inc. (court upheld EPA's non-APA hearing procedures for

issuance of administrative orders concerning corrective action orders under section 3008(h) of RCRA); *United States* v. *Independent Bulk Transport, Inc.*, 480 F. Supp. 474 (S.D. NY 1979) (court upheld non-APA hearing held by Coast Guard in assessing less than the maximum $5,000 civil penalty per unlawful discharge under the Federal Water Pollution Control Act).

H. Design of Field Citations

Field citations will be of a standardized format nationwide, and will be issued in triplicate. The following information shall be included on the field citation:

(1) Date and time of violation(s);
(2) Inspector's name, title, and office;
(3) Name and address of source;
(4) Name and telephone number of owner/operator or his/her representative;
(5) Specific violation(s);
(6) Location/source/description of violation(s);
(7) Proposed penalty;
(8) Notification of the 30-day deadline to either pay the penalty or request a hearing;
(9) Address to which payment must be sent;
(10) Address to which a request for a hearing must be sent;
(11) Inspector's signature;
(12) Space for signature indicating receipt; and
(13) Citation number.

The actual format of the citation will be published in the Agency's guidance document.

V. Section-by-Section Analysis

A. Section 59.1 Purpose and Scope

This section of the proposed rule states EPA's authority to develop a field citation program and explains that procedures developed in this part will be used in administering the field citation program. The section acknowledges the twin goals of the field citation program: ensuring compliance with the Act and providing for expedited enforcement.

B. Section 59.2 Use of Number and Gender

This section clarifies that words in the singular also include the plural, and those in the masculine gender also include the feminine, and vice versa.

C. Section 59.3 Computation of Time

This section provides that any time period specified in these rules shall begin the day following the event from which the period begins, and shall include Saturdays, Sundays, and Federal legal holidays.

D. Section 59.4 Definitions

This section provides definitions of terms used in part 59.

E. Section 59.5 Determination of Minor Violation and Maximum Proposed Penalty

This section describes the process that will be used to determine whether a violation is minor. Each violation will be evaluated according to the proposed list of factors provided. A violation will be determined as minor through evaluation of the factors, considered as a whole.

Criminal violations will not be addressed under the field citations program. Criminal enforcement action may be pursued for the violations described in section 113(c). These violations include "knowing" violations such as knowing endangerment, in which a person knowingly releases a hazardous air pollutant, with the knowledge that the release is placing another person in imminent danger of death or serious bodily injury.

This section also provides the proposed maximum civil penalty for a minor violation as $5,000 per day of violation, and defines a field citation's total proposed penalty as the sum of each individual minor violation's proposed penalty.

Subpart B—Rules Governing Hearings on Field Citations

F. Section 59.6 Scope of These Rules

This section outlines the purpose of Subpart B, which is to establish streamlined administrative procedures for conducting hearings under section § 113(d)(3) of the Act.

G. Section 59.7 Issuance and Service of Field Citations

This section describes who may issue field citations and what should be contained therein. The section also details requirements for service of a field citation. The statute limits the authority to issue field citations to EPA officers or employees.

H. Section 59.8 Presiding Officer

This section describes the role and responsibilities of the Presiding Officer. There are no specific qualification requirements except that the Presiding Officer be neutral to the controversy. In most cases the Presiding Officer will be the Regional Judicial Officer. The Presiding Officer is authorized to take certain actions, but also must abide by the limitations imposed under subsection (c).

I. Section 59.9 Hearing Clerk

This section describes the role and responsibilities of the Hearing Clerk, who shall be designated by the Regional Administrator.

J. Section 59.10 Representation by Counsel

This section outlines a respondent's right to be represented by counsel. Following notification of such representation, all further notification shall be directed to that counsel.

K. Section 59.11 Preliminary Matters

This section describes the process by which a hearing is requested and scheduled. It also details the Presiding Officer's discretion in granting delays, continuances, and permission to amend a response or raise new issues prior to a scheduled hearing.

L. Section 59.12 Revocation of Field Citation

This section sets forth the Agency's authority to revoke a field citation, in whole or in part, at any time before the penalty amount becomes final.

M. Section 59.13 Request for Confidential Treatment

This section describes the basis for, and procedure by which a respondent may request confidential treatment of a document or portion thereof.

N. Section 59.14 Consent Agreements and Consent Orders

This section outlines the basis for a consent agreement, through which the Agency and the respondent formally agree to a civil penalty, with or without conditions. Thereafter, the Presiding Officer shall enter a consent order in accordance with the terms of the consent agreement. The consent order may be filed at any time prior to final Agency action, and constitutes a final order that may not be appealed.

O. Section 59.15 Prehearing Conference

This section provides the Presiding Officer with the discretion to conduct a prehearing conference, and sets forth matters appropriate for discussion during such conference.

P. Section 59.16 Information Exchange

This section outlines the responsibilities of each party, both in serving information requests and in providing information requested by the other party. The exchange of information shall proceed according to the schedule established by the Presiding Officer.

Q. Section 59.17 Subpoenas

This section establishes the Presiding Officer's right to subpoena the testimony of witnesses or the production of documents, or both, and establishes the manner by which subpoenas shall be served.

R. Section 59.18 Hearing Procedures

This section outlines the basic requirements for the conduct of the proceeding. It also establishes the rights and responsibilities of the Presiding Officer and of each party in presenting or receiving evidence, testimony, responses and rebuttals. Either party has the right to cross-examine any witness who has provided direct testimony, however, such crossexamination is limited to the issues presented in direct testimony. The overall format for the proceeding is informal, and the Presiding Officer has the discretion to offer opportunities for rebuttal and response to rebuttal.

S. Section 59.19 Penalty Assessment Criteria

This section establishes the criteria which shall be considered by the Presiding Officer in reviewing the penalty amount requested by the field citation, and assigns the burden of proof for each criterion either to the Respondent or to the Agency.

T. Section 59.20 Transcript or Recording of Hearing

This section provides that all hearings will be tape recorded unless both parties agree and the Presiding Officer directs otherwise. A verbatim transcript will not normally be prepared, however, this section outlines the requirements and procedure to be followed if either party or the Presiding Officer should specially request that such a transcript be prepared.

U. Section 59.21 Post-Hearing Submissions

The Presiding Officer may request a written statement from each party following the conclusion of the hearing. Such statements are limited to those matters raised at the hearing.

V. Section 59.22 Recommended Decision

This section describes the procedural requirements for preparing, transmitting, and filing a recommended decision.

W. Section 59.23 Decision of the Regional Administrator

The Regional Administrator must issue a final decision that either affirms, reverses, or modifies the recommended decision, or remands the case to the Presiding Officer for further proceedings. This section describes the procedures the Regional Administrator shall follow in concluding actions taken under this part. The Regional Administrator's decision must be based on applicable law and the administrative record, which includes the recommended decision of the Presiding Officer. The final decision becomes effective thirty days following the date of issuance.

X. Section 59.24 Sua Sponte Review

This section describes the role of the Environmental Appeals Board in reviewing the Regional Administrator's decision. The thirty-day period for this review coincides with the thirty-day period before a final decision becomes effective.

Y. Section 59.25 Payment of Assessed Penalty

This section outlines the deadline and method of payment for civil penalties assessed pursuant to this part.

VI. 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, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required. The expected impact of this proposed rule is negligible. The rule creates no new requirements, small or large, and is procedural in nature. Accordingly, I hereby certify that these proposed regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

These proposed rules do not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Labeling, Penalties, Reporting and recordkeeping requirements.

Dated: April 15, 1994.

Carol M. Browner,

Administrator.

Part 59 is proposed to be added to 40 CFR chapter I to read as follows:

PART 59—FIELD CITATION PROGRAM

Subpart A—Scope of Program

Sec.
59.1 Purpose and scope.
59.2 Use of number and gender.
59.3 Computation of time.
59.4 Definitions.
59.5 Determination of minor violation and maximum proposed penalty.

Subpart B—Rules Governing Hearings on Field Citations

59.6 Scope of these rules.
59.7 Issuance and service of field citations.
59.8 Presiding officer.
59.9 Hearing clerk.
59.10 Representation by counsel.
59.11 Preliminary matters.
59.12 Revocation of field citation.
59.13 Request for confidential treatment.
59.14 Consent agreements and consent orders.

59.15 Prehearing conference.
59.16 Information exchange.
59.17 Subpoenas.
59.18 Hearing procedures.
59.19 Penalty assessment criteria.
59.20 Transcript or recording of hearing.
59.21 Post-hearing submissions.
59.22 Recommended decision.
59.23 Decision of the regional administrator.
59.24 *Sua Sponte* review.
59.25 Payment of assessed penalty.

Authority: 42 U.S.C. 7413(d).

Subpart A—Scope of Program

§ 59.1 Purpose and scope.

Section 113(d)(3) of the Clean Air Act (42 U.S.C. 7413(d)) authorizes EPA to implement a field citation program. The regulations in this part establish the standards and procedures which will apply to all field citations issued by EPA under this authority. The field citation program is designed both to deter minor violations of the Act and to expedite enforcement against such violations.

§ 59.2 Use of number and gender.

As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 59.3 Computation of time.

In computing any period of time prescribed or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

§ 59.4 Definitions.

In this part:

(a) *Act* means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(b) *Agency* or "EPA" means the United States Environmental Protection Agency.

(c) *Administrator* means the Administrator of the United States Environmental Protection Agency, or the Administrator's delegate.

(d) *Complainant* means the Agency, acting through any Agency employee authorized by the Administrator to initiate an action under this Part, or authorized to conclude such an action, in whole or in part, upon consent.

(e) *Consent agreement* means a written agreement executed by Complainant and Respondent, consisting of:

(1) Stipulations by the parties establishing subject matter jurisdiction;

(2) An admission by Respondent that it had violated the Act as alleged in the field citation or a statement by Respondent that it neither admits nor denies such violation; and

(3) Agreement as to the assessment of a stated civil penalty, with or without conditions.

(f) *Consent order* means an order entered by the Presiding Officer in accordance with the consent agreement of the parties.

(g) *Field citation* means an administrative complaint which is issued by the complainant as a document that:

(1) Names one or more respondents;

(2) Alleges one or more minor violations of applicable law, stating with reasonable specificity the nature of the alleged violations; and

(3) Proposes that a penalty be assessed upon the respondent as authorized by applicable law.

(h) *Hearing clerk* means the person authorized by the Administrator or Regional Administrator to serve as hearing clerk.

(i) *Minor violation* means a violation which is:

(1) Minor in nature as determined by one or more relevant factors listed in § 59.5(a) and

(2) Addressed by the Agency as a minor violation.

(j) *Penalty* means the civil penalty assessed against a respondent under this part for one or more minor violations of the Act.

(k) *Presiding officer* means the person designated by the Administrator or Regional Administrator to preside at hearings conducted under this part.

(l) *Regional Administrator* means the Administrator of the Regional Office of the EPA Region in which the alleged violation occurred, or any officer or employee thereof to whom his authority has been duly delegated.

(m) *Respondent* means any person named in the field citation.

§ 59.5 Determination of minor violation and maximum proposed penalty.

(a) The following factors shall be considered in determining whether a violation is minor under the Act:

(1) Whether the violation is readily recognizable;

(2) Risk of environmental harm;

(3) Time required to correct the violation;

(4) Effort required to correct the violation;

(5) Expense required to correct the violation;

(6) Frequency of the violation;

(7) Duration of the violation;

(8) Importance of the violated requirement to the specific program; and

(9) Other factors as appropriate.

Criminal violations shall not be addressed through issuance of field citations.

(b) The maximum civil penalty which may be proposed for each minor violation shall not exceed $5,000 per day for each violation. The total cumulative penalty proposed in a field citation is the sum of the proposed penalties corresponding to each minor violation alleged in the field citation. The maximum cumulative penalty which may be proposed in any single field citation is (insert dollar amount from $15,000 to $25,000).

Subpart B—Rules Governing Hearings on Field Citations

§ 59.6 Scope of these rules.

This subpart sets forth procedures for the issuance of field citations and for the administration of administrative hearings on field citations under section 113(d)(3) of the Act.

§ 59.7 Issuance and service of field citations.

(a) A field citation may be issued by the complainant to any person for any minor violation of the Act or for any minor violation of any regulations promulgated under the Act.

(b) A field citation shall list:

(1) Each alleged minor violation;

(2) The penalty amount proposed for each violation;

(3) The total proposed penalty amount; and

(4) The address of the Regional office issuing the field citation; the address of the Federal repository to which payment of the proposed penalty may be sent; and the address of the Hearing Clerk to whom a request for a hearing shall be submitted.

(c) A field citation shall be served on the respondent personally or by certified mail, return receipt requested (or any other manner of service that is no less speedy and reliable), with an attached certificate of service. Service upon a corporation, partnership or other unincorporated association shall be made personally, or by certified mail, return receipt requested (or by any other manner of service that is no less speedy and reliable), directed to an officer, partner, managing or general agent, or to any person authorized by appointment or by federal or State law to receive service of process. Service upon a federal agency, State or municipal government, State or municipal agency

or other instrumentality thereof shall be made in the manner prescribed by the applicable law for service of process.

(d) Proof of service of the field citation shall be made by affidavit of the person making personal service, or by properly executed return receipt, and shall be filed with the Hearing Clerk.

§ 59.8 Presiding officer.

(a) The Presiding Officer shall have the authority to:

(1) Issue subpoenas pursuant to § 59.17 for the attendance and testimony of witnesses and for the production of relevant information and documents.

(2) Issue or modify a prehearing order pursuant to § 59.15(c);

(3) Schedule and further limit the information exchange pursuant to § 59.16;

(4) Impose sanctions pursuant to § 59.16 or to aid in the maintenance of order and the efficient and impartial administration of justice; and

(5) Certify the administrative record and set forth and transmit a recommended decision pursuant to § 59.22.

(b) The Presiding Officer shall, in a timely fashion:

(1) Carry out his duties as required by this part;

(2) Oversee and direct the activities of the Hearing Clerk in an action under this part;

(3) Schedule activities of the parties pursuant to the requirements of this part; and

(4) Take any other action necessary for the maintenance of order and for the efficient and impartial adjudication of allegations arising in an action under this part.

(c) The Presiding Officer shall not:

(1) Have any prior connection with the action before him, including the performance or supervision of investigative or prosecutorial functions;

(2) Have any interest in the outcome of the action;

(3) Grant an extension, delay or continuance to a party based on a party's request for information pursuant to law outside the scope of this part;

(4) Allow the introduction of any document or testimony into the administrative record relating to settlement of the instant action; or

(5) Dismiss the field citation.

§ 59.9 Hearing clerk.

The Regional Administrator shall designate a Hearing Clerk. After the filing of a field citation by the Complainant with the Regional Hearing Clerk, the Hearing Clerk shall:

(a) Timely notify each party in writing of the name of the Presiding Officer designated to preside over the case;

(b) Record the date of receipt of each document received regarding the action;

(c) Timely notify the Presiding Officer of the receipt of any document filed with the Clerk by either party;

(d) Perform such other functions as required by the Presiding Officer to assist him in carrying out his responsibilities under this part; and

(e) Perform such ministerial and clerical functions as required by the Regional Administrator or by the Environmental Appeals Board to assist each in carrying out its responsibilities under this part.

§ 59.10 Representation by counsel.

The respondent has the right to be represented at all stages of the proceedings by counsel. Following notification that a respondent is represented by counsel, all further communications regarding the proceedings shall be directed to that counsel.

§ 59.11 Preliminary matters.

(a) Within 30 days after receipt of the field citation, the respondent, or counsel for the respondent, may:

(1) Request a hearing;

(2) Provide any written evidence and arguments in lieu of a hearing; or

(3) Pay the penalty proposed in the citation. A hearing must be requested in writing and must specify the issues which are in dispute. Any request for hearing shall be filed with the Hearing Clerk.

(b) The right to a hearing is waived if the respondent fails to submit the request to the Hearing Clerk within thirty (30) days after service of the field citation.

(c) If the respondent fails to respond to the field citation in accordance with the provisions of this section, the penalty proposed in the field citation shall be final and immediately payable. The Agency shall file with the Hearing Clerk, no later than ten (10) days following the respondent's failure to respond, a written explanation supporting the penalty amount requested by the field citation.

(d) The Presiding Officer shall promptly schedule all hearings. The Presiding Officer shall grant such delays or continuances as may be necessary or desirable in the interest of fairly resolving the case.

(e) The respondent may amend the response no later than ten (10) days prior to the scheduled hearing date. Issues raised later than ten (10) days before the scheduled hearing may be presented only at the discretion of the Presiding Officer.

§ 59.12 Revocation of field citation.

At any time before the penalty proposed by the field citation becomes final, the Complainant may revoke the field citation, in whole or in part, without prejudice.

§ 59.13 Request for confidential treatment.

(a) A request for confidential treatment of a document or portion thereof may be made by the respondent on the basis that the information is:

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The respondent must submit the request for confidential treatment to the Presiding Officer in writing and must state the reasons justifying nondisclosure. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

§ 59.14 Consent agreements and consent orders.

(a) At any time before final Agency action, the complainant and the respondent may settle an action, in whole or in part, by agreeing upon a civil penalty, with or without conditions. The parties shall memorialize such an agreement in the form of a consent agreement. The Presiding Officer shall thereafter enter a consent order in accordance with the terms of the consent agreement. Such consent order may not be appealed to federal court by either party.

(b) If the filing of the consent order with the Hearing Clerk pursuant to paragraph (a) of this section does not wholly conclude the action, the Presiding Officer shall promptly inform the parties of the schedule of the remaining proceedings.

§ 59.15 Prehearing conference.

(a) Within thirty (30) days following receipt of the respondent's response to the field citation, the Presiding Officer may, in his discretion, hold a prehearing conference. The Presiding Officer may conduct the conference in person or by telephone.

(b) At the prehearing conference, the Presiding Officer:

(1) May attempt to simplify issues and assist the parties in reaching a stipulation as to facts that are not in dispute;

(2) May, upon request of either party, schedule an exchange of information in accordance with § 59.16;

(3) Shall establish a time and place for the hearing; and

(4) May discuss other appropriate matters.

(c) The Presiding Officer may issue a prehearing order to the parties, no later than twenty (20) days following the conference, which memorializes the rulings of the Presiding Officer made at the prehearing conference.

§ 59.16 Information exchange.

(a) Subject to any limitation imposed by the Presiding Officer in a prehearing order issued pursuant to § 59.15(c) each party shall provide, in writing, the following information:

(1) The name of each witness it intends to present at the hearing and the subject matter of the intended testimony; and

(2) Each document it intends to introduce at the hearing.

(b) The respondent shall provide the following information in writing, to the Agency:

(1) If the respondent contends that it is unable to pay the proposed penalty, the respondent shall submit financial information in support of such claim, including, but not limited to, complete copies of its federal income tax returns for the previous three years;

(2) The respondent's net profits, delayed or avoided costs, or any other form of economic benefit resulting from any activity or failure to act by the respondent which is alleged in the field citation; and

(3) The respondent's good faith efforts to comply with the applicable Clean Air Act requirements.

(c) The parties shall conduct the exchange of information according to the schedule established by the Presiding Officer pursuant to § 59.15(c).

(d) Each party shall file its information exchange with the Hearing Clerk and shall simultaneously serve copies thereof personally or by certified mail (or any other manner of service that is no less speedy and reliable), with an attached certificate of service, upon the other party and the Presiding Officer.

(e) The Presiding Officer has the discretion to impose on any party that fails to comply with the requirements of this section any sanction that is just and proper.

§ 59.17 Subpoenas.

(a) The Presiding Officer may, on his own initiative or at the request of either party, subpoena the testimony of witnesses or the production of documents, or both, for a hearing conducted pursuant to § 59.16.

(b) The Presiding Officer shall serve the subpoena upon its recipient in the manner prescribed for the service of a field citation pursuant to § 59.7(d).

(c) The Presiding Officer shall file a copy of the subpoena with the Hearing Clerk.

§ 59.18 Hearing procedures.

(a) The Presiding Officer shall conduct a fair and impartial proceeding in which each party has a reasonable opportunity to be heard and to present evidence. Each witness shall testify in the form determined by the Presiding Officer to be most efficient in resolving an issue. Forms of testimony include oral testimony provided in person or by other means, and written or otherwise recorded testimony. The Presiding Officer may limit the number of witnesses and the scope and extent of any direct examination or cross-examination as necessary to protect the interests of justice and conduct a reasonably expeditious hearing.

(b) The Agency representative shall present the field citation and the evidence supporting its issuance, and any other material that is pertinent to the issues to be determined by the Presiding Officer. The respondent has the right to examine, and to respond to or rebut, the field citation and any proffered evidence and material. The respondent may offer any facts, documents, testimony or other exculpatory evidence which bears on appropriate issues, or which may be relevant to the size of an appropriate penalty. Any opposing party has a right of crossexamination after the introduction of a witness' direct testimony. A party shall not cross-examine regarding a matter that is outside of the scope of the direct examination. The Presiding Officer may require the authentication of any written exhibit or statement.

(c) At the close of the respondent's presentation of evidence, the Presiding Officer may allow the introduction of rebuttal evidence by the Agency representative. The Presiding Officer may allow the respondent to respond to any such evidence submitted by the Agency.

(d) In receiving evidence, the Presiding Officer is not bound by the Federal Rules of Evidence. In evaluating the evidence presented, the Presiding Officer shall give due consideration to the reliability and relevance of each item of evidence.

(e) The Presiding Officer may take notice of matters which are not subject to reasonable dispute and are commonly known in the community, or are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Prior to taking notice of a matter, the Presiding Officer shall give each party an opportunity to show why notice should not be taken. In any case in which notice is taken, the Presiding Officer shall place in the record a written statement of the matter as to which notice was taken with the basis for such notice, including either a statement that the parties consented to notice being taken or a summary of any party's objections.

§ 59.19 Penalty assessment criteria.

(a) The Presiding Officer shall consider the following criteria in reviewing the penalty proposed in the field citation:

(1) The size of the business;

(2) The economic impact of the penalty on the business;

(3) The respondent's full compliance history, and good faith efforts by the respondent to comply;

(4) The duration of the violation as established by any credible evidence (including evidence other than the applicable test method);

(5) Payment by the respondent of penalties previously assessed for the same violation;

(6) The economic benefit of noncompliance;

(7) The seriousness of the violation; and

(8) Such other factors as justice may require.

(b) The burden of going forward with respect to criteria in paragraphs (a)(1), (2), (3), (5), and (6) of this section, is on the respondent. The burden of going forward with respect to criteria in paragraphs (a)(4) and (7) of this section is on the Agency. The burden of going forward with respect to criterion in paragraph (a)(8) of this section is on the party proffering such factors. Failure of the respondent to meet its burden with respect to any applicable criterion shall mean that a penalty amount that is appropriate in light of other criteria shall also be appropriate in light of such criterion for which the respondent failed to meet its burden.

§ 59.20 Transcript or recording of hearing.

(a) The hearing shall be tape recorded unless the parties agree and the Presiding Officer directs otherwise. A verbatim transcript will not normally be prepared, but may be ordered by the Presiding Officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the Presiding Officer, a party may, at its own expense, cause a verbatim transcript to be made. The party causing the verbatim transcript to be made shall submit one (1) copy to the Presiding

Officer and one (1) copy to the other party.

(b) The transcript or recording of the hearing, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.

§ 59.21 Post-hearing submissions.

The Presiding Officer may request, within a reasonable time following the conclusion of the hearing, that the parties submit a written statement for his consideration including, but not limited to, proposed recommended findings of fact and conclusions of law. Such written statement shall be limited to the matters raised at the hearing.

§ 59.22 Recommended decision.

(a) Within a reasonable time after the conclusion of the hearing, the Presiding Officer shall:

(1) Certify the administrative record as complete;

(2) Make the administrative record available to the Regional Administrator; and

(3) Prepare and transmit a recommended decision to the Regional Administrator. The recommended decision shall address all material issues of fact or law properly raised by the respondent, and shall recommend that the field citation be affirmed, modified or withdrawn. The recommended decision shall be based on substantial evidence in the administrative record, taken as a whole, and shall provide citations to relevant material contained in that record.

(b) The Presiding Officer shall file a copy of the recommended decision with the Hearing Clerk at the time of its transmittal to the Regional Administrator. The Hearing Clerk shall immediately serve each party with a copy of the recommended decision.

§ 59.23 Decision of the regional administrator.

(a) Following receipt of the recommended decision, the Regional Administrator shall issue a final decision that either affirms, reverses, or modifies the recommended decision or remands the case to the Presiding Officer for further proceedings. The Regional Administrator's decision may compromise, modify, or remit the penalty requested by the recommended decision, with or without conditions.

(b) If the Regional Administrator rejects the recommendation of the Presiding Officer, in whole or in part, the decision shall include a written explanation for that rejection that states each point of disagreement with the recommendation of the Presiding Officer. If the Regional Administrator determines that the proposed penalty assessment must be withdrawn, such action may be done without prejudice.

(c) The Regional Administrator's decision shall be supported by clear reasons and by the administrative record and shall include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. The decision shall be comprised of the Regional Administrator's findings of fact, conclusions of law, and assessment of an appropriate penalty after taking into account all applicable statutory and penalty factors.

(d) For purposes of appeal, the final decision of the Regional Administrator pursuant to this part shall be deemed issued five (5) days following the date of mailing of the decision to the respondent. The final decision becomes effective thirty (30) days following its date of issuance unless an appeal is taken pursuant to section 113(d)(4) of the Clean Air Act, 42 U.S.C. 7413(d)(4) before that date. The issuance of the final decision by the Regional Administrator pursuant to this section constitutes final Agency action on its effective date.

§ 59.24 Sua Sponte review.

The Environmental Appeals Board may, on its own initiative, within thirty (30) days of the date of issuance by the Regional Administrator of a final decision pursuant to § 59.23, suspend implementation of such decision for the purpose of reviewing its conclusions of law or its sufficiency under § 59.23(c). The Environmental Appeals Board, after such review, may amend its conclusions of law, withdraw the field citation, remand the case for appropriate action to the Regional Administrator, or may allow the decision to issue unchanged. In any action in which the Environmental Appeals Board acts pursuant to this section, the provisions of § 59.23 shall apply, except that:

(a) The Regional Administrator who issued the final decision shall be deemed the recommending Presiding Officer for purposes of § 59.22;

(b) Upon suspension of the final decision, the Environmental Appeals Board shall be deemed the Regional Administrator for purposes of § 59.23;

(c) The Regional Administrator's decision, except for its findings of fact, shall be deemed a recommended decision; the Regional Administrator's findings of fact are findings for purposes of this part and are not subject to review by the Environmental Appeals Board;

(d) If the Environmental Appeals Board does not amend the Regional Administrator's conclusions of law nor determine that the order is insufficient under § 59.23(c), the Regional Administrator's penalty determination is not subject to review. If the Environmental Appeals Board amends the Regional Administrator's conclusions of law or determines insufficiency, the Regional Administrator's penalty determination shall be remanded by the Environmental Appeals Board to the Regional Administrator for appropriate action, except that if the Environmental Appeals Board determines that the respondent is not liable for the violations alleged under applicable law, then the Environmental Appeals Board shall withdraw the field citation and the final decision of the Regional Administrator without remand;

(e) If the Environmental Appeals Board allows the final decision to issue unchanged, the requirements of § 59.23(c) shall not apply;

(f) If the Environmental Appeals Board amends or remands the decision, the requirements of § 59.23(c) to make findings of fact and to assess the appropriate penalty shall not apply; and

(g) The Environmental Appeals Board's decision to suspend implementation of a final decision shall not be deemed final Agency action for the purposes of § 59.23(d).

§ 59.25 Payment of assessed penalty.

Except as may otherwise be provided by applicable law and the provisions of any applicable consent order, the respondent shall pay, within thirty (30) days of the effective date of the final decision, any civil penalty assessed pursuant to this part by forwarding to the address provided by the field citation a cashier's or certified check, payable to "Treasurer, The United States of America."

[FR Doc. 94–10197 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 65

[FRL–4877–5]

RIN 2060–AD81

Regulations Governing Awards Under Section 113(f) of the Clean Air Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rule.

SUMMARY: This proposed rule sets forth criteria and procedures for the granting of awards as authorized by an amendment to the Clean Air Act (the Act). The amendments added section

113(f) to the Act, which authorizes the Administrator of the Environmental Protection Agency discretion to pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty enforced under section 113 of the Act for a violation of titles I, III, IV, V, or VI of the Act, as amended. Section 113(f) also authorizes the Administrator to prescribe, by regulation, additional criteria for eligibility for such an award. This proposed rule sets forth such additional criteria for eligibility. In addition, this proposal establishes procedures to petition the Agency for consideration for an award, including what information must be submitted in such petitions, and describes award criteria. This proposed rule also provides an assurance of confidentiality as to the identity of persons who provide information or services on a confidential basis. Furthermore, to implement the goal of the program, this rule provides direction for providing information or services regarding potential violations.

DATES: *Comments.* Written comments on the proposed rule must be received on or before July 5, 1994.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule. If anyone contacts EPA requesting to speak at a public hearing by June 6, 1994, a public hearing will be held June 8, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention: Docket Number A–94–05, U.S. Environmental Protection Agency, room M–1511, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Public Hearing. The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

Docket. Materials relevant to this rulemaking are contained in Docket Number A–94–05. The docket is available for public inspection and copying between 8 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M–1500, 1st floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Clara Poffenberger, Office of Air and Radiation, Stationary Source Compliance Division (EN–341W), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (703) 308–8709.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

Section 113(f) of the Clean Air Act, as amended, (the Act), 42 U.S.C. 7413(f), authorizes the Administrator discretion to pay awards to persons who provide information or services regarding potential violations of the Act. Pursuant to section 113(f), the information or services must result in a criminal conviction or a judicial or administrative civil penalty for a violation of titles I, III, IV, V, or VI of the Act, enforced under section 113 of the Act, before an award may be issued.

The statute specifically authorizes awards only for enforcement actions brought under section 113 of the Act. Thus, information or services which assist actions brought under State law (e.g, enforcement of SIPs under State law or citizen suits brought under State law), under other sections of the Act (i.e., citizen suits under section 304), or under other statutes, do not qualify for an award under this provision. However, in cases where the Agency intervenes, overfiles, or otherwise takes over the enforcement action under the authority of section 113, the awards authority may become applicable.

Under section 113(f) of the Act, any officer or employee of the United States or any State or local government who furnishes information or renders services to the Agency in the performance of an official duty is ineligible for an award. Also, section 113(f) authorizes the Administrator to prescribe, by regulation, additional criteria for eligibility for an award. In response, the regulation proposed today prescribes additional criteria for eligibility. The regulation proposed today also prescribes general criteria for the Agency to consider in determining whether and how much of an award is appropriate and procedures to be followed by persons who want to be considered for an award. Additional authority for these provisions is provided by section 301(a) of the Act.

II. The Proposal

Today's proposed rule prescribes regulations for EPA's awards authority under section 113(f) of the Clean Air Act, as amended, 42 U.S.C. 7413(f). The proposed rule sets forth general eligibility criteria, criteria to be used in considering petitions for awards, the procedures for petitioning consideration for an award, and other matters designed to assist the Administrator in exercising her discretion in this area. The goal of this proposal is to assist in the implementation of an awards program that would encourage citizens to cooperate with and voluntarily assist the EPA's Clean Air Act enforcement efforts and thereby deter violations. Inherent in a program for awards are concerns regarding the confidentiality of the identity of those who provide information or services and the need to evaluate the quality of such information or services. This proposal is intended to address those concerns.

A. Application of Proposal

The EPA intends that this proposed regulation will apply only after promulgation. Petitions for an award based on information or services provided to the EPA after the passage of the Clean Air Act Amendments of 1990 (the Amendments) but before the regulation is promulgated may be processed using the proposed criteria as nonbinding guidance. The EPA will not consider a petition for an award based on information or services provided entirely prior to enactment of the Amendments.

B. Eligibility Criteria

As discussed above, section 113(f) renders certain persons ineligible for an award, and also authorizes the Administrator to prescribe additional eligibility criteria. In response, this proposed rule categorically excludes EPA employees from eligibility to receive an award. The proposed regulation further delineates eligibility limits for employees of, and others who have a contractual relationship with, federal, State, or local governments. Thus under the proposal, officers, employees, contractors, and grantees will be ineligible to receive an award if at the time they come into possession of the information or render services which constitute, in whole or in part, the basis of the award, they were performing an official duty. Furthermore, any members of the immediate family of those "performing their official duty" are likewise ineligible.

The EPA believes these provisions will help ensure that employees and others contractually obligated to the EPA or other governmental entities will fulfill their obligation and will not withhold information that they would otherwise provide to the government. The proposed provisions also address the concern that such persons could indirectly benefit by passing information obtained while performing their official duty to family members, who could then use that information to petition for an award. The concern

addressed here is protection of the integrity of compliance and enforcement activities. By declaring such persons ineligible for an award, the proposed regulation seeks to ensure that the awards program will not create an incentive for employees to abuse access to information and authority otherwise unavailable to the public. The term "immediate family member" is purposely not defined in the proposed regulation, as the EPA prefers to maintain its discretion in referencing other sources of law and otherwise evaluating the circumstances of the particular case in making its award determination.

So that persons who may receive awards are aware that certain persons are ineligible to be paid an award, the proposal requires that a certificate of eligibility be signed by the person before the Administrator may pay the award. This requirement assists the EPA in assuring that an award is not paid to ineligible persons.

C. Addresses for Tips

Tips from citizens to the US EPA and State and local air pollution control agencies provide useful information on the possible existence or extent of a violation. Since the goal of the awards program is to encourage citizens to cooperate with and voluntarily assist EPA enforcement efforts, the proposal provides the addresses to which information may be sent. The information or services provided may or may not lead to eligibility for an award. Providing such information does not create an obligation on the Agency to issue an award, or vest in any person a right to such award. Nevertheless, the Administrator encourages all persons to provide any information they have regarding violations of the Act to the appropriate persons listed in Appendix A. Such information improves the Agency's ability to enforce the Act. The EPA encourages persons to provide the information or services to State and local agencies as well. Although completion of an enforcement action by a State or local agency under authority other than section 113 of the Clean Air Act cannot lead to an award paid by the U.S. EPA under section 113(f), it is important that information be provided to State and local agencies. In most situations, the U.S. EPA will defer to State enforcement authorities to address violations in a timely and appropriate manner. However, persons who provide information or services to a State or local agency may become eligible for an award if the EPA overfiles or otherwise takes over the enforcement action.

D. Confidentiality

Because today's proposal contemplates the EPA receiving and using information and services from private sources for enforcement activities, the EPA is also proposing to maintain as confidential, upon request, the identity of persons providing information or services. The EPA believes this assurance of confidentiality will encourage persons to assist the EPA in its efforts to enforce compliance with the Act. In this regard, the proposed rule provides, upon request, confidential treatment by the EPA consistent with this proposal, existing law and other EPA regulations. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552 (b)(6) & (7), the confidentiality of the identity of those providing information and services will be protected from FOIA requests consistent with existing law. The assurance of confidentiality extends to petitions for awards submitted to the EPA. To ensure confidential treatment of such petitions, it is important that persons submitting petitions to the EPA specifically request confidentiality at or prior to the time of providing information or services, and to renew such request at the time of submitting a petition.

E. Petitions for Awards

Because the information or services provided would be instrumental to the successful prosecution of the EPA's enforcement action, in many cases EPA personnel will be aware of persons potentially eligible for an award, even without a petition being submitted. The EPA expects that in many such situations, award determinations may be made without submission of a petition.

Today's proposal recognizes, however, that a person may wish to petition the Agency for consideration for an award and authorizes such petitions. To ensure that such petitions contain sufficient information for the purpose of evaluation, and to ensure that petitions are directed to the appropriate EPA office, the proposal sets forth award petition procedures and requirements.

Timing of Petitions

The proposed rule requires petitions for consideration to be submitted in writing no later than one year after the judgment of conviction or assessment of a civil penalty. Petitions may be submitted at any time prior to the judgment or assessment, but no award determination will be made before the judgment of conviction is entered or a judicial or administrative civil penalty is finally assessed, agreed, or ordered. Again, payment and the amount of any award granted is within the Administrator's unfettered discretion. The granting of an award is a gratuity, and not an entitlement.

Certification of Eligibility

The proposed regulation also requires that the petition contain a certification of compliance with the eligibility criteria set forth in the regulation. A statement signed by the person to be considered for an award attesting to having read the eligibility requirements and attesting that the person to be considered for an award is not ineligible to receive an award would meet this requirement. This certification is important to the award determination process because the EPA recognizes that it may be difficult for the Administrator to determine with certainty whether a person meets all eligibility criteria. However, the Act prohibits payment of an award to certain persons. Therefore, the proposal requires a certification of eligibility be signed before the Administrator may pay an award.

F. Criteria for Awards

Under the Act, the Administrator has discretionary authority whether to pay an award and to determine the amount of an award. The proposed regulation does not constrain this discretion. Although the proposed rule permits petitions for consideration for an award, whether an award is ultimately granted will turn on the exercise of the Administrators unfettered discretion, including the application of factors described in this proposed regulation. These factors include whether the information or services constituted the initial, unsolicited notice of the violation to the government, whether the government would have obtained knowledge of the violation in a timely manner absent the information or services, the importance of the case, the severity of the violation, the potential for or existence of actual or threatened harm to persons or the environment, the willingness to assist in the governments enforcement action(s) regarding the violation(s), the value of the assistance in comparison to that given by any other persons or sources of information or services and, in part, the amount of money available to the EPA through appropriations.

Furthermore, the rule is not intended to discourage self-auditing within facilities nor is it intended to encourage concealment of information about violations or problems within a facility by an employee from an employer. Thus, the regulation sets forth the

additional criterion of whether payment of the award would improperly create incentives against the timely and appropriate identification of such a violation to either the employer or the government.

G. Timing of Award Consideration

As mandated by section 113(f), persons may not be considered for an award unless and until such time as the information or services provided leads to a judicial or administrative civil penalty or a criminal conviction under section 113 of the Act.

H. Prepayment Offers

The proposed regulation makes clear the distinction between the Awards program and paid informant programs or contractual relationships that may be created by the Agency. The EPA's employees do not have the authority under this proposal or this statutory provision to promise that an award will be paid nor to promise consideration or recommendation for an award.

I. Request for Public Comment

The EPA is interested in public comment on all aspects of this proposed rule. The EPA is particularly interested in comments on: (1) The provision for confidentiality of identity for persons who provide information or services; (2) the eligibility exclusions and eligibility criteria for an award; (3) petitions for consideration; and (4) the criteria for awards determinations.

III. 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, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in public record.

B. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

C. Paperwork Reduction Act

Since this proposed rule does not create any new information requirements or contain any new information collection activities, no clearance is necessary from OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 65

Environmental protection, Air pollution control, Awards, Confidentiality, Enforcement, Natural resources.

Dated: April 15, 1994.

Carol M. Browner,

Administrator.

40 CFR part 65 is proposed to be amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 is revised to read as follows:

Authority: 42 U.S.C. 7413, 7601(a).

2. Part 65 is proposed to be amended by adding subpart BBB to read as follows:

Subpart BBB—Awards

Sec.
65.571 Purpose and scope.
65.572 Definitions.
65.573 Eligibility.
65.574 Information or tips regarding possible violations.
65.575 Confidentiality.
65.576 Petitions for consideration.
65.577 Criteria for awards.
65.578 Prepayment offers.

Appendix A to Subpart BBB—Addresses for Petitions for Consideration and for Tips or Information

Subpart BBB—Awards

§ 65.571 Purpose and scope.

(a) This regulation implements section 113(f), 42 U.S.C. 7413(f), the "citizen award" provision of the Clean Air Act, as amended (the Act). As authorized in section 113(f), of the Act the Administrator of the U.S. Environmental Protection Agency (the Agency) is authorized to pay up to $10,000, as may be available from appropriations, to any person who provides information or services leading to a criminal conviction or a judicial or administrative civil penalty, enforced under section 113, for any violation of Titles I, III, IV, V, or VI of the Act. The goal of the program is to encourage citizens to cooperate with and voluntarily assist the Agency's enforcement efforts and thereby deter noncompliance.

(b) Providing information or services to the Agency by any person does not create any obligation on the Administrator to issue an award or to pay compensation for such assistance. Neither the Act nor these regulations create an entitlement to the payment of an award. The determinations whether to pay an award, and in what amount, are matters which remain by statute in the exclusive and unfettered discretion of the Administrator.

§ 65.572 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

(a) *Administrative penalty.* Any amount finally assessed, agreed or ordered to be paid into the U.S. Treasury pursuant to an administrative enforcement action under section 113 of the Act.

(b) *Certification of Eligibility.* A statement signed by the person to be considered for an award attesting to having read the eligibility requirements and attesting that the person is not ineligible to receive an award.

(c) *Criminal conviction.* A judgment of conviction entered in U.S. District Court on a verdict or finding of guilty, or by a plea of guilty, including a plea of nolo contendere, in an action brought under section 113 of the Act (as defined at 28 U.S.C. 2901(f)).

(d) *Judicial penalty.* Any amount finally assessed, agreed or ordered to be paid into the U.S. Treasury by a court of the United States pursuant to a judicial enforcement action under section 113 of the Act.

§ 65.573 Eligibility.

(a) Any person who provides information or services which leads to a criminal conviction or a judicial or administrative civil penalty, enforced under section 113, for any violation of titles I, III, IV, V, or VI of the Act, except those persons identified in paragraph (b) of this section, shall be eligible to receive an award under this part.

(b) The following persons are not eligible to receive an award:

(1) Persons convicted of or found liable for the violation(s) that are the subject of the award,

(2) Officers or employees of the United States Environmental Protection Agency,

(3) Any of the following persons who, at the time he or she came into possession of the information or rendered the service which constitutes in whole or in part the basis for an award, was performing his or her official duty:

(i) Officers or employees of the United States Government;

(ii) Contractors or grantees of the United States Government;

(iii) Officers or employees of a State or local government;

(iv) Contractors or grantees of a State or local government;

(4) Any members of the immediate family of persons who would be ineligible under paragraph (b)(3) of this section; and

(5) Such other persons as the Administrator may determine to be ineligible who are not otherwise ineligible under the law.

(c) Before the Administrator may pay an award, a certification of eligibility must be signed by the person receiving the award.

§ 65.574 Information or tips regarding possible violations.

(a) Persons having knowledge of violations of the Act may provide such information to the Regional Administrators listed in appendix A of this subpart.

(b) Information regarding violations of the Act should also be provided to State and local agencies, although not required by this regulation. The USEPA, in many cases, defers to State enforcement authorities to address violations in a timely and appropriate manner.

§ 65.575 Confidentiality.

(a) Any person providing information or services under this subpart may request confidentiality as to his or her identity.

(b) To the extent permitted by law, the EPA will not disclose the identity of, or information which could reasonably be expected to disclose the identity of, a person who has requested confidentiality prior to or at the time of providing information or services under this 66 subpart, except in exceptional circumstances under appropriate restrictions with the approval of the Office of General Counsel or a Regional Counsel.

§ 65.576 Petitions for consideration.

(a) Any person may petition the Agency to consider paying an award.

(b) *Addresses.* (1) Petitions for consideration must be submitted in writing to the Regional Administrator in the Region(s) bearing a substantial relationship to the violation(s) that are the subject of the petition.

(2) The appropriate addresses for the Regional Administrators are provided in appendix A of this subpart.

(c) *Timing.* (1) Petitions may be submitted at any time prior to the judgment of conviction or assessment of a civil penalty but must be submitted no later than one year after the judgment of conviction or assessment of a civil penalty.

(2) No award determination will be made before a judgment of conviction is entered or judicial or administrative civil penalty is assessed, agreed, or ordered to be paid.

(d) *Content.* A petition for consideration shall contain the following information:

(1) Whether a request for confidentiality was made prior to or at the time of providing the information or services, and whether such request is still in effect; the petition envelope should also specify whether the information or services were provided under a request for confidentiality;

(2) Name, address, and telephone number of the petitioner;

(3) A brief description of the federal enforcement action (whether the action was a criminal conviction or judicial or administrative civil penalty) which resulted (if known) from the information or services;

(4) Name, title, agency and office affiliation, city, and telephone number of person(s) to whom the information and services was provided (to the extent known);

(5) Name(s) and address(es) of the violator(s) and (to the extent relevant) the names and/or locations of any sites or facilities involved;

(6) Description of the information or services that led to the federal enforcement action;

(7) Date(s) the information or services were provided;

(8) Description of any other involvement by the petitioner in the enforcement action;

(9) Certification of eligibility stating that the petitioner meets the requirements for eligibility for an award set forth in § 65.575 (if the petitioner is the person who provided the information or services); and

(10) Any other relevant information in support of the petition.

§ 65.577 Criteria for awards.

In deciding whether to make an award, and in what amount, the Administrator shall consider relevant criteria, giving such weight and importance to each separate criterion as appears warranted in his or her judgment alone. Relevant criteria shall include, but not be limited to, one or more of the following:

(a) Whether the information or services constituted the initial, unsolicited and full disclosure to a governmental entity with jurisdiction over the violation;

(b) Whether the governmental entity would readily have obtained knowledge of the violation in a timely manner absent the information or services;

(c) The importance of the case, severity of the violation, and potential for or existence of actual or threatened harm to persons or the environment;

(d) The willingness to assist as necessary in the Government's resulting or related enforcement action(s) regarding the violation(s), including providing further information or services, participating in hearing or trial preparation and appearing as a witness at or in connection with any hearings or trial(s) of the matter, to the extent consistent with a reasonable claim of need for confidentiality, if any;

(e) Value of the assistance in comparison to that given to the government in the resulting enforcement action by any other persons or sources of information or services;

(f) Value of the assistance in comparison to that given by other petitioners or others in similar circumstances in other enforcement actions brought by the government; and

(g) Whether such payment would result in a conflict of interest, present an appearance of impropriety, or improperly create incentives against the timely and appropriate identification of such a violation to either the employer or the government.

§ 65.578 Prepayment offers.

Prior to the actual payment of an award under section 113(f) of the Act, no employee of the United States Government, including any person purporting to act on behalf of the United States Government, is authorized by these regulation to make any promise, offer, or representation with respect to the Agency's grant of such an award.

Appendix A to Subpart BBB—Addresses for Petitions for Consideration and for Tips or Information

For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Regional Administrator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Building, Room 2203, Boston, MA 02203.

For New Jersey, New York, Puerto Rico, and Virgin Islands: Regional Administrator, Region II, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 930, New York, NY 10278.

For Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia: Regional Administrator, Region III, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107.

For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Regional Administrator, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365.

For Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Regional Administrator, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604.

For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Regional Administrator, Region VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733.

For Iowa, Kansas, Missouri, and Nebraska: Regional Administrator, Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101.

For Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming: Regional Administrator, Region VIII, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202–2405.

For Arizona, California, Hawaii, Nevada, American Samoa, and Guam: Regional Administrator, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

For Alaska, Idaho, Oregon, and Washington: Regional Administrator, Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

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40 CFR Part 80

[AMS–FRL–4879–7]

RIN 2060–AF13

Regulation of Fuels and Fuel Additives: Individual Foreign Refinery Baseline Requirements for Reformulated Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to amend the reformulated gasoline regulations to define criteria and procedures by which foreign refiners establish individual refinery baselines that reflect the properties and volume of the gasoline that was produced at a foreign refinery in 1990 and imported for use within the United States. EPA is seeking comments on a wide range of matters in this proposal, including the air quality effects of the proposed approach. Where the requisite showing is made through a petition process, importers of reformulated gasoline produced at the foreign refinery would be allowed to use the individual foreign refinery baseline values to demonstrate compliance with the reformulated gasoline standards with regard to gasoline produced at that foreign refinery and imported into the United States only during the period 1995 through 1997 and only up to a volume of gasoline each year that equals the foreign refinery's 1990 import volume, and subject to certain limitations and conditions that are proposed as well. This amendment would allow imported reformulated gasoline to be evaluated relative to individual refinery baselines in a manner that is similar to that applicable to reformulated gasoline produced at domestic refineries. Individual foreign refinery baselines could be used only with reformulated gasoline under this proposal, and such baselines could not be used with conventional gasoline.

EPA specifically states that it seeks comments on the proposed approach for foreign refinery baselines and on any underlying assumptions, as well as any other options for regulating imported reformulated gasoline that would be fair to all regulated parties and would achieve the environmental benefits intended for reformulated gasoline by the Clean Air Act.

DATES: The comment period will close on June 23, 1994. EPA will hold a public hearing on this proposal on May 23, 1994, beginning at 10 a.m.

ADDRESSES: Send comments to Public Docket A–94–25 at the address below. It is also requested that a duplicate copy of comments be sent to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Materials relevant to this NPRM are contained in Public Dockets A–91–02 and A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

The meeting will be held at the Hyatt Regency Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: George Lawrence, Field Operations and Support Division, U.S. EPA (6406J), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 233–9307.

SUPPLEMENTARY INFORMATION: To Request Copies of This Document Contact: Helen Sablack, Field Operations and Support Division, U.S. EPA (6406J), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 233–9402.

Copies of this proposed rule are available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, or 14400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(T) GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. The individual foreign refinery baseline proposed rule is identified by the title: "FORBASE.ZIP." To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp
Selection or <CR> to exit: D
FORBASE.ZIP

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. Then go into your own software and tell it to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers.

Background

On December 15, 1993 the EPA Administrator issued the final regulations implementing the reformulated gasoline and anti-dumping programs (the Final Rule), as prescribed by section 211(k) of the Clean Air Act (the Act). See 59 FR 7716 (February 16, 1994).

Under the final rule, compliance by refiners and importers with certain reformulated gasoline and anti-dumping

standards is measured against baselines that are intended to reflect 1990 gasoline quality. Domestic refiners are required to establish individual refinery baselines of the quality and quantity of the gasoline that was produced by the refiner in 1990. Domestic refinery baselines must be calculated using, in hierarchical order based on the availability of data, 1990 gasoline test data (Method 1), 1990 blendstock test data (Method 2), or post-1990 blendstock and/or gasoline test data (Method 3).

Under the rule, domestic importers of foreign-refined gasoline are treated differently. They are required to establish baselines of the quality and quantity of 1990 gasoline that they import using 1990 gasoline test data (Method 1) if available. If Method 1 data are not available, importers are assigned a baseline approximating average gasoline quality in the United States in 1990—the statutory baseline.[1] EPA anticipates that most importers, like most domestic refiners, lack the actual 1990 testing data necessary to establish a baseline using Method 1. As a result, EPA expects most importers will be assigned the statutory baseline, with the consequence that most gasoline produced at foreign refineries will be evaluated using the statutory baseline. The baseline-setting scheme is specified in 40 CFR 80.91 through 80.93 and is discussed in the Preamble to the final rule at 59 FR 7791 (February 16, 1994).

Before January 1, 1998, refiners and importers have the option of certifying reformulated gasoline using either the "simple" model or "early use of the complex model." Under either of these reformulated gasoline certification approaches, compliance with certain standards is determined in relation to the baseline established for each refinery or importer. Under the simple model, the annual average levels for sulfur, T–90, and olefins are limited to each refinery's or importer's baseline levels for these parameters.[2] Under early use of the complex model (in contrast to mandatory use of the complex model beginning in 1998) refinery- or importer-specific standards for VOC, toxics, and NO_X emissions performance are set in part using refiner or importer baseline levels for sulfur, T–90, and olefins.[3]

Beginning on January 1, 1998, only the complex model may be used to certify reformulated gasoline, and the basis for all compliance with the reformulated gasoline complex model standards is determined in relation to 1990 statutory baseline gasoline. See §§ 80.41(i)(2)–(i)(3). As a result, beginning in 1998 refiner or importer baselines are no longer relevant to determining compliance with reformulated gasoline standards.

Compliance with the standards for conventional gasoline (the "anti-dumping" standards) is measured against refinery or importer baselines beginning in January 1995 and thereafter. See § 80.101. As a result of the baseline-setting requirements of the final rule discussed above, domestic refiners would determine compliance with the anti-dumping standards in relation to refinery-specific baselines, while most or all importers of gasoline produced at foreign refineries would determine compliance in relation to the statutory baseline.

In developing the final rule, EPA evaluated comments regarding the proposed approach for establishing baselines for imported gasoline, including comments submitted on behalf of Petroleos de Venezuela, S.A. (PDVSA), the Venezuelan national oil company, in response to the April 16, 1992 reformulated gasoline proposal, at 57 FR 13416. In their comments, PDVSA said that the proposal for imported gasoline baselines is unfair in that it treats domestic and foreign refiners differently. PDVSA also stated in its comments that this difference in treatment of domestic and foreign refiners conflicted with the requirements of the General Agreement on Tariffs and Trade (GATT). EPA officials held a series of meetings on the foreign refiner baseline issue during the Fall of 1992 and during 1993. These included meetings with PDVSA officials, regarding whether PDVSA has the data necessary to establish a baseline of the quality of its gasoline that was used in the United States in 1990, and whether EPA could formulate an adequate enforcement scheme for a program that included individual foreign refinery baselines. EPA also met with domestic refiners on this issue, to hear their concerns, and with representatives of other agencies, primarily officials from the Office of the U.S. Trade Representative and the State Department, to better understand the GATT requirements. EPA's February 26, 1993 reformulated gasoline proposal also invited comment on these issues. See 58 FR 11758.

As a result of these comments and meetings, EPA considered provisions allowing foreign refiners to establish individual refinery baselines in a manner similar to that required for domestic refiners. See discussion in the Preamble to the final rule at 59 FR 7785–7788 (February 16, 1994). EPA was not prepared to adopt such provisions by the court ordered deadline for the final rule of December 15, 1993, but it stated at that time that it would continue to consider this issue and continue discussions with PDVSA. Since issuance of the final rule, EPA has continued to consider this question, including the relationship of the GATT and the reformulated gasoline rule, and is seeking comments on its proposal in this notice to allow foreign refiners to establish individual refinery baselines under limited circumstances. While EPA does not necessarily agree with PDVSA position on GATT requirements, EPA desires to remove the uncertainty in this regard and we believe the proposal does that in a manner fully protective of human health and the environment.

II. The Proposed Limited Use of Individual Foreign Refinery Baselines

Under today's proposal, importers would be allowed limited use of a baseline established for an individual foreign refinery to demonstrate compliance with the reformulated gasoline standards for gasoline produced at that foreign refinery and imported for use in the United States. The use of individual foreign refinery baselines would be conditioned and limited in the following ways:

- EPA would have to specifically approve the baseline for the foreign refinery. In order to obtain a baseline, the foreign refiner would have to submit a petition to EPA, which would include the same types of gasoline and blendstock testing data and refinery modelling analyses that domestic refiners must submit. In addition, a foreign refiner would have to support its baseline petition with a report prepared by an independent baseline auditor, and like for domestic refiners EPA would have to approve the auditor. One key

[1] The "statutory" baseline is calculated pursuant to section 211(k)(10)(B) of the Act which defines the statutory baseline for summertime gasoline and instructs the Administrator to establish the properties of the statutory baseline for wintertime gasoline based on average 1990 qualities of wintertime gasoline. EPA's Final Rule specifies the properties of the statutory baseline for wintertime gasoline in § 80.45(b)(2), and annual statutory baseline gasoline properties in § 80.91(c)(5).

[2] The reformulated gasoline "simple" model requirements include standards for oxygen, benzene, RVP, and toxics emissions which are unrelated to refinery or importer baselines, in addition to standards for sulfur, T–90, and olefins which are in relation to refinery or importer baselines. See §§ 80.41 (a) and (b).

[3] Under early use of the "complex" model, a refiner or importer calculates refinery- or importer-specific standards for VOC, toxics, and NO_X emissions performance by using the complex model to evaluate a gasoline with "simple" model values for benzene, RVP, oxygen, and aromatics, and the refiner's or importer's individual baseline values for sulfur, T–90, and olefins. See § 80.41(j).

aspect of a foreign refiner's baseline petition is that it would have to conclusively establish the quality and volume of gasoline that was used in the United States in 1990, and not just the refinery's overall gasoline quality in 1990.

- Individual foreign refinery baselines could be used by importers only to demonstrate compliance with reformulated gasoline standards and only prior to January 1, 1998. They could not be used to demonstrate compliance with anti-dumping standards.
- The total volume of imported reformulated gasoline that could be subject to the individual baseline for any foreign refinery would be limited each year to the volume of that refinery's gasoline used in the United States in 1990.
- The importer would be required to establish that any imported gasoline that would be subject to an individual foreign refinery baseline actually came from that refinery, through gasoline inspections and attest engagements conducted by independent inspectors and auditors at the foreign refinery.
- EPA inspectors would have to receive full access to the foreign refinery to conduct announced and unannounced inspections and audits related to the individual foreign refinery's baseline or any gasoline produced at the foreign refinery.

These conditions and limits are discussed more fully below.

Under the final rule, individual baselines are used to certify reformulated gasoline and demonstrate compliance with the reformulated gasoline standards only during 1995 through 1997. Beginning January 1, 1998 all reformulated gasoline compliance must be certified using the statutory baseline. See §§ 80.41(h)–(j). This constraint also would apply to importers of reformulated gasoline who under today's proposal had previously used individual foreign refinery baselines.

Importers would be able to use an individual foreign refinery baseline for reformulated gasoline for 1995 through 1997 only if all of these conditions and limits are fully met. If any condition is not met with regard to a specific foreign refinery, then importers would not be allowed to use the foreign refinery's individual baseline. If any such conditions are not met subsequent to the time the importer uses the individual foreign refinery baseline, then the importer would be required to recalculate its compliance using the statutory baseline, even if the failure to meet the conditions occurs during a subsequent averaging period. This potentially could expose the importer to substantial penalties if subsequent use of the statutory baseline causes the importer to be in non-compliance with the reformulated gasoline requirements.[4]

EPA is proposing that importers who use a foreign refinery's individual baseline would use that baseline, and the volume of the foreign refinery's reformulated gasoline involved, to calculate a new importer baseline for use during that year. The total of the reformulated gasoline imported by the importer during the relevant averaging period would then be evaluated against this new importer baseline to determine compliance by the importer with the reformulated gasoline standards. This proposed method for using foreign refinery baselines is illustrated by the following example.

A hypothetical importer has been assigned the statutory baseline. During 1996 he imports reformulated gasoline totalling 900,000 barrels of gasoline produced at hypothetical foreign refinery A, and 800,000 barrels of gasoline produced at hypothetical foreign refinery B. Foreign refiner A has an individual refinery baseline, and the sulfur baseline level is 400 ppm, and a baseline volume of 1,000,000 barrels.[5] Foreign refiner B does not have an individual refinery baseline, and the importer would use the statutory baseline, which for sulfur is 338 ppm, for the refinery B volume. The average sulfur content of the imported gasoline that was produced at foreign refinery A was 375 ppm, and the average sulfur content of the imported gasoline that was produced at foreign refinery B was 360 ppm.

The hypothetical importer would calculate a new sulfur baseline of 370.80 ppm as follows:

$$\frac{(900{,}000 \times 400) + (800{,}000 \times 338)}{1{,}700{,}000} = 370.80$$

The hypothetical importer then would compute the average sulfur content of all gasoline imported during the year, of 365.00 ppm, as follows:

$$\frac{(900{,}000 \times 375) + (800{,}000 \times 360)}{1{,}700{,}000} = 365.00$$

Because the 365.00 ppm overall average sulfur content of the gasoline imported is less than the 370.80 ppm calculated baseline for the importer, the importer meets the sulfur standard applicable to the importer. Note that the imported gasoline produced at foreign refinery A would not be required to separately meet the 400 ppm sulfur baseline applicable to refinery A, and the imported gasoline produced at foreign refinery B would not be required to separately meet the 338 ppm sulfur baseline applicable to refinery B.

A. Establishing Individual Foreign Refinery Baselines

In order to establish an individual baseline for a foreign refinery under this proposal, a petition would have to be submitted to EPA in a manner analogous to the baseline submissions required for domestic refiners. The petition would have to contain the Method 1, Method 2, and/or Method 3 data, collected and evaluated in the same manner as is required of domestic refiners under § 80.91. The baseline data would have to be submitted in the same manner as is required of domestic refiners under § 80.93, except that EPA is proposing to modify the requirements in § 80.93 related to the dates by which baseline submissions are due.

Under § 80.93 domestic refiners are required to submit data collected before December 15, 1993 by June 1, 1994, or by September 1, 1994 if data is collected subsequent to December 15, 1993. As a result of the timing of this proposal, these dates are not reasonable for baseline petitions for foreign refiners. EPA is therefore proposing that any petition for an individual foreign refinery baseline would be required to be submitted to the Administrator within six months following the date the individual foreign refinery baseline final regulation is signed. This approach is analogous to the lead time afforded domestic refiners in the final rule for baseline submissions.

Another departure from the baseline submission requirements of § 80.93 is that baseline data for foreign refineries would have to be submitted in such a manner that EPA could determine the quality and quantity of the gasoline produced at the foreign refinery during 1990 that was used in the United States. Baseline submissions by domestic refiners are not required to focus on the 1990 U.S. market share of refinery production, because it is assumed that all gasoline produced at a domestic refinery is used in the United States, unless the refiner shows certain gasoline was exported. This proposal that foreign refinery baseline petitions would be

[4] Under section 211(d) of the Clean Air Act, violators of the reformulated gasoline requirements and standards are subject to a maximum penalty of $25,000 per violation per day, plus economic benefit. Violations of multi-day (averaging) standards constitute a separate day of violation for each day in the averaging period.

[5] Because the 1990 baseline volume assigned to Refinery A is greater than 900,000 barrels, the importer may use Refinery A's individual baseline for all 900,000 barrels imported from that refinery.

required to establish U.S. market gasoline quality and quantity is critical, because the quality of a foreign refinery's U.S. market gasoline in many cases would be different from the quality of the refinery's overall gasoline quality. Under the proposal, if EPA is unable to determine both the quality and quantity of the gasoline that was produced by any foreign refinery in 1990 and used in the United States, the individual foreign refinery baseline petition would be denied.

The accuracy and completeness of the data and conclusions contained in the individual foreign refinery baseline petition would have to be verified by an independent EPA-approved auditor, in the same manner as is required of domestic refiners under § 80.92. Thus, the auditor would have to be approved by EPA according to the criteria, specified in § 80.92, which include approval of the auditor's independence and technical ability.

EPA is proposing that a petition for an individual foreign refinery baseline must be submitted by the foreign refiner. EPA believes the foreign refiner is the most appropriate person to submit such a petition, because it is the foreign refiner who will possess most or all of the information that would support such a petition.

EPA also is proposing that the petition must contain a declaration by the owner or president of the foreign refiner business that the information submitted in the petition is accurate and complete. EPA is further proposing that the foreign refiner owner or president would be required to affirmatively declare that EPA auditors and inspectors will be given full and immediate access to all refinery premises, for purposes of compliance with the EPA inspection requirements EPA has proposed in § 80.84(f). The declarations by the foreign refiner owner or president would be mandatory conditions for EPA approval of any foreign refinery baseline petition. EPA is proposing this declaration requirement in order to ensure that in each case of a foreign refiner seeking an individual baseline, refiner officials at the highest levels of the business are aware of the refiner commitments that are necessary for use of a foreign refinery's baseline.

B. Establishing the Refinery-of-Origin

EPA is proposing regulatory requirements that would, for any batch of imported gasoline claimed to be subject to an individual foreign refinery baseline, establish the identity of the foreign refinery at which the gasoline was produced. The proposed requirements would include the testing of samples of the gasoline in question collected subsequent to loading into the ship at the port serving the foreign refinery, but before the ship leaves that port. These test results from the foreign refinery loading point would then be compared with test results of samples of the gasoline in question collected when the ship arrives at the United States port of entry. Sampling and testing of gasoline at the U.S. port of entry is required by the final rule, at §§ 80.65(e)–(f).

The proposed regulations include criteria for evaluating whether the test results of the gasoline samples from the foreign refinery loading port match the test results of the gasoline samples from the U.S. port of entry. The test results would have to agree, for each parameter included in the evaluation of reformulated gasoline, within the limits used for comparing domestic refiner and independent laboratory test results, which are specified in § 80.65(f).

The volume of gasoline contained in each shipment of imported gasoline claimed to be subject to an individual foreign refinery baseline also would have to be confirmed. The inspection at the foreign refinery loading port would have to establish the volume loaded onto the ship, which would be compared to the volume determination at the U.S. port of entry. EPA is proposing that these two volume determinations, corrected for temperature and density, would have to agree within one percent. EPA believes this level of correlation is appropriate, because it is well within the level of correlation normally expected in commercial transactions. EPA understands that protests normally are initiated if ship volume determinations in commercial dealings differ by 0.5%. Nevertheless, EPA requests comment as to the appropriate level of correlation which should be required, and as to any other approach to confirming volumes that would be preferable to that proposed.

In the event any single parameter, or the volumes involved, would not agree in the manner proposed, the individual foreign refinery baseline could not be used by the importer for the specific batch of imported gasoline for which there is parameter value or volume disagreement.

EPA believes that in most cases the gasoline contained in each compartment of a ship would constitute a separate batch, because the gasoline would not be homogeneous across more than one compartment, and would therefore not meet the batch definition of § 80.2(gg). In consequence, EPA believes that in most cases the sampling, testing, and volume determinations would have to be performed separately for each of a ship's compartments. In addition, it is EPA's understanding that the current practice for inspecting the gasoline transported by ship is to separately sample each compartment, even when the same grade of gasoline is being transported in more than one compartment of a ship.

EPA also is proposing that the independent laboratory would be required to determine the refinery of origin, and thereby establish whether the gasoline loaded onto the ship was in fact produced at that refinery. The laboratory also would determine whether the foreign refinery's gasoline has been combined with gasoline produced at any other refinery. Only gasoline that is produced at the foreign refinery or origin would be eligible for use with the foreign refinery's baseline, yet it is possible that gasoline loaded onto a ship at a port serving a foreign refinery could have been produced at a different refinery. For example, two refineries could be linked to a port by a common pipeline, or gasoline could be produced at a foreign refinery and then transferred by ship to storage tanks located at a second foreign refinery.

The proposed requirements related to determining the refinery of origin would confirm that gasoline loaded into a ship at the port serving a foreign refinery was in fact produced at the foreign refinery and therefore that the foreign refinery's individual baseline would be applicable. This confirmation of the source refinery by the independent inspector normally would require the review of documents that reflect all transfers and storage of the gasoline in question from the point of production at the source refinery to the point of ship loading. The inspector thus would be required to establish the refinery of origin and that there was no fungible mixing of the gasoline in question with any gasoline produced at any other refinery prior to loading onto the ship.

An additional proposed requirement that relates to establishing the refinery-of-origin for imported gasoline is the proposal for attest engagements at the foreign refinery. This attest requirement would supplement the requirements regarding an independent laboratory determination of the source refinery of gasoline. The focus of the attest engagement, however, would be on the refinery operations while the independent laboratory's primary focus would be on the transportation and storage of gasoline from the refinery to the point of ship loading.

Under the proposed procedures, the attester would be required to confirm

the overall production for the refinery in question, and to confirm that the portion claimed to have been transferred to ships for shipment to the United States was a part of that overall production. The attester also would be required to confirm the transfer of gasoline from the refinery to the ships, and to identify the ships into which the gasoline was transferred. EPA requests comment on whether these proposed attest procedures are appropriate and adequate.

EPA is proposing that the sampling, testing, and volume determinations at the foreign refinery loading port would have to be performed by an independent laboratory that is U.S.-based. The proposed criteria for independence are the same criteria that apply for the independent sampling and testing requirement for domestic refiners and importers, and that are specified at § 80.65(f)(2)(ii). Similarly, EPA is proposing that the attest requirements would have to be fulfilled by certified public accountants (CPA's) that are United States citizens, or members of a firm that is a U.S. corporation.

The proposed requirements that the independent laboratories and CPA's be U.S.-based is intended to result in laboratories and CPA's over which EPA may easily exercise jurisdiction. EPA's ability to inspect, obtain judicial enforcement, or submit information requests under section 114 of the Clean Air Act is significantly more effective in the case of a person that is a United States citizen or a United States corporation. These enforcement approaches may not be easily available against non-U.S. corporations or citizens. EPA seeks comment on the proposed requirement that independent laboratories and CPA's be U.S. corporations or citizens.

C. The Volume Limitation on Use of Individual Foreign Refinery Baselines

EPA is proposing that the total volume of imported reformulated gasoline that could be subject to the individual baseline for any foreign refinery would be limited each year to the volume of that refinery's gasoline that was used in the United States in 1990. It has been argued that this proposed volume constraint would limit any potential adverse environmental effects of gasoline imported under individual foreign refinery baselines in comparison to the final rule, as is discussed more fully below.

The proposed volume constraint would apply separately to each foreign refinery having an individual baseline, and would apply across all of the importers who import gasoline produced at each foreign refinery. Thus, for example, if the gasoline produced at a particular foreign refinery having an individual baseline is imported by ten importers during a specific year, the volume constraint applicable to that foreign refinery would apply to the ten importers collectively. Any of the hypothetical refinery's gasoline that is imported that year beyond the proposed volume constraint would be subject to the baseline otherwise applicable to the importer (normally the statutory baseline), and the individual foreign refinery's baseline would not apply to this excess volume.

EPA is proposing that the date gasoline is imported would be the criterion for determining which gasoline would qualify for use of an individual foreign refinery baseline. In the event importers claim use of an individual foreign refinery's baseline for a volume in excess of the proposed volume constraint, the gasoline that is first imported that equals the volume constraint would receive use of the individual baseline. Thus, the proposed volume constraint would apply based on the date the gasoline is imported into the United States, and not based on the date the gasoline is produced. Beginning on January 1 of each year the volume constraint accounting would begin anew.

EPA is not proposing any regulatory mechanisms that would provide importers a running accounting of the volume of a particular foreign refinery's gasoline that has been imported subject to an individual refinery baseline. Moreover, EPA would not know the total volume of imported gasoline claimed to be subject to any particular foreign refinery's baseline until quarterly or annual reports are submitted to EPA. EPA expects that importers would make private arrangements with their foreign refiner business partners to track the volume of each foreign refinery's gasoline that is imported under each individual foreign refinery's baseline. In this way EPA believes that importers would be able to know whether any particular batch of imported gasoline would be within the volume constraint that would apply to the foreign refinery that produced the gasoline.

The proposed consequences for the importer that would result from claiming use of an individual foreign refinery's baseline beyond the proposed volume constraint are discussed below.

EPA is proposing that any reformulated gasoline that is imported during 1994 and for which an individual foreign refinery baseline is used would be combined with such gasoline imported during 1995 for purposes of the proposed volume constraint. This proposal for combining compliance calculations for gasoline imported during 1994 and 1995 is analogous to the requirement in the final rule that reformulated gasoline produced or imported in 1994 must be combined with reformulated gasoline produced or imported in 1995 for determining compliance with average standards. See § 80.67(i).

EPA is further proposing to expand the 1990 baseline volume to allow for imports during 1994, but this expanded baseline volume would apply only for gasoline imported during 1994–1995. The mechanism proposed for this volume expansion is to multiply the foreign refinery's 1990 baseline volume times 1.17, which would result in an additional volume equal to two months of the 1990 baseline volume. EPA believes this approach for expanding the 1990 baseline volume to cover imports during 1994 is appropriate, because it would allow imports subject to an individual baseline to begin in November 1994 and to continue at the same rate as would be allowed for 1995.

EPA requests comment on this proposal for combining gasoline imports in 1994 and 1995 for purposes of applying the proposed volume constraint on use of an individual foreign refinery's baseline, and on the proposed mechanism for calculating an expanded 1990 individual foreign refinery baseline volume for use during 1994 and 1995.

D. The Requirement To Allow EPA Inspections and Audits

EPA is proposing that, as a condition of use by an importer of an individual foreign refinery's baseline, EPA inspectors and auditors would have to be given full access to conduct inspections and audits related to the foreign refinery's baseline and to the gasoline produced at the foreign refinery. The proposed access for inspections and audits would be at the foreign refinery, at any place gasoline produced at the foreign refinery for the U.S. market is located, and at any location where documents are kept that relate to the foreign refinery's baseline or to gasoline produced at the foreign refinery for the U.S. market. EPA is proposing that the access would have to be granted in response to inspections or audits that either are announced or unannounced.

EPA is proposing the inspection and audit access requirement in order to allow EPA inspectors and auditors to confirm the baseline submissions that would relate to any foreign refinery. In

addition, EPA inspections and audits would confirm the information related to refinery-of-origin that is reported to EPA. The proposed access requirements related to foreign refineries would provide EPA with access analogous to that exercised over domestic refiners to conduct inspections and audits. EPA historically has conducted inspections and audits of domestic refineries in order to ensure compliance with gasoline quality rules, including the lead phasedown requirements at § 80.20, and the gasoline volatility requirements at §§ 80.27–28. EPA intends to follow this enforcement approach with the reformulated gasoline program. EPA believes it is important that it have comparable access to foreign refinery operations under the proposed approach for foreign refinery baseline in order to meet its enforcement responsibilities.

The scope of the proposed access requirement is intended to allow EPA to inspect or audit wherever documents are located that would relate to an individual foreign refinery's baseline, or to the production or shipping of gasoline that would be subject to such a baseline. In addition, the access proposal would ensure EPA access to collect samples of any gasoline that would be subject to an individual foreign refinery baseline.

EPA is proposing that the access requirement would terminate on January 1, 2003. This proposed termination date is five years following January 1, 1998, the last date individual foreign refinery baselines could be used. Five years is the statutory limitation that applies to potential liability for violations of the reformulated gasoline requirements. EPA also is proposing that its inspection and audit access would be limited to gasoline produced before 1998 and to documents that relate to such gasoline. This proposed limitation on the access requirement also corresponds to the January 1, 1998 date individual foreign refinery baselines would become unavailable.

EPA would conduct these inspections or audits at facilities controlled by the foreign refiner. As a result, EPA inspectors and auditors would have to be given access to conduct inspections or audits by the foreign refiner and by the country in which the foreign refiner's facilities are located. Any failure to grant access, therefore, would be the result of an action or decision by the foreign refiner or the foreign country. Nevertheless, the consequences of any failure to give EPA full and immediate access would fall on the U.S. importers of that foreign refiner's gasoline. In consequence, EPA believes any importer who would claim use of an individual foreign refinery's baseline would be expected to protect itself against this possibility through whatever means it would feel prudent, such as assurances from the foreign refiner that the access requirement would be met, or contractual indemnification provisions that would apply in the event the access requirement is not met.

The proposed consequences for the importer that would result from any failure to meet the access requirements are discussed below.

E. Failure To Meet Requirements

EPA is proposing that a foreign refinery's individual baseline could not be used by any importer if EPA were to determine that information submitted to EPA to establish the foreign refinery's individual baseline is inaccurate, or if EPA were denied access to the foreign refinery to conduct an inspection or audit. EPA also is proposing that a foreign refinery's individual baseline could not be used by the importer of a specific batch of gasoline in the event any of the foreign refinery baseline requirements would not be met with respect to that batch of gasoline.

Thus, for example, if EPA would determine that a foreign refinery's individual baseline submittal is in error, an individual baseline for that refinery could not be used by any importer during any year, unless the Administrator determines a shorter period is appropriate. Similarly, if EPA were to attempt to conduct an inspection or audit of a foreign refinery and were to be denied full and immediate access, the individual baseline for that refinery could not be used by any importer during any year, unless the Administrator determines a shorter period is appropriate. In this situation, any importer who had previously submitted reports to EPA for any averaging period that included use of the foreign refinery's individual baseline would be required to recompute its compliance calculations, *ab initio*, using the baseline that would apply to the importer in the absence of the foreign refinery's individual baseline—normally the statutory baseline. This recalculation by the importer would be required even if the recalculation would result in violations by the importer of the reformulated gasoline standards. It would be no defense for the importer to argue it used the foreign refinery's individual baseline in a good faith belief the baseline information was accurate, or that the foreign refiner would allow EPA to conduct inspections and audits.

A similar result would occur if EPA were to discover that a particular batch of imported gasoline, claimed by the importer to be subject to a foreign refinery's individual baseline, in fact is not entitled to use of that baseline. This could occur, for example, if through the CPA attest engagement or through an EPA audit it were discovered that the gasoline comprising the batch was not produced at the foreign refinery claimed by the importer. Another example of gasoline that would not be entitled to use of a foreign refinery's baseline would be a batch of gasoline that is imported subsequent to the date when the total volume of imported gasoline for which use of the foreign refinery's baseline is claimed equals the baseline volume for that foreign refinery. In these cases the importer who improperly claimed use of the foreign refinery's individual baseline, but not other importers of gasoline produced by that foreign refinery, would be required to recompute its compliance calculations, *ab initio*, as described above.

EPA is proposing that these consequences would be imposed on the importers, because there are clear barriers to effective enforcement directly against foreign refiners. This would occur even in a case where EPA could prove that gasoline was improperly imported using a foreign refinery's individual baseline, and where the improper use was the fault of the foreign refiner, for example by submitting false baseline information or by refusing to allow EPA inspections or audits. In such a case EPA could not bring effective enforcement against the foreign refiner. As a result, in order to preserve the integrity of the reformulated gasoline program, EPA proposes that importers would be ultimately responsible for the proper establishment and use of individual foreign refinery baselines.

EPA believes that importers would be able to decide whether and when to claim use of a foreign refinery's individual baseline. This approach is predicated on the assumption that importers would be expected to use great care in making this decision, and would do so only if the importer has complete confidence the foreign refinery baseline information was properly submitted to EPA and the foreign refiner intends to fully and properly comply with all requirements related to use of individual foreign refinery baselines, including requirements that apply years into the future. EPA also would expect importers to require the foreign refiner to carry out a gasoline volume tracking scheme that would enable importers to know with certainty that any batch of imported gasoline for which use of the

foreign refinery's individual baseline would be claimed is within the foreign refinery's baseline volume.

III. Justification for Proposed Amendment to Final Rule

When EPA issued the final rule on December 15, 1993 the Agency was not fully satisfied that the baseline-setting scheme applicable to importers, and thereby applicable to foreign refiners, was the optimum solution. In preparing the final rule, EPA focused on three major issues regarding the use of individual baselines for foreign refiners in the reformulated and conventional gasoline programs. EPA's overriding consideration, and the basis for EPA's focus on these issues, was the ultimate environmental consequences of the baseline-setting scheme. The three issues are: (1) The technical problems with using baseline-setting Methods 2 and 3 to accurately predict the qualities of gasoline imported in 1990 from a foreign refiner; (2) the ability of the agency to adequately verify and enforce the use of foreign refiner individual baselines, including problems identifying the refinery of origin of imported gasoline and enforcing performance standards against a foreign refiner; and (3) any risk that would result from providing refiners or importers with options in establishing baselines.

The final regulations for reformulated and conventional gasoline, promulgated on December 15, 1993 pursuant to a court ordered deadline, attempt to resolve these issues. These issues, however, are complex and have potentially broad consequences. EPA therefore announced that it would continue to consider individual baselines for foreign refiners after promulgation of the Final Rules in mid-December 1993. This consideration has resulted in today's proposal, with EPA inviting comments on the proposed resolution described above.

The first issue involved whether and when it would be appropriate to allow refiners or importers an option in establishing individual baselines. In general, EPA's Final Rule takes the approach that options should not be allowed. Given a choice, a refiner or importer would tend to choose the option requiring the least expense overall, which would also presumably be the least protective of the environment. Avoiding options should therefore tend to avoid skewing the program in a way that would reduce air quality benefits. EPA described this gaming concern in the preamble to the Final Rule, at 59 FR 7785 (February 16, 1994).

Under EPA's Final Rule, domestic refiners are basically provided no choice regarding individual baselines—they must develop an individual baseline, using one or more of three different methods or modelling approaches. Since gasoline produced by domestic refiners made up an overwhelming majority of the gasoline sold in the U.S. in 1990, the average of all domestic refiner baselines should closely approximate the average 1990 quality of gasoline sold in 1990. Importers are treated like domestic refiners in that they are not provided an option on how to develop an individual baseline. A major difference, however, is that importers may use only the first of the three modeling methods. If the data are not available for this method, the importer defaults to the statutory baseline. In general, EPA expects all or almost all importers to default to the statutory baseline.

For foreign refiners, EPA considered whether it should also require that all foreign refiners establish individual baselines before they could import either conventional or simple model reformulated gasoline into the U.S. However, as discussed later, EPA had considerable doubt about the ability of baseline-setting Methods 2 and 3 to accurately predict the quality of that portion of a foreign refiner's production sent to the U.S. in 1990. EPA believed many foreign refiners would therefore not be able to use these models, and mandating use of an individual baseline might therefore lead to a ban on importation of gasoline from those foreign refiners not able to develop such baselines.[6] In addition, EPA had serious questions whether it could adequately verify the accuracy of individual baselines for foreign refiners under such a scenario. The current Final Rule resolves these concerns by not allowing foreign refiners to establish individual baselines, and regulating the introduction of gasoline into the U.S. through the importer. Importers must establish an individual baseline in the manner described above.

The air quality impact of allowing foreign refiners a choice in what baseline to use, such as would result from the petition process proposed today, depends in large part on which foreign refiners ultimately would have the ability, and would choose, to produce reformulated gasoline for importation into the U.S., and on the individual baselines of those foreign refiners who would make this choice. If a significant number of foreign refiners sent gasoline to the U.S. in 1990 that was cleaner than the statutory baseline, those refiners would not be expected to choose to establish an individual baseline but would instead default to the statutory baseline. Refiners who sent gasoline to the U.S. in 1990 that was dirtier than the statutory baseline might well decide to petition for an individual baseline, assuming they could satisfy all of the conditions for establishing an individual baseline. In such a case, this might result in certain foreign refiners being allowed to degrade the emissions performance of their gasoline down from its actual 1990 quality to the statutory baseline. Under this approach other foreign refiners might be allowed to establish accurate and verifiable individual baselines that are dirtier than the statutory baseline, and thereby continue to produce at this quality.

In comparison, the current regulatory provisions provide foreign refiners with no choice. As described above, foreign refiners whose 1990 gasoline was cleaner than the statutory baseline may degrade the quality of their gasoline down to the statutory baseline, while foreign refiners whose 1990 gasoline was dirtier than the statutory baseline are required to reformulate to meet the stricter statutory baseline.

It is important to note that EPA does not have any clear evidence as to the actual average quality of gasoline imported into the U.S. in 1990. EPA does not know, for example, whether a significant amount of such gasoline was cleaner than the statutory baseline. While it would be reasonable to assume that at least some imported gasoline was cleaner and some was dirtier than the statutory baseline, EPA is not in a position to quantify this in any reliable manner. As such, it is not clear whether or how much providing foreign refiners with an option in establishing an individual baseline would actually skew the air quality impacts of these programs in a negative direction. As mentioned above, a second major issue EPA has considered involves the technical limits of Methods 1, 2 or 3 in predicting the qualities of that portion of a foreign refiner's 1990 gasoline production that was sent to the U.S.[7]

[6] EPA considered the option of banning foreign supplies of gasoline that were not produced under a verifiably accurate individual baseline. This option appeared to redress the issue of the loss of a "netting out" effect due to the presumed loss of "cleaner" than statutory baseline foreign gasoline. However, EPA believes that many foreign refiners do not possess adequate data to establish an individual baseline. It has been agreed that the consequence of banning foreign supplies of gasoline, both to the nation's energy security and to competitive pricing, would be unfair.

[7] These technical limits have important implications for the first issue discussed above. For example, if EPA required that foreign refiners

Foreign refiners likely did not send the majority of their gasoline to the United States in 1990. Foreign refiners may not have exported the majority of their gasoline to the United States in 1990. Domestic refiners, on the other hand, are assumed to have distributed (and to continue to distribute) the majority of their gasoline within the U.S. In the absence of actual 1990 data, domestic refiners may calculate individual baselines using models developed by EPA that depend, in part, on the fact that the majority of the modelled gasoline is distributed in the U.S. However, foreign refiners typically did not distribute the majority of their 1990 gasoline within the U.S., rendering the models inappropriate for those refiners.[8]

The third major issue of concern involves whether EPA can accurately verify individual baselines of foreign refiners and effectively enforce standards for foreign produced gasoline based on such individual baselines. EPA was concerned that it would not be able to effectively exercise authority to inspect foreign facilities and require the production of records or samples, or to require accurate auditing of the compliance of foreign operations. This includes, for example, EPA's ability to ensure the accuracy of an individual foreign refiner baseline, EPA's ability to clearly identify the refinery of origin for gasoline imported into the U.S. (the "tracking" issue), and EPA's ability to easily access foreign records, samples, and facilities for inspections and other compliance measures.

With respect to tracking refinery of origin, EPA believes it must be able to establish with certainty which baseline attaches to each specific batch of gasoline imported into the U.S. The distribution of foreign produced gasoline is significantly distinct from domestic distribution patterns. As described in the preamble to the final rule, see 59 FR 7785 (February 16, 1994), the association of a refinery-specific baseline with the gasoline produced at a domestic refinery is relatively uncomplicated, because compliance is determined at the refinery level before fungible mixing in the gasoline distribution system. The source refinery for gasoline is clear before the gasoline leaves the refinery. In the case of all imported gasoline, on the other hand, the gasoline will be transported from the refinery to the U.S. port of entry prior to the point at which the imported gasoline would have to be associated with a foreign refinery-specific baseline. This stage of transportation from the foreign refinery to the U.S. port of entry could be by fungible means for any imported gasoline, with the consequence that fungible mixing could obscure the identity of the source refinery for any batch of imported gasoline. For a discussion of these and other enforcement and compliance related issues, see the preamble to the final rule at 59 FR 7787 (February 16, 1994).

Finally, it is important to place the role of individual baselines in their proper context for the reformulated and conventional gasoline programs. For conventional gasoline, the individual baseline of a refiner or importer establishes the applicable emissions standard for the conventional gasoline they produce or import. On average, a refiner's or importer's conventional gasoline has to meet an emissions performance standard measured by the performance of their individual baseline. If the refiner or importer is assigned the statutory baseline instead of an individual baseline, then performance is measured against the statutory baseline. This performance standard applies on an annual basis starting with 1995. The statutory basis for these requirements are found in section 211(k)(8) of the Act.

The individual baseline plays a much more limited rule in the reformulated gasoline program. For the first three years of that program, three specific fuel qualities are capped at the level of a refiner's or importer's individual baseline.[9] Starting January 1, 1998, a refiner or importer's individual baseline has no relevance in the reformulated gasoline program. This short term requirement is part of the standards adopted by EPA and commonly called the simple model. The refiner and importer specific caps on the three parameters were based on EPA's understanding of the directional impacts of these parameters on emissions, the lack of adequate data to fully model the emissions impacts of these three gasoline parameters when EPA proposed the simple model, and the lead time needed before requiring use of a subsequent, more complex emissions performance model adopted by EPA in the final rule. Further discussion of this may be found in the preamble to the final rule at 59 FR 7720 (February 16, 1994).

The final rule's requirements for individual baselines resolves these various concerns in a straightforward manner. EPA is seeking comment on whether this proposal addresses all of the above concern, in a manner that achieves the environmental goals intended for reformulated gasoline while at the same time addressing the equity concerns that previously have been raised, by placing clear limits and conditions on the use of individual baselines for foreign refiners. These limits and conditions would be designed to address the issues described above—concerns about skewing of air quality benefits in a negative direction by providing options in establishing individual baselines, concerns about the technical limits of the refinery modeling used to establish baselines, and finally concerns over the Agency's ability to adequately verify individual baselines for foreign refiners and adequately ensure compliance by imported gasoline with standards based on individual baselines.

A. Accuracy of Individual Foreign Refiner Baselines

As described in detail above, this proposed amendment provides that parties that desire to establish an individual baseline for a foreign refinery would submit a petition to EPA's Assistant Administrator for Air and Radiation to establish a reliable and verifiable individual baseline. The petitioner would also submit data adequate to establish the volume of gasoline exported to the United States during 1990.

The Assistant Administrator would only approve petitions when the individual baseline had been established with sufficient certainty, to the satisfaction of the Assistant Administrator. The Assistant Administrator's decision whether to approve a petition would depend, in part, on the certainty with which the foreign refiner's 1990 fuel properties and volume data could be verified by a U.S.-based independent baseline auditor and by EPA, as discussed above. In requiring that a petitioner bear the burden of demonstrating to the Assistant Administrator that the

establish individual baselines, without providing any choice on defaulting to the statutory baseline, then many foreign refiners might not be able to develop such baselines and EPA would confront a situation involving whether or not it should ban the importation of gasoline from such foreign refiners.

[8] EPA believes it is possible that in certain limited situations a foreign refiner may be able to establish a baseline of U.S.-market gasoline quality and quantity. For example, a foreign refiner potentially could establish that in 1990 its refinery produced only a limited number of gasoline blending components, and therefore could be capable of producing only a predictable and limited number of gasoline types from these blending components. In such a case, it is possible that a baseline could be established based on the "cleanest" of the gasoline types, without actually showing that this was the gasoline supplied to the U.S. market. Under this approach, the foreign refiner's baseline would be the most rigorous baseline possible given the refinery configuration.

[9] The three parameters are sulfur, olefins, and T-90 or E300. See § 80.41(h)(2).

individual baseline and the data submitted in support of an individual baseline is accurate and verifiable, and in requiring that a U.S.-based attestor corroborate that demonstration, the amendment provides for appropriate certainty in establishing accurate individual baselines.

EPA requests comment as to whether the proposal would result in appropriate certainty as to any foreign refinery baseline that would be established.

B. Certainty as to Refinery-of-Origin

In the preamble to the final rule, EPA expressed concern about effectively determining the refinery-of-origin for specific batches of imported gasoline so as to determine the appropriate baseline to be applied to the product. However, EPA is proposing and seeking comment on procedures that are designed to ensure that importers effectively track gasoline from the point of gasoline production to the port-of-entry into the U.S.

Strict tracking and segregation of reformulated gasoline that is produced by foreign refiners and that would be subject to an individual baseline is necessary to assure compliance with this program. Only by matching a discrete volume of gasoline with an individual baseline would an importer be able to accurately calculate its compliance with this proposed amendment to the reformulated gasoline program. Further, such tracking and segregation is necessary for EPA to ensure that use of an individual baseline remains within the foreign refiner's volume cap.

Today's proposed amendment of the final rule seeks to provide for certainty with respect to establishing the refinery-of-origin of imported gasoline through the use of independent sampling and testing that would be required upon loading on-board ship at the refinery-of-origin and upon receipt by an importer at a U.S. port-of-entry. The sampling and testing at both ends of the shipment would help to assure that the volume and parameters of the product subject to the individual baseline are identical. Additionally, the independent laboratory would verify the foreign refinery-of-origin before the shipment leaves the foreign port.

The amendment proposes that batch specific information pertaining to the parameters and volume of the batch would be collected by an independent laboratory upon loading of the product and a report filed with EPA. This information would be available for comparison with batch specific information required to be collected by importers upon receipt of product.

Further, the tracking system would help to ensure that EPA could determine that the imported reformulated gasoline produced subject to an individual baseline was not commingled with gasoline produced under another baseline en route from its source to the U.S. port-of-entry.

Today's proposal also would require that an importer exercising the option to use a foreign refinery's individual baseline must demonstrate that an annual attestation engagement is conducted of the foreign refinery for each year of individual baseline use. The engagement would be undertaken by a U.S.-based CPA or firm. This requirement would be equivalent with attest engagement requirements applicable to domestic refiners and importers under the Final Rule. The engagement would verify that the gasoline loaded on-board ship was produced by the refinery for which individual baseline use is claimed.

The practical effect of today's proposal would be to condition the use of individual foreign refinery baselines upon strict tracking of reformulated gasoline. An importer's use of a foreign refinery's individual baseline would depend upon the importer's ability to establish with certainty that the reformulated gasoline for which the individual baseline is claimed was, in fact, produced at the foreign refinery for which the individual baseline is applicable.

EPA requests comment regarding whether there would be appropriate certainty as to the refinery of origin of any imported gasoline that would use an individual foreign refinery's baseline under this proposal.

C. The Limited Potential for Adverse Air Quality Effects From Gaming

It has been argued that the proposed constraints on the use of individual baselines by importers would limit the potential for gaming associated with establishing baselines for imported gasoline, and in consequence the potential for adverse air quality effects from such gaming.

If all foreign refiners sending gasoline to the U.S. established accurate and verifiable baselines, and concerns about tracking refinery of origin and other compliance concerns were resolved, then it has been agreed, those baselines and the gasoline produced under them clearly and easily would lead to the air quality benefits expected from conventional and reformulated gasoline. This might be considered the "ideal", or best possible result. As described earlier, however, there is considerable doubt about whether accurate, verifiable, and enforceable baselines can be expected for *all* foreign refiners.

The Final Rule addresses these problems in effect by requiring all foreign refiners to produce gasoline using the statutory baseline—those cleaner than the statutory baseline are allowed to degrade down to that baseline, while those dirtier than the statutory baselines are required to clean up to that baseline. While the Final Rule would not allow the average quality of foreign produced gasoline to degrade below the statutory baseline, it might in fact require that foreign gasoline be cleaner on average than would be required if all refiners did establish individual baselines.[10]

One concern regarding the approach used in the Final Rule is that it treats all foreign refiners as a class (by assigning the statutory baseline to all imported gasoline), yet the factors that led to grouping foreign refiners as a class may not apply equally to all foreign refiners. The result of the class approach to resolving the foreign refiner baseline issue could be considered unfair to any particular foreign refiner who would be able to accurately establish refinery baselines, and who would be able to establish with certainty the refinery of origin for gasoline imported into the United States. On the other hand, and as has been discussed above, allowing each foreign refiner to choose whether to establish individual refinery baselines creates the potential for gaming with consequent adverse environmental effects. The challenge for EPA, then, is to create a regulatory mechanism for imported gasoline baselines that is as fair as possible to each foreign refiner, but that also achieves the environmental goals intended for reformulated gasoline.

The proposed revisions would allow certain foreign refiners the option to petition for the right to establish individual baselines under carefully controlled circumstances. As discussed above, this proposed scheme has a potential for adverse air quality effects, in comparison to the current Final Rule, because some importers would have an option as to which baseline would apply to imported reformulated gasoline. Presumably, foreign refiners and their U.S. importer business partners would elect to seek to establish individual foreign refinery baselines only if the foreign refinery produced gasoline in 1990 that was "dirtier" than the statutory baseline alternative to an individual foreign refinery baseline. In

[10] This would occur if the average quality of all gasoline imports in 1990 was dirtier than the statutory baseline.

the case of foreign refineries that produced gasoline in 1990 that was "cleaner" than the statutory baseline, on the other hand, the foreign refiners and their U.S. importer business partners presumably would use the less stringent and less costly statutory baseline option. EPA's "gaming" concern would result from these likely decisions by "dirtier" and "cleaner" foreign refiners. The potential adverse air quality consequence would result from the volume of imported gasoline during 1995 through 1997 that would use a "dirtier"-than-statutory baseline, and the loss to the U.S. gasoline pool during 1995 through 1997 of gasoline produced to meet a "cleaner"-than-statutory baselines. There may or may not be an adverse air quality impact in relation to the "ideal" scenario described above, depending on whether the average quality of gasoline imported from foreign refiners in 1990 was different from the statutory baseline and how much reformulated gasoline is imported in 1995 through 1997.

EPA has been unable to identify any foreign refiners other than PDVSA who intend to produce any reformulated gasoline,[11] though there nevertheless could be some because there is no requirement that refiners must announce their intentions at this time. The absence of identified foreign reformulated gasoline refiners (other than PDVSA) does present the possibility that there will be few, if any, foreign reformulated gasoline refiners who would have a "cleaner"-than statutory baseline (but who would opt for the statutory baseline). If true, this would resolve EPA's gaming concern.

Moreover, even to the extent there are foreign refiners who would qualify for "cleaner"-than-statutory baselines EPA believes there is a possibility that their gasoline would nevertheless be cleaner than the statutory baseline, which would limit the likelihood for adverse air quality effects. This possibility was presented to EPA by a foreign refiner who argued that such "clean" refiners may in fact be technologically incapable of relaxing production parameters so as to realize a benefit from the statutory baseline. To the extent this may be true, such "clean" refiners might reduce any adverse air quality impact associated with providing an option to establish individual baselines.

The principal reason limiting the potential for adverse air quality effects from gaming under today's proposal is, however, that use of "dirtier"-than-statutory individual baselines would be restricted. It has been argued that this would in turn limit any adverse air quality effects, in relation to the current final rule.[12] At the same time, any reformulated gasoline imported under an individual baseline would be required to meet the same standards that apply to any other refiner, foreign or domestic, with the same baseline. For the three parameters of interest under the simple model for reformulated gasoline, sulfur, olefins, and T–90, reformulated gasoline produced by a foreign or domestic refiner with an individual baseline would have to meet an annual average limit set at 100% of the individual baseline level for those parameters. This effectively requires that the gasoline stay as clean as it was in 1990, for those three specific parameters.

EPA has considered the level of emissions that would result from gasoline imported under the approach contained in the final rule, versus gasoline imported under the approach described in today's proposal. While no baselines have been established yet for any refiner or importer, PDVSA has submitted to the reformulated gasoline docket a record that describes the baseline it would be able to establish if given the opportunity. The baseline it describes is dirtier than the statutory baseline for some parameters, and cleaner for other parameters. In the case of sulfur and olefins, PDVSA's stated baseline levels would be significantly higher than the statutory baseline: PDVSA's claimed sulfur level is 644 parts per million (ppm), and the statutory baseline level is 339 ppm; PDVSA's claimed olefin level is 22 vol% and the statutory baseline level is 9.2 vol%. The environmental implication is that NO_X emissions are higher with larger sulfur and olefin levels.

Taking into account the volume of PDVSA's gasoline that is used in the Northeast U.S.—its primary market, EPA's preliminary analysis shows that PDVSA's 1995 gasoline would increase overall NO_X emissions there by only 0.08% during the high ozone season,[13] in comparison to the case where PDVSA would produce gasoline to meet the statutory baseline for sulfur and olefins.

Also, PDVSA's 1995 gasoline quality will be approximately equal to the quality of statutory gasoline in terms of VOC emissions, and will be much cleaner in terms of toxics emissions.[14]

The proposed program elements that would help to limit the impact of "dirtier"-than-statutory baselines are the limited volume of a foreign refinery's reformulated gasoline that could use the individual baseline, the limited time period during which the individual baseline could be used, the fact that the individual baseline could be used only for reformulated gasoline, and EPA's belief that the individual baseline option would not be attractive to most foreign refiners.

1. The Volume Limitation on Use of Individual Refinery Baselines

An importer's use of a foreign refinery's individual baseline is proposed to be limited to volumes of reformulated gasoline equivalent to the foreign refinery's 1990 volume of gasoline imports to the U.S. This volume constraint is described above.

The volume cap limiting use of an individual baseline for reformulated gasoline production (until January 1, 1998) to a foreign refiner's 1990 import volumes ensures that the use of an individual baseline is constrained by historical import volumes. Volumes imported above the 1990 constraint would be subject to the importer's statutory baseline. Foreign-produced reformulated gasoline subject to an individual baseline, within the 1990 volume cap limitation, would be measured for compliance against gasoline produced in 1990, and therefore would be at least as clean as the foreign refiner's 1990 gasoline. However, any reformulated gasoline produced by a foreign refiner above the 1990 volume would be evaluated relative to the statutory baseline and therefore would be at least as clean as reformulated gasoline produced using the statutory baseline.

2. The Time Limitation on the Use of Individual Foreign Refinery Baselines

A further constraint on potential adverse air quality effects is the time limit on an importer's use of a foreign refiner's individual baseline. It would

[11] EPA does expect some imports of reformulated gasoline under the Final Rule's provision that applies to a foreign refinery that is owned by the U.S. importer and where at least 75% of the refinery's 1990 production was imported into the U.S. These refineries are relevant to this discussion.

[12] It is important to note that the potential for adverse air quality effects discussed in this preamble is in relation to gasoline that would be imported under the approach contained in the Final Rule, i.e., to imported gasoline that meets the statutory baseline. That comparison may not be fair. Another comparison that may be more appropriate would be with imported gasoline that is produced to each foreign refinery's individual baseline, like is done for domestic refiners. When imported gasoline is compared based on individual foreign refinery baselines, there may be no potential for adverse air quality effects from today's proposal.

[13] The high ozone season is the appropriate period for evaluating NO_X emissions, because NO_X is of primary concern as an ozone precursor.

[14] EPA has placed in the docket an analysis of the environmental impacts of the use of gasoline having properties equal to those described by PDVSA.

be limited to the period commencing when reformulated gasoline is first imported into the U.S. and continues through December 31, 1997. After 1997, individual baselines have no further relevance to the requirements for reformulated gasoline, and all importers and domestic refiners are required by the Final Rule to measure compliance with the reformulated gasoline standards against the statutory baseline. Therefore, the effect of this regulation would be limited to this three year period only.

3. The Number of Foreign Refiners Who Would Seek to Use Individual Foreign Refinery Baselines Would be Limited

This proposal is predicated on the assumption that the costs inherent in producing reformulated gasoline and meeting the requirements of the reformulated gasoline program, including those costs necessary to establish an individual baseline, will deter most foreign refiners from selecting the individual baseline option, thereby further limiting any potential adverse air quality impact. These costs include extensive refinery modifications; costs associated with petitioning EPA for an individual baseline and providing adequate information to establish with certainty that the baseline determination is accurate; a baseline audit; and the record keeping and product tracking associated with complying with the proposed annual compliance audits.

EPA believes that few refiners have made the requisite capital investments necessary to produce reformulated gasoline. Therefore, it currently appears that the number of foreign refiners who would take advantage of this proposed amendment would be limited.

In addition, the limited time period during which individual foreign refinery baselines could be used may limit the number of foreign refiners that would take advantage of this option, because the costs associated with exercising this option described above, could only be recouped within the 1995 through 1997 time frame.

4. Conventional Gasoline Not Affected by This Proposed Amendment

EPA's concern for gaming in the case of conventional gasoline is substantially greater than its concern with respect to reformulated gasoline. First, there is likely to be significantly more conventional gasoline imported into the U.S. than reformulated gasoline. Second, the Final Rule provides that individual baseline will be the basis for conventional gasoline compliance into the foreseeable future while an individual baseline for reformulated gasoline is applicable only until December 31, 1997. Accordingly, due to these volumetric and long term distinctions between reformulated gasolines and conventional gasolines, the potential for adverse air quality impact is significantly larger if individual foreign refinery baselines could be used with conventional gasoline, as compared with the potential if individual foreign refinery baselines could be used with reformulated gasoline.

The Final Rule requires that domestic refiners apply their individual baselines to conventional gasoline production. EPA anticipates that nationwide use of individual baselines will result in gasoline quality that approximately equals the statutory baseline. However, EPA believes that an option to use individual baselines by foreign refiners in the production of conventional gasoline would result in significant skewing, in a negative direction, of the average quality of imported gasoline based on the gaming scenario described above.

A skewing in a negative direction of the average of baselines with respect to foreign conventional gasoline, is of significant concern because EPA anticipates that most foreign sources of gasoline will provide conventional gasoline to the U.S. This assumption is based on EPA's belief that few foreign producers of gasoline have invested in the capital equipment necessary for complying with the reformulated gasoline program. Further, the increased costs of capitalization realized by a refiner entering the reformulated gasoline market would be exacerbated by the continuing costs of overseas shipping under the segregated fuels requirement proposed in this amendment. Accordingly, there appears to be few economic incentives for foreign refiners to reallocate production from conventional to reformulated gasolines.

Thus, EPA is not proposing to change the approach contained in the Final Rule pertaining to baselines for imported conventional gasoline, and EPA expects all or almost all importers to default to the statutory baseline.

EPA requests comment as to the magnitude of any potential adverse air quality consequences that would result from gaming under today's proposal.

D. EPA's Compliance Oversight Authority

The preamble to the Final Rule expresses EPA's concern that it would lack adequate compliance monitoring and enforcement techniques to ensure that foreign refineries comply fully with the reformulated gasoline program. This concern arose out of the perceived need to bring any enforcement actions against importers that would rely on baseline audits and inspections of foreign refiners, and that these foreign refiners may not be subject to the full panoply of enforcement mechanisms available with domestic corporations.

Today's proposed amendment, however, provides for compliance monitoring and enforcement pertaining to foreign-produced reformulated gasoline to focus on domestic importers. Such foreign-produced reformulated gasoline would be subject to the full array of monitoring and enforcement devices available to EPA. It has been argued that importers' potential liability, including but not limited to exposure to potential relegation to compliance with the statutory baseline, will be adequate to ensure that importers would import gasoline using an individual foreign refinery's baseline only where the importer has sufficient confidence the requirements of this program would be met, including the compliance monitoring provisions that require the cooperation of the foreign refiner and the government of the country in which the foreign refiner is located. These compliance monitoring and enforcement provisions appears to be equivalent to EPA's compliance monitoring and enforcement authority over domestic refiners.

The proposal provides that, as a condition for the use of a foreign refinery's individual baseline, EPA would be guaranteed full and immediate access to conduct compliance oversight inspections, collect gasoline samples and perform compliance audits at the foreign refinery. EPA's compliance audits supplement the baseline certification and annual audits specified elsewhere in this proposal. EPA's compliance oversight authority is proposed to last until January 1, 2003, consistent with the statute of limitations governing violations of the reformulated gasoline program and associated statutes governing the submission of information to the U.S. government.

In addition, foreign refiners electing to petition to use an individual baseline would be required to engage a domestic CPA to conduct a baseline certification audit and annual attest engagements. EPA anticipates that and is seeking comment on whether the professional standards governing the conduct of such audits, as well as the amenability of a U.S. CPA to EPA compliance monitoring and enforcement, is adequate assurance that EPA can

effectively monitor foreign refiners for program compliance.

E. EPA Seeks Comment on Today's Proposal, or Any Alternative Approaches

Today's proposal is an attempt to resolve the issue of baselines for foreign refiners in a more appropriate manner, with the intent of achieving several important, but different, goals. One goal is that the environmental benefits intended for reformulated gasoline by the Clean Air Act be realized. The other goal is that all regulated parties who are similarly situated be treated alike, with the differences in treatment between domestic and foreign refiners limited to those measures necessary to appropriately accommodate differences in their situations and protect human health and environmental values. EPA recognizes that there may be other methods for regulating imported reformulated gasoline that resolve these two goals in ways that are preferable to the approaches contained both in the Final Rule and in today's proposal. EPA requests comment as to any alternative approaches to regulating imported reformulated gasoline that achieves the environmental benefits required by the Clean Air Act for reformulated gasoline, and that treats domestic and foreign refiners in a manner consistent with the provisions of the GATT.

IV. Public Participation

EPA invites comment on all aspects of today's notice. EPA has specifically requested comments on a number of areas throughout the previous discussion. A list of these and other areas for comment are the following:

- Any alternative approaches to regulating imported reformulated gasoline that achieve the environmental benefits required by the Clean Air Act for reformulated gasoline, and that treat domestic and foreign refiners in a manner consistent with the provisions of the GATT.
- The accuracy of any foreign refinery baseline that would be established under the proposal.
- The identification of the refinery of origin of any imported gasoline that would use an individual foreign refinery's baseline under today's proposal.
- Whether today's proposal would result in the environmental benefits that are intended by the reformulated gasoline provisions of the Clean Air Act.
- The issue of when foreign refinery baseline petitions would be due.
- The appropriate approach for correlating the volume determination at the foreign refinery and at the U.S. port of entry.
- The adequacy of the proposed attest procedures.
- The proposed requirement that independent laboratories and CPA's be U.S. corporations or citizens.
- The proposal for combining gasoline imports in 1994 and 1995 for purposes of applying the proposed volume constraint on use of an individual foreign refinery's baseline.
- The proposed mechanism for calculating an expanded 1990 individual foreign refinery baseline volume for use during 1994 and 1995.

V. Administrative Designation and Regulatory Analysis

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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of the potential impacts on portions of the domestic refining and gasoline importing industry. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The issue of baselines for imported reformulated gasoline is discussed generally in section VII-C of the Regulatory Impact Analysis that was prepared to support the Final Rule for reformulated gasoline. A copy of this document may be found in the reformulated gasoline docket, number A–92–12, at the location identified in the ADDRESSES section of this document.

The RFA of 1980 requires federal agencies to examine the effects of proposed regulations and to identify significant adverse impacts on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[15] For purposes of the proposed individual foreign refinery requirements for reformulated gasoline, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

The Agency believes that the individual foreign refinery baseline requirements being proposed today are unlikely to have a significant economic impact on a substantial number of small entities. The businesses affected will be either a relatively small number of major domestic oil companies who would compete with imported gasoline that is produced at foreign refineries for which individual baselines are established, or importers who would import gasoline that is produced by foreign refineries for which individual baselines are established. EPA expects the number of foreign refineries for which individual baselines will be established will be small, with the result that the number of affected domestic refiners and importers also will be small.

However, EPA invites comment on the question of significant impacts on small entities. EPA also requests all relevant data which justify any conclusions submitted.

C. The Paperwork Reduction Act

The information collection requirements in this proposal have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C.

[15] U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance with the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1591.04) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St., SW. (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated recordkeeping and reporting burden averaging 4.1 hours per respondent. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M St., SW. (Mail Code 2136), Washington, DC 20460, and to the Office of Information Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

VI. Statutory Authority

The statutory authority for the rules proposed today is granted to EPA by sections 114, 211 (c) and (k), and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: April 21, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.84 is proposed to be added to subpart D to read as follows:

§ 80.84 Individual baselines for foreign refineries.

(a) *Definitions.* For purposes of this section, "foreign refinery" shall mean a specific refinery located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) *Conditions for use of individual foreign refinery baselines.* For purposes of compliance with the reformulated gasoline standards of § 80.41, any importer may use a baseline established for a foreign refinery as the importer's individual baseline, but only for gasoline produced at that foreign refinery and provided that:

(1) The Administrator has approved separate 1990 baseline properties and volume for the foreign refinery, as specified under paragraph (c) of this section;

(2) The importer is able to establish that the imported gasoline was produced at the foreign refinery, as specified under paragraph (d) of this section;

(3) An attest engagement is conducted of the foreign refinery operation for the calendar year during which the separate foreign refinery baseline is claimed by the importer, as specified under paragraph (e) of this section; and

(4) Authorized representatives of the Administrator are given full and immediate access and are allowed to conduct inspections, review records and other documents, collect gasoline samples, and perform audits relating to the foreign refinery, as specified under paragraph (f) of this section.

(c) *Establishing individual foreign refinery baselines.* (1) Any foreign refiner may seek a separate baseline for a foreign refinery by submitting a petition to the Assistant Administrator of EPA's Office of Air and Radiation, such petition to include the Method 1-, 2-, and/or 3-type data as specified in § 80.91 for the foreign refinery, submitted as specified in § 80.93, and verified as specified in § 80.92 except that the baseline auditor shall be an individual who is a United States citizen.

(2) The Assistant Administrator of EPA's Office of Air and Radiation may grant such petition if the properties and volume of the gasoline produced at the foreign refinery and imported for use in the United States in 1990 are established to the satisfaction of the Assistant Administrator.

(3) Any petition under this paragraph (c) of this section shall:

(i) Contain a declaration, signed by the owner or president of the foreign refiner business, that contains the following language:

The information contained in this individual baseline petition is complete and accurate.

I agree that any EPA inspector or auditor will be given immediate and complete access to the premises of [the name of foreign refinery for which an individual baseline is requested], to any other location where gasoline produced at [the name of the foreign refinery] for use in the United States during the period December 1994 through December 1997 is stored or transported, and to any other location where documents are kept which relate to this baseline petition or to the quality and/or quantity of the gasoline produced at the foreign refinery for use in the United States during the period December 1, 1994 through December 31, 1997, regardless of whether these inspections are announced in advance or are unannounced;

and

(ii) Be submitted by [insert date 6 months after publication of the Final Rule].

(d) *Establishing refinery-of-origin.* In order to establish the refinery-of-origin with regard to any batch of imported gasoline:

(1) The gasoline to which the individual foreign refinery baseline would apply may not be combined with gasoline produced at any other refinery prior to arrival at the United States port-of-entry;

(2)(i) A United States-based independent laboratory shall:

(A) Collect a representative sample of the batch subsequent to loading on the ship that will transport the gasoline to the United States, and prior to departure of that ship from the port serving the refinery-of-origin;

(B) Analyze such sample for each property specified in § 80.65(e)(1) using the methodologies specified in § 80.46;

(C) Independently determine the volume of the batch;

(D) Independently determine the refinery at which the subject gasoline was produced, and that the subject gasoline was not combined with gasoline produced at any other refinery before loading on the ship.

(E) Obtain the EPA-assigned registration number of the refinery at which the batch was produced;

(F) Determine the name and country of registration of the ship used to transport the batch to the United States port-of-entry; and

(G) Determine the date the ship departs from the port serving the refinery-of-origin.

(ii) A laboratory shall be considered independent only if it meets the criteria specified in § 80.65(f)(2)(iii).

(iii) In order to be considered United States-based, the laboratory must be a United States corporation engaged in the business of gasoline sampling and

testing, or an individual who is a United States citizen who is engaged in the business of gasoline sampling and testing in the United States.

(iv) The independent laboratory shall submit to the Administrator a report containing the information required under paragraph (d)(2)(i) of this section, within thirty days following the date of the independent laboratory's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the subject gasoline was produced, that the subject gasoline was not mixed with gasoline produced at any other refinery, and a description of the gasoline's movement and storage between production at the source refinery and ship loading.

(v) The refinery-of-origin sampling and testing required under paragraph (d)(2) of this section is in addition to the sampling and testing required at the port-of-entry under §§ 80.65 (e) and (f).

(3) The importer shall meet the sampling and testing requirement, under § 80.65(f)(1)(i), whereby an independent laboratory samples and tests each batch of imported gasoline.

(4)(i) The results of testing of the batch sample collected at the refinery-of-origin under paragraph (d)(2) of this section, when compared to the results of testing of the batch sample collected at the United States port-of-entry under § 80.65(f)(1)(i), must for each parameter be within the range specified for the parameter under § 80.65(e)(2)(i);

(ii) The volume determination for the batch at the refinery-of-origin under paragraph (d)(2) of this section, when compared to the volume determination for the batch at the United States port-of-entry under § 80.65(f), must be within ± 1% where such volume determinations are corrected for temperature and density;

(iii) The ship identified under paragraph (d)(2) of this section must be the same ship that is used to transport the gasoline on arrival at the United States port-of-entry; and

(iv) The refinery-of-origin, volume, shipment date, and ship name under paragraph (d)(2) of this section must be confirmed by the attest engagement under paragraph (f) of this section.

(e) *Attest requirements.* (1) The attest engagement required under paragraph (b)(3) of this section shall be conducted by a United States-based CPA in accordance with the procedures specified in §§ 80.126 and 80.127.

(2) The CPA shall: (i) Obtain a gasoline inventory reconciliation analysis for the current year from the refinery which includes reformulated gasoline, RBOB, conventional gasoline, and other non-finished gasoline petroleum products, whether imported into the United States or not;

(ii) Test the mathematical accuracy of the calculations contained in the analysis; and

(iii) Agree the beginning and ending inventories to the refinery's perpetual inventory records.

(3) The CPA shall: (i) Obtain a separate listing of all tenders during the current year of reformulated gasoline produced at the refinery for use in the United States, such listing to include the date the tender was transported from the refinery, the method of transportation of the tender from the refinery to the point of ship loading, the identification of any storage of the gasoline prior to the point of ship loading, and the name and country of registration of the ship used for transporting the gasoline from the refinery to the United States;

(ii) Test the mathematical accuracy of the calculations contained in the listings;

(iii) Agree the listing's tender volumes to the gasoline inventory reconciliation in paragraph (e)(2) of this section; and

(iv) Confirm that the gasoline comprising the tender was not mixed with gasoline produced at any other refinery between its production and ship loading.

(4)(i) The CPA shall prepare a report on the attest engagement summarizing the procedures performed and the findings in accordance with the § 80.125(b), and shall include in the report, for each tender of reformulated gasoline, the volume, date shipped, and ship name and country of registration.

(ii) The CPA report for each calendar year shall be submitted to EPA not later than May 31 of the following year.

(5) In order to be considered a United States-based CPA, a CPA firm must be a United States corporation, or an individual CPA must be a United States citizen who is a licensed CPA in the United States.

(f) *EPA inspections.* The inspections, reviews, collections, and audits under paragraph (b)(4) of this section may be conducted:

(1)(i) At the foreign refinery;

(ii) At any other location where gasoline produced at the foreign refinery for use in the United States is stored or transported; and

(iii) At any other location where documents are kept which relate to the quality and/or quantity of the gasoline produced at the foreign refinery for use in the United States;

(2) Either announced in advance, or unannounced;

(3) At any time prior to January 1, 2003; and

(4) With relation to any gasoline produced:

(i) During 1990 and any other year for which data are submitted to EPA in support of an individual baseline; and

(ii) For use in the United States during the period December 1994 through December 1997.

(g) *Failure to meet requirements.* If any requirement specified in paragraphs (b) through (f) of this section is not fully met for any calendar year, or if the Administrator determines that the information submitted to EPA under paragraphs (b) through (f) of this section is inaccurate in whole or in part, then compliance with the requirements of §§ 80.41 (h) and (i) by an importer shall be measured, *ab initio* and for each and every calendar year or for such other period of time as the Administrator may determine, from the baseline that otherwise would apply to the importer in the absence of the operation of this section.

(h) *Volume constraints.* (1) During any calendar year the total volume of gasoline imported by one or more importers to which a foreign refinery's baseline applies shall not be greater than the refinery's 1990 baseline volume.

(2) Where the volume of gasoline for which the foreign refinery's baseline is claimed by one or more importers during any calendar year exceeds the refinery's 1990 baseline volume, the refinery's baseline applies only to the first volume of that refinery's gasoline that is imported into the United States that equals the 1990 baseline volume.

(3) In the event any importer uses a foreign refinery baseline in violation of the volume constraint specified in paragraphs (h) (1) through (2) of this section the importer shall, *ab initio*, calculate compliance using the baseline values that properly apply under paragraphs (h) (1) through (2) of this section.

(4) In the event any gasoline is imported before January 1, 1995 for which a separate foreign refinery baseline is claimed:

(i) Such gasoline shall be combined with gasoline imported during 1995 for which the separate foreign refinery baseline is claimed for purposes of the volume constraint specified in paragraphs (h) (1) through (2) of this section; and

(ii) An adjusted 1990 baseline volume for the foreign refinery shall be calculated, for use during the combined 1994 and 1995 period only, by

multiplying the 1990 baseline volume for the foreign refinery times 1.17.

[FR Doc. 94–10434 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Children's Television

AGENCY: Federal Communications Commission.

ACTION: Policy Statement; notice of hearing and extension of comment period.

SUMMARY: The Commission will hold a public hearing on the issues raised concerning the implementation of the Children's Television Act of 1990. The Commission will also accept additional comments and reply comments. It has been nearly one year since the last comments were filed in this proceeding. Submission of this more current information will facilitate the Commission's ability to make an informed policy decision.

DATES: Requests to appear at the hearing must be submitted by May 11, 1994; written comments must be submitted by June 8, 1994; and reply comments must be submitted by July 15, 1994.

ADDRESSES: Request to appear at the hearing should be sent to: Larry A. Miller, Video Services Division, Mass Media Bureau, Federal Communications Commission, 1919 M Street, NW.—room 702, Washington, DC 20554.

Comments and reply comments should be sent to: Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554 with copies to the Video Services Division.

The hearing will be held at: Federal Communications Commission, Room 856, 1919 M Street, NW. Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry A. Miller at (202) 632–6993.

SUPPLEMENTARY INFORMATION:

April 20, 1994.

Commission To Hold En Banc Hearing on Children's Television (MM Docket No. 93–48)

The Federal Communications Commission will hold an *en banc* hearing on children's television on Tuesday, June 28, 1994. The hearing will convene at 9 a.m. in Room 856, at 1919 M Street, NW., Washington, DC, and will be open to the public. The Commission has determined that it would be useful to hear oral presentations and a direct exchange of viewpoints on the issues raised in the pending children's television proceeding. The issues in this proceeding focus on the Commission's current definition of informational and educational programming and the amount of informational and educational programming a broadcaster must air to meet its obligation to children under the Children's Television Act. The Commission had earlier issued a Notice of Inquiry, 8 FCC Rcd 1841 (1993) (58 FR 14367, March 17, 1993), in this proceeding, comments were filed on May 7, 1993, and reply comment were filed on June 7, 1993.

Parties wishing to make oral presentations and appear on panels to debate issues at this hearing should submit written requests by close-of-business, Wednesday, May 11, 1994, to: Larry A. Miller, Video Services Division, Mass Media Bureau, Federal Communications Commission, 1919 M Street, NW.—room 702, Washington, DC 20554.

Such requests should clearly identify the speaker, the organization represented (if any), relevant experience and training, and the specific topic(s) to be discussed. Appropriate topics include any issues related to the *NOI*, and specifically comments on changes in the availability, quantity, quality and effectiveness of programming directed to the educational and informational needs of children, including standard-length programming, that have occurred between the enactment of the Children's Television Act of 1990 and the present. The Commission is also interested in comments on the economics of providing educational and informational programming for children either to the home or to the classroom.

Depending on the number of requests, it may be necessary to limit the number of presenters. If so, we will select speakers for the hearing in order to achieve broad representation of different viewpoints. With this in mind, interested parties wishing to present similar material are encouraged to propose a single representative or consolidated presentation. The precise format and schedule for the *en banc* hearing, as well as a list of the selected presenters, will be specified in a future public notice; however, we anticipate that presentations will be limited to no more than five minutes.

Persons selected to appear will be required to submit to the Secretary by close-of-business, Wednesday, June 8, 1994, an original and 9 copies of the proposed remarks, a summary of those remarks of no more than two pages, a brief speaker biography, and a description of the organization represented. In addition, 21 copies of the material submitted to the Secretary must be submitted to the Video Services Division by close-of-business on June 8, 1994. Interested persons not desiring to participate or not selected to participate in the *en banc* hearing may file written comments on June 8, 1994. Persons filing written comments only should comply with Sections 1.415 and 1.419 of the Commission's Rules. Persons wishing to respond to testimony presented at the hearing are invited to do so by July 15, 1994.

For more information contact Larry Miller, Video Services Division, (202) 632–6993. Members of the media should contact Maureen Peratino, Office of Public Affairs, (202) 632–5050.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–10119 Filed 5–2–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 84
Tuesday, May 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–038–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 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 those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

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. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
994–054–01, renewal of permit 93–165–01, issued on 07–12–93.	Upjohn Company.	03–25–94	Squash plants genetically engineered to express resistance to zucchini yellow mosaic virus and watermelon mosaic virus 2.	Maryland.
94–069–01, renewal of permit 93–105–04, issued on 06–17–93.	Michigan State University.	03–29–94	Cantaloupe plants genetically engineered to express resistance to zucchini yellow mosaic virus.	Michigan.
93–342–01	U.S. Department of Agriculture, Agricultural Research Service.	03–31–94	Tomato plants genetically engineered to express a satellite of cucumber mosaic virus (CMV) for resistance to CMV.	Alabama, Florida, Maryland.
93–364–01	Washington University.	03–31–94	*Arabidopsis thaliana* plants genetically engineered to express tolerance to the herbicide chlorsulfuron.	Missouri.
94–039–04, renewal of permit 90–088–01, issued on 07–11–90.	Upjohn Company.	04–05–94	Cantaloupe and squash plants genetically engineered to express resistance to cucumber mosaic virus, papaya ringspot virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, Michigan.
94–038–01	Calgene, Incorporated.	04–06–94	Canola plants genetically engineered to express oil modification genes.	North Dakota.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 26th day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–10546 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Grain Inspection Service

Opportunity for Designation in the Little Rock (AR), Los Angeles (CA), and Ohio Valley (IN) areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Little Rock Grain Exchange Trust (Little Rock), Los Angeles Grain Inspection Service, Inc. (Los Angeles), and Ohio Valley Grain Inspection, Inc. (Ohio Valley), will end October 31, 1994, according to the Act, and FGIS is asking persons interested in these designations to submit an application.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before May 31, 1994.

ADDRESSES: Applications must be submitted to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Little Rock, main office located in North Little Rock, Arkansas, Los Angeles, main office located in Montebello, California, and Ohio Valley, main office located in Newburgh, Indiana, to provide grain inspection services under the Act on November 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Little Rock, Los Angeles, and Ohio Valley end on October 31, 1994.

The geographic area presently assigned to Little Rock, in the States of Arkansas and Texas, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Arkansas State line from the western Benton County line east to the eastern Clay County line;

Bounded on the East by the eastern Clay, Greene, Lawrence, Jackson, Woodruff, Monroe, Arkansas, Desha, and Chicot County lines;

Bounded on the South by the southern Arkansas State line from the eastern Chicot County line west to the western Miller County line; and

Bounded on the West by the western Arkansas State line from the southern Miller County line north to the northern Benton County line.

Bowie and Cass Counties, Texas.

An exception to Little Rock's assigned geographic area is the following location inside Little Rock's area which has been and will continue to be serviced by Memphis Grain Inspection Service: Lockhart-Coleman Grain Company, Augusta, Woodruff County, Arkansas.

The geographic area presently assigned to Los Angeles, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In California: Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Ohio Valley, in the States of Indiana, Kentucky, and Tennessee, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is as follows:

Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties, Indiana.

Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties, Kentucky.

Cheatham, Davidson, and Robertson Counties, Tennessee.

Interested persons, including Little Rock, Los Angeles, and Ohio Valley are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning November 1, 1994, and ending October 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 22, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–10476 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity To Comment on the Applicants for the Denver (CO), East Indiana (IN), and Kansas Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS is requesting comments on the applicants for designation to provide official services in the geographic areas currently assigned to Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and the Kansas State Grain Inspection Department (Kansas).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by May 31, 1994.

ADDRESSES: Comments must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 1994, **Federal Register** (59 FR 10108), FGIS asked persons interested in providing official services in the geographic areas assigned to Denver, East Indiana, and Kansas to submit an application for designation. Applications were due by March 31, 1994. There were three applicants. Denver, East Indiana, and Kansas, the only applicants, each applied for the areas currently assigned to them. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 22, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–10477 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Memphis (TN) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Memphis Grain Inspection Service (Memphis) to provide official inspection services under the United States Grain Standards Act, as amended (Act). FGIS also announces that there were no applicants for the Alaska area, and that there will be no designated agency to serve Alaska.

EFFECTIVE DATE: June 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 December 1, 1993, **Federal Register** (58 FR 63332), FGIS announced that the designations of Memphis and Alaska end on May 31, 1994, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by December 31, 1993. Memphis applied for designation in the entire area currently assigned to it. There were no applicants for the Alaska geographic area. FGIS requested comments on the applicant for the Memphis area, and comments on the need for official services in Alaska in the February 1, 1994, **Federal Register** (59 FR 4679). Comments were due by March 2, 1994. FGIS received no comments. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Memphis was able to provide official services in the geographic area for which they applied.

Effective June 1, 1994, and ending May 31, 1997, Memphis is designated to provide official inspection services in the geographic area specified in the December **Federal Register**.

FGIS also determined that, pursuant to the provisions of the Act, there is insufficient need for official services in Alaska to designate an agency. Alaska's designation ends May 31, 1994. Any person desiring official services in Alaska after this date should contact the FGIS office in Olympia, Washington at 206–753–9072 (Fax: 206–586–5257).

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 22, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–10478 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of the Opportunity To Comment on Certain Proposed Actions and of Decisions Subject to Notice and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This is a list of those newspapers that will be used to publish notice of all decisions which are subject to appeal under 36 CFR part 217, notice of the opportunity to comment on certain proposed actions pursuant to 36 CFR 215.5, and notice of decisions subject to appeal under the general provisions of 36 CFR part 215. As required at 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to public notice and comment and administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing the notices required under the provisions of 36 CFR part 215 shall begin January 3, 1994.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, Box 25127, Lakewood, Colorado 80225, Area Code 303–275–5148.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region shall give notice of the opportunity to comment on certain proposed actions and of decisions subject to appeal pursuant to 36 CFR part 215 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. The day after the publication of the public notice in the primary newspaper shall be the first day of the appeal filing period.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the Rocky Mountain News, published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Boulder Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Granby Sky High News, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: Delta County Independent, published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: Telluride Times-Journal, published weekly in Telluride, San Miguel County, Colorado.

Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the La Junta Tribune Democrat, published daily in La Junta, Otero County, Colorado, and in the Ark Valley Journal, published weekly in La Junta, Otero County, Colorado.

Cimarron District: Tri-State News, published weekly in Elkhart, Morton County, Kansas.

South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the High Timber Times, published weekly in Conifer, Jefferson County, Colorado, and in the Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.

South Park District: Fairplay Flume, published week in Fairplay, Park County, Colorado.

Pikes Peak District: Gazette Telegraph, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: Northwest Colorado Daily Press published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the Hayden Valley Press, published weekly in Hayden, Routt County, Colorado, and in the Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Yamp and Hans Peak Districts: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: Middle Park Times, published weekly in Kremmling, Grand County, Colorado.

North Park District: Jackson County Star, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: Aspen Times, published weekly in Aspen, Pitkin County, Colorado.

Blanco District: Meeker Herald, published weekly in Meeker, Rio Blanco County, Colorado.

Dillion District: Summit Sentinel, published twice weekly in Frisco, Summit County, Colorado.

Eagle District: Eagle Valley Enterprise, published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: Vail Trail, published weekly in Minturn, Eagle County, Colorado.

Rifle District: Rifle Telegram, published weekly in Rifle, Garfield County, Colorado.

Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.

Samuel R. McKelvie National Forest: The Valentine Newspaper, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Pine Ridge District: The Chadron Record, published weekly in Chadron, Dawes County, Nebraska.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below)

District Ranger Decisions

Tongue District: Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: Buffalo Bulletin, published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: Lovell Chronicle, published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: Northern Wyoming Daily News, published daily in Worland, Washakie County, Wyoming.

Paintrock District: Greybull Standard, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: Rawlins Daily Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Wind River District: The Dubois Frontier, published weekly in Dubois, Teton County, Wyoming.

Lander District: Wyoming State Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: April 25, 1994.

Elizabeth Estill,

Regional Forester.

[FR Doc. 94–10505 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–11–M

Management Plan Being Developed for Allegheny National Wild and Scenic River; Warren, Forest, and Venango Counties, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement for a Management Plan and Final Corridor Boundaries for the Allegheny National Wild and Scenic River located in northwestern Pennsylvania.

The agency invites written comments and suggestions on the issues to be addressed and management recommendations needed to protect the outstandingly remarkable values of the Allegheny National Wild and Scenic River. In addition, the agency gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the decision. This EIS will result in an amendment to the Allegheny National Forest Land and Resource Management Plan.

DATES: Comments should be received in writing by May 18, 1994, to ensure timely consideration.

ADDRESSES: Send written comments to Allegheny River Management Plan, Allegheny National Forest, P.O. Box 847, Warren, PA 16365.

FOR FURTHER INFORMATION CONTACT: Susan K. Wingate, Allegheny National Forest, P.O. Box 847, Warren, PA 16365 (814/723–5150).

SUPPLEMENTARY INFORMATION: On April 20, 1992, legislation was signed (Pub. L. 102–271) amending the Wild and Scenic Rivers Act of 1968 to include 85 miles of the Allegheny River as a component of the National Wild and Scenic River System. This act gave a "recreational" classification to all three designated sections of the Allegheny River between Kinzua Dam and Emlenton, PA. The Act directed the Secretary of Agriculture to establish two advisory councils to advise him on the final corridor boundaries and the management of the designated river segments. Approximately 20 percent of the designated river segments are bordered by public lands and 80 percent by private lands.

The decision to be made, based on this environmental impact statement is: What management guidelines and final corridor boundaries will best preserve and protect for present and future generations the outstanding scenic, natural recreational, scientific, historic and ecological values of the Allegheny River while adequately recognizing private land rights?

The following preliminary issues derived from public involvement during

the initial river study and the more recent advisory council process, as well as significant issues identified during additional scoping, will be considered in the environmental analysis: (1) Public vs. Private Interests: There is a concern that with the increasing use of the river by the public, the possibility of conflicts between private landowners and river users will increase. Landowners are also concerned about the loss of property rights and increased regulation to protect identified river values. There is also concern that private land use could change the character of the river corridor. (2) River Development: There is concern about what will be proposed, how proposed river development will be managed and how river development will affect municipalities and landowners. There is also concern about how to maintain the river's character and minimize impacts on riparian landowners while developing the economic potential of the river. (3) Land Acquisition: There is a concern that acquisition of land by the Forest Service within the river corridor will result in a loss of tax base for local municipalities.

A range of alternatives will be considered. They will include, as a minimum, the no action alternative that does not recommend any action to implement the Wild and Scenic River designation beyond that which is needed to meet minimum requirements and existing laws; and an alternative that recommends maximum protection of designated sections, including public land purchase and the inforporation of advisory council recommendations. Additional alternatives may be developed from public comments received during the scoping process. The environmental impact statement will disclose the direct, indirect and cumulative effects of implementing each alternative.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposal. Comments previously submitted during the river study and relevant to the management of the corridor as well as new information submitted will be utilized in the preparation of the draft environmental impact statement. During April 1994, news releases will be mailed to local and regional newspapers, radio stations, etc., and letters will be sent to key contacts and interested and affected publics. Advisory Council meetings will continue to be used as a means to inform the public of the analysis process and to provide for public participation and involvement. Additional meetings may be held in other locations.

The responsible official is Floyd J. Marita, Regional Forester.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1994. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of available in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft environmental impact statement, projected for September 1994, reviewers must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by December 1994. This decision will be subject to appeal under 36 CFR 217.3.

Dated: April 7, 1994.

Lionel A. Lemery,

Wild and Scenic Rivers Coordinator.

[FR Doc. 94–10472 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Recreation Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice, as required by the Federal Advisory Committee Act (5 U.S.C. App. 2), of the times and location of the next meeting of the Recreation Access Advisory Committee.

DATES: The next meeting of the Recreation Access Advisory Committee is scheduled for Friday, May 20, 1994 (8:30 a.m.–5:00 p.m.), Saturday, May 21, 1994 (8:30 a.m.–5:30 p.m.), and Sunday, May 22, 1994 (9:00 a.m.–12:30 p.m.). The schedule of events is as follows:

Friday, May 20, 1994

8:30 a.m.–9 a.m. Convene in Full Committee
9:00 a.m.–12:30 p.m. Discussion of Program and Operational Issues
1:15 p.m.–2 p.m. Review of Rulemaking Process and Federal Advisory Committee Act Requirements
2 p.m.–4 p.m. Sports Facilities Subcommittee Report
4 p.m.–5 p.m. Public Comment Period

Saturday, May 21, 1994

8:30 a.m.–10:45 a.m. Golf Subcommittee Report
10:45 a.m.–12:30 a.m. Developed Outdoor Recreation Facilities and Areas Subcommittee Report
2 p.m.–3:30 p.m. Recreational Boating and Fishing Subcommittee Report
3:30 p.m.–5 p.m. Play Area Settings Subcommittee Report
5 p.m.–5:30 p.m. Public Comment Period

Sunday, May 22, 1994

9 a.m.–11:30 a.m. Places of Amusement Subcommittee Report
11:30 a.m.–12 noon Public Comment Period
12 noon–12:30 p.m. Full Committee Discussion

ADDRESSES: The meeting will be held at the offices of the Disabled American Veterans, 807 Main Avenue, SW., Washington, DC in the auditorium on the lobby level of the building.

FOR FURTHER INFORMATION CONTACT: Peggy H. Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 ext. 34. (Voice); (202) 272–5449 (TTY). These are not toll free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Access Board established a Recreation Access Advisory Committee to provide advice on issues related to making recreational facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. This advice will be used by the Access Board to develop accessibility guidelines under the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 for newly constructed and altered recreational facilities and outdoor developed areas. The Advisory Committee is composed of owners and operators of various recreational facilities; persons who design recreational facilities or manufacture related equipment; Federal, State and local government officials responsible for parks and other outdoor developed areas; and individuals with disabilities and organizations representing the interests of such persons.

The Recreation Access Advisory Committee has formed subcommittees to assist in its work. The subcommittees include: Places of Amusement; Golf; Play Area Settings; Recreational Boating and Fishing; Developed Outdoor Recreation Facilities and Areas; and Sports Facilities. The subcommittees will be presenting their recommendations to the full Committee during the May meeting.

This meeting is open to the public and the meeting site will be accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by May 16, 1994 at (202) 272–5434 ext. 34. (Voice) or (202) 272–5449 (TTY). These are not toll free numbers.

Lawrence W. Roffee,
Executive Director.
[FR Doc. 94–10471 Filed 5–2–94; 8:45 am]
BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will hold a consultation and planning meeting from 9 a.m. until 5 p.m., on Wednesday, May 25, 1994 and Thursday, May 26, 1994, from 9 a.m. to 5 p.m., at the Westin Hotel, 909 North Michigan Avenue, Chicago, Illinois 60611. The purpose of the meeting is to gather information regarding civil rights issues facing Asian Americans in Metropolitan Chicago and to discuss other current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Faye M. Lyon or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 25, 1994.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 94–10559 Filed 5–2–94; 8:45 am]
BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Wednesday, May 25, 1994, at the Holiday Inn-Downtown, 120 W. Broadway in Louisville, Kentucky. The meeting will include: (1) A discussion of the status of the Commission and the State Advisory Committees; (2) a discussion of civil rights issues and progress in the State; and (3) review of a draft report on "Bigotry-Related Violence in Kentucky."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Thelma Clemons, 502–893–1055 or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 26, 1994.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 94–10560 Filed 5–2–94; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty orders and findings listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than May 31, 1994.

EFFECTIVE DATE: May 3, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty order or findings for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping duty proceeding	*Date of finding/order*
Japan: Impression Fabric (A–588–066). Contact: Joseph Fargo/Richard Rimlinger (202) 482–4733	43 FR 12344, 05/25/78
Dominican Republic: Portland Cement (A–247–003). Contact: Joseph Fargo/Richard Rimlinger (202) 482–4733	28 FR 4507, 05/04/63
Argentina: Rect. Carbon Steel Tubing (A–357–802). Contact: Sally Hastings/John Kugelman (202) 482–5253	54 FR 22794, 05/26/89
Taiwan: Pipe and Tube (A–583–008). Contact: Barbara Victor/John Kugelman (202) 482–5253	49 FR 19369, 05/07/84
Brazil: Pipe Fittings (A–351–505). Contact: Michael Diminich/Richard Rimlinger (202) 482–4733	51 FR 18640, 05/21/86
South Korea: Pipe Fittings (A–580–507). Contact: Michael Diminich/Richard Rimlinger (202) 482–4733	51 FR 18917, 05/23/86
Taiwan: Pipe Fittings (A–583–507). Contact: Dennis Askey/Wendy Frankel (202) 482–5253	51 FR 18918, 05/23/86
Turkey: Steel Pipe and Tube (A–498–510). Contact: Gayle Longest/Kelly Parkhill (202) 482–2786	51 FR 17784, 05/15/86
Brazil: Iron Construction Castings (A–351–503). Contact: Brian Albright/Maria Mackay (202) 482–2786	51 FR 17220, 05/09/86

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, and domestic interested parties do not object to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping duty orders and findings are no longer of interest to interested parties and shall proceed with the revocation.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings by May 31, 1994.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: April 28, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–10712 Filed 5–2–94; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Wednesday, June 8, 1994, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on the Institute's laboratory plans, a progress report and program definition of the Advanced Technology Program, Institute budget update; and tours to the Optical Fiber Geometry Standards Laboratory and to the Pulsed Tube Refrigeration Laboratory.

DATES: The meeting will convene June 8, 1994, at 8:30 a.m. and will adjourn at 5 p.m. on June 8, 1994.

The discussion on NIST Budget, scheduled to begin at 3:50 p.m. and end at 5 p.m. on June 8, 1994, will be closed.

ADDRESSES: The meeting will be held in Conference Room 1103, Radio Building, National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 14, 1994, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: April 12, 1994.

Samuel Kramer,

Assocaite Director.

[FR Doc. 94–10585 Filed 5–2–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D.042894B]

Marine Mammals

AGENCIES: The Advanced Research Projects Agency (ARPA), Department of Defense in cooperation with National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement and request for comment.

SUMMARY: The ARPA, in cooperation with the NMFS, intends to prepare an environmental impact statement (EIS), according to the National Environmental Policy Act (NEPA), on an application for a scientific research permit to allow harassment of marine mammals and sea turtles by a low frequency sound source, and to monitor the effects thereof.

DATES: Comments are requested by June 15, 1994. The public hearing and scoping meeting will be held on May 16, 1994.

ADDRESSES: Comments and requests for additional information should be addressed to: Ralph W. Alewine, III, Ph.D., Director, Advanced Research Projects Agency, NMRO, 3701 North Fairfax Drive, Arlington, VA 22203–1714, (703) 696–2246. The public hearing and scoping meeting will held at the Santa Cruz Civic Auditorium, 307 Church Street, Santa Cruz, CA.

SUPPLEMENTARY INFORMATION: An application for a scientific research permit has been submitted by Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate (ATOC) Program, 9500 Gilman Drive, La Jolla, CA 92093–0225. The applicant is requesting authorization to take (by harassment) several species of cetaceans, pinnipeds, and sea turtles in California coastal waters, during a study designed to assess the effects of low frequency sound associated with the ATOC program on marine mammals and sea turtles. The proposed research is a pilot project which is intended to provide information which can be used in assessing the potential environmental effects of continuing the ATOC program in a broader context. If a decision is made to continue funding for the broader ATOC program, any potential environmental effects will be assessed in a separate environmental analysis.

The subject research was proposed to be conducted in California waters from April 1994 through March 1996. As currently proposed, the sound source will be located due west of Pt. Sur, California at 850–950 m depth. The maximum duty cycle will be 8%, with a transmission bandwidth of 20 Hz at a level of 195 dB (re 1 μPa at 1m), and with a spectrum level for the center frequency (70 Hz) at 182 dB. The effects of these transmissions on marine mammals and sea turtles will be monitored through the authority of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (EIS) of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215. ARPA and NMFS invite interested parties to participate in determining the scope of significant issues to be addressed in the EIS. Significant issues currently under consideration by ARPA and NMFS are: the potential effects of the proposed low frequency sound source on marine mammals, sea turtles, and other marine resources, including fish; alternatives with respect to site selection; and, as a related issue, the purpose of the ATOC program, and an evaluation thereof as compared to other possible alternatives for assessing global warming. ARPA and NMFS will also consider as part of the scoping process, comments received at a public hearing to be held in California on May 16, 1994, from 5 p.m. to 10 p.m. at the Santa Cruz Civic Auditorium, 307 Church Street, Santa Cruz, California co-sponsored with the Monterey Bay National Marine Sanctuary. The period from 5 p.m. to 6 p.m. will be allotted for the applicant to provide a brief description of an udpated research program. Upon completion of a draft EIS on the proposed application, ARPA and NMFS will solicit public comments on it, as well.

Dated: April 28, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service, Department of Commmerce.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10667 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 042294E]

Gulf of Mexico Fishery Management Council; Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public meeting on May 100912, 1994, at the Marriott Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, TX; telephone: (512) 887091600. Related committee meetings will be held on May 9 and 10, 1994.

The Council will meet on May 10, from 3 p.m. until 5 p.m. p.m. The Council will receive public testimony on Amendment 5 to the Stone Crab Fishery Management Plan, on Amendment 7 to the Shrimp Fishery Management Plan, on Amendment 10 to the Reef Fish Fishery Management Plan, and on Mackerel Total Allowable Catch and Bag Limits and the South Atlantic amendment to the Coral and Coral Reefs Fishery Management Plan in the area of jurisdiction from 3:15 until 5:45 p.m. (NOTE: Testimony cards must be turned in to staff before the start of public testimony). From 5:45 p.m. until 6 p.m., the Council will take action on Shrimp Amendment 7.

The Council will reconvene on May 11 at 8:30 a.m. to receive the Panel report on the NMFS Shrimp Effort Data System, previous Council Actions/ Information, Background and Overview of Shrimp.

Trawl Bycatch Research Plan, Bycatch Characterization, Finfish Mortality Estimates, Bycatch Reduction by Turtle Excluder Devices, Bycatch Reduction Devices, Social and Economic Research, and Predator/Prey Bycatch Reduction Model. The meeting will adjourn at 5 p.m. and reconvene on May 12 at 8:30 a.m. to receive a presentation of Fishery Provisions of Draft Environmental Impact Statement for the Florida Keys National Marine Sanctuary until 10 a.m. From 10 a.m. until 11:30 a.m. the Council will receive reports of the Mackerel Management Committee, from 11:30 a.m. until 11:45 a.m. from the Stone Crab Management Committee, from 11:45 a.m. until 12 noon from the Scientific and Statistical Selection Committee, from 1:30 p.m. until 2:30 p.m. from the Reef Fish Management Committee, from 2:30 p.m. until 2:45 p.m. from the Habitat Protection Committee, from 2:45 p.m until 3 p.m. from the Migratory Species Management Committee. The reports will be followed by Clarification of Council Intent (Reef Fish Amendment 7), Enforcement Reports, the Director's Reports, and other business. This meeting will adjourn at 4:15 p.m.

Committees will convene at 11 a.m. on May 9, beginning with meetings of the Migratory Species Management Committee, the Shrimp Management Committee and the Stone Crab Management Committee and will recess at 5:30 p.m. The meetings will reconvene at 8 a.m. on May 10, with the Mackerel Management Committee, and the Habitat Protection Committee. The meetings will adjourn at 2 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228092815.

SUPPLEMENTARY INFORMATION: The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by May 2, 1994.

Dated: April 25, 1994.

David S. Crestin,

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

[FR Doc. 94-10467 Filed 5-2-94; 8:45am]

BILLING CODE 3510-22-F

[I.D. 042294F]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Committee and Surf Clam and Ocean Quahog Industry Advisory Subcommittee will hold a meeting on May 17, 1994, at the Ramada Inn, 76 Industrial Highway, Essington, PA. The meetings will begin at 10 a.m.

The following topics will be discussed:

(1) Amendment 9 to the Surf Clam and Ocean Quahog Fishery Management Plan;

(2) The vessel call-in requirement, and

(3) Transfers of individual transferable quotas.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331 at least 5 days prior to the meeting date.

Dated: April 25, 1994.

David S. Crestin,

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

[FR Doc. 94-10468 Filed 5-2-94; 8:45am]

BILLING CODE 3510-22-F

[I.D. 042594D]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a scientific research permit (P567).

Notice is hereby given that Dr. Peter Lutz of Florida Atlantic University has applied in due form to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

The applicant requests authorization to conduct a detailed study on the daily movements and habitat usage of green sea turtles (*Chelonia mydas*) and to relate these activities to local topography and flow patterns. The purpose of the comparisons is to provide an understanding of the spatial distribution of the sea turtles and to allow researchers to forecast the impact of oil spills on the turtles, in order to take timely remedial action. The applicant requests this authorization for a duration of two years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226 (301–713–2322); and

National Marine Fisheries Service, Southeast Region, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813-893-3141).

Dated: April 26, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-10501 Filed 5-2-94; 8:45a.m.]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Establishing a Report-Based Contract Month Cycle for the Live Hog and Frozen Pork Bellies Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Change.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed amendments to its live hogs and frozen pork bellies futures option contracts. The proposed amendments will establish a "report-based" contract month trading cycle. Trading in each contract month of the cycle will occur only during a two-week period immediately preceding the release of the United States Department of Agriculture's (USDA's) quarterly "Hogs and Pigs" report.

In accordance with section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that publication of the proposed amendments is in the public interest. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before June 2, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the report-based contract month cycle for the live hog and frozen pork bellies futures option contracts.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: Under the existing terms of the live hogs and pork bellies futures option contracts, the CME lists "regular cycle" option contract months which are exercisable into each of the contract months listed by the CME for the underlying live hogs and pork bellies futures contracts.[1] Currently, all live hogs option contract months expire on the first Friday of the underlying futures contract month. All but one of the contract months listed for the pork bellies option contract expire on the last Friday that precedes by at least three days the first business day of the underlying futures contract month.[2]

[1] For the live hogs futures contract, the CME currently lists the following annual cycle of contract months: February, April, June, July, August, October and December. For the pork bellies futures contract, the CME currently lists contracts months in the following annual cycle: February, March, May, July and August.

[2] In the case of pork bellies, there currently are two option contract months based on the underlying February futures contract month: one contract month that expires on the last Friday that

The CME presently lists for trading at all times the nearest five live hogs option contract months and the nearest four pork bellies option contract months.[3]

The pork bellies option contract's existing terms provide for the listing of 11 strike prices in intervals of two cents per pound at the commencement of trading in a contract month, including the strike price nearest to the previous day's settlement price and the next five strike prices above and the next five strike prices below that strike price. The pork bellies option contract currently provides for the listing of additional strike prices as necessary to maintain the listing of at least the next five strike prices above and the next five strike prices below the prevailing prices for the underlying futures contract month.

The live hogs option contract currently provides for the listing at the commencement of trading in a contract month of all strike prices in intervals of two cents per pound that fall within the range of ten cents above and ten cents below the previous day's settlement price for the underlying futures contract month. In addition, the live hogs option contract currently provides that, when a contract month becomes the next-to-expire contract month, all strike prices that fall within a range of six cents per pound above or six cents per pound below the previous day's settlement price will be listed in intervals of one cent per pound. The live hogs option contract's existing terms also provide for the listing of additional strike prices as necessary to ensure that all strike prices at the specified price intervals are listed within the above-noted ranges of ten and, as appropriate, six cents above and below the prevailing prices for the underlying futures contract month.

The proposed amendments would provide for the listing of a "report-based" cycle of contract months for the live hog and frozen pork bellies option contracts, in addition to the listing of the "regular cycle" of option contract months currently provided for in the contracts' rules.[4] Each report-based option will have a trading life of two weeks. Specifically, a report-based option contract month will be listed on the first business day of the calendar week preceding the week in which the USDA releases the quarterly "Hogs and Pigs" report[5] and will expire on the last business day of the week in which the report is released.[6]

For report-based options in live hogs, the underlying futures contract will be the second-nearest futures contract to delivery. For example, the underlying futures contract for a report-based option that is listed in March in connection with the release of the March Hogs and Pigs report would be the June futures contract month. Similarly, the underlying futures contracts for the other report-based options to be listed during the calendar year are: the August futures contract month for the option listed during June; the December futures contract month for the option listed in September; and the April futures contract month for the option listed in December. The CME shall list initially, and thereafter maintain, put and call live hogs report-based options with strike prices at one-cent intervals in a range of six-cents above and below the previous day's settlement price of the underlying futures contract, and at two-cent intervals in a range 10 cents above and below the previous day's settlement price of the underlying futures contract.

The underlying futures contract months for pork bellies report-based options are: the May futures contract month for the option listed in March; the August futures contract month for the option listed in June; the February futures contract month for the option listed in September; and the March futures contract month for the option listed in December. The CME shall list initially and maintain pork bellies report-based put and call options at eleven strike prices listed in two-cent intervals, including the strike price that is nearest the previous day's settlement price of the underlying futures contract, and the next five higher, and the next five lower strike prices.

The proposed amendments will continue to specify the listing of the "regular cycle" of option contract months and the listing of strike prices for such months in the same manner as provided for in the contracts' existing terms.

In support of the proposed amendments, the CME states the following:

> Options on futures allow hedgers to shield themselves from the adverse impact of a ["Hogs and Pigs"] report while retaining much of the ability to benefit from a favorable market response. However, for hedgers using options on the more distant contract months, the high cost of buying an option—due to the large time value component of the option premium—can outweigh the benefits of protection from an unfavorable market reaction. As a result, many potential hedgers are effectively priced out of the option market.
>
> Short-dated options would address this problem. Since these options would be traded for such a short time, the time value component of the option premium would be negligible, and therefore the total premium would be substantially less than for a traditional long-dated option, all other things being the same. This would make short-dated options an attractive risk-management tool for hedgers who require protection around the release of these critical reports, and particularly those whose usage of options is currently limited due to the cost of the premium.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 254–6314.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at

is more than three business days prior to the first business day of February and a contract month which expires on the third Friday of the November which immediately precedes the underlying February futures contract month.

[3] For the pork bellies option contract, the CME lists the nearest five option contract months when one of the nearest five contract months is the existing option month that is based on the February futures contract month but expires during the preceding November.

[4] Under the proposals, the regular cycle option contract months for pork bellies will include both of the above-noted existing option contract months that are based on the February futures contract month.

[5] These quarterly reports are released late in the months of March, June, September and December. The exact dates on which the reports will be released during a given year are published by the USDA during the last calendar quarter of the preceding year.

[6] In some cases, the USDA Hogs and Pigs report will be released after trading ceases on the last trading day for the proposed report-based options. For example, the most recent Hogs and Pigs report was released at 2 p.m., Central Time, on Friday, March 25, 1994 (the USDA releases all Hogs and Pigs reports at 2 p.m., Central Time, on the scheduled release day, which typically is either a Thursday or Friday). The release time for this report would have followed the 1 p.m., Central Time, close of trading for live hogs and pork bellies on the last trading day of the report-based options for that month if such options had been available for listing during March 1994. In such cases, persons who hold report-based option positions after trading ends on the last trading day would have the right to choose whether to exercise such options into the underlying futures contract after the USDA report is released. In this respect, the option contracts' current terms permit persons holding option positions after trading ceases on the last trading day to submit to the CME a notice that they wish to exercise their report-based option positions until 7 p.m., Central Time, on the last trading day. For persons holding in-the-money report-based options, the option contracts' existing rules provide that such options will be automatically exercised by the CME unless instructions to the contrary are submitted to the CME by the option holder by 7 p.m. on the last trading day.

the above address in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC on April 26, 1994.

Blake Imel,

Acting Director, Division of Economic Analysis.

[FR Doc. 94–10464 Filed 5–2–94; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Meeting

AGENCY: Corporation for National and Community Service.

ACTION: Notice of meeting.

SUMMARY: The Corporation for National and Community Service, gives notice under Public Law 92–463 (Federal Advisory Committee Act), that it will hold a meeting of the Civilian Community Corps (CCC) Advisory Board. The Board advises the Director of the CCC concerning the administration of the program and assists in the development and administration of the Corps. This meeting of the Board will discuss the purpose and general status of the program. The meeting will be open to the public up to the seating capacity of the room.

DATES: May 20, 1994, 8:30am–4 pm.

ADDRESSES: Washington VISTA Hotel, 1400 M Street, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: To assure adequate accommodation contact Dr. Alice McGill, Special Assistant to the Director, CCC at 1100 Vermont Ave., NW., Washington, DC 20525; (202) 606–5000 ext. 179 or (202) 606–5256 (TDD) prior to May 16, 1994.

Dated: April 25, 1994.

Donald L. Scott,

Director.

[FR Doc. 94–10465 Filed 5–2–94; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0105]

Clearance Request for Certification of Commercial Pricing

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 (9000–0105).

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 Certification of Commercial Pricing.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This clearance covers the extension of reporting requirements as required by 41 U.S.C. 253e on Certification of Commercial Pricing. The clauses at FAR 52.215–32 and 52.215–35 require that offerors/contractors certify to the best of their knowledge and belief that prices offered for certain spare or repair parts that the contractor offers for sale to the public are no higher than the lowest commercial sales price at which such parts were sold during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available, provided that in no event shall this period be less than 30 days in duration. All items for which prices offered are higher than the lowest commercial sales price discussed above must be identified and a written justification for the differences supplied.

The commercial pricing information is used by contracting officers to ensure that the Government does not pay prices for commercial spare and repair parts that exceed the lowest commercial sales prices at which such items are sold by the contractor to the general public unless the price differences are justified. Without the information, the Government may pay prices for such supplies that are higher than prices paid by other customers.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *120* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *303*; responses per respondent, *1*; total annual responses, *303*; preparation hours per response, *120*; and total response burden hours, *36,360*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *303*; hours per recordkeeper, *160*; and total recordkeeping burden hours, *48,480*.

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. 9000–0105, Certification of Commercial Pricing, in all correspondence.

Dated: April 18, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–10562 Filed 5–2–94; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0096]

Clearance Request for Patents

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 (9000–0096).

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 Patents.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract above a dollar value of $25,000 (sections 27.202–1 and 52.227–2). The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (sections 27.204–1, 52.227–6, and 52.227–9). The information collected is to protect the rights of the patent holder and the interest of the Government.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *30*; responses per respondent, *1*; total annual responses, *30*; preparation hours per response, *.5*; and total response burden hours, *15*.

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. 9000–0096, Patents, in all correspondence.

Dated: April 18, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–10563 Filed 5–2–94; 8:45 am]

BILLING CODE 6820–34–M

Office of the Secretary

DOD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, May 18, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II Section 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: April 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10539 Filed 5–2–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, May 17, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of election devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: April 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10538 Filed 5–2–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1800, Thursday, 12 May 1994.

ADDRESSES: The meeting will be held at Hyatt Regency Monterey, Spyglass II, Monterey, CA.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: April 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10537 Filed 5–2–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 18 May 1994.

Time of Meeting: 1200–1500 (classified).

Place: Pentagon, Washington, DC.

Agenda: The Threat Team III of the Army Science Board's 1994. Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Analytical Efforts Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10254 Filed 5–2–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 24 May 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team I of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, maybe contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10255 Filed 5–2–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25 May 1994.

Time of Meeting: 1200–1500 (classified).

Place: Pentagon, Washington, DC.

Agenda: The Threat Team III of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Analytical Efforts Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10256 Filed 5–2–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 2, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Wallace McPherson, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Wallace McPherson (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or

Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Wallace McPherson at the address specified above.

Dated: April 28, 1994.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Final Performance Report for the Library Services for Indian Tribes and Hawaiian Natives Program.

Frequency: Annually.

Affected Burden: State or local governments.

Reporting Burden: Responses: 250. *Burden Hours:* 625.

Recordkeeping Burden: Recordkeepers: 250. *Burden Hours:* 300.

Abstract: This report form is used to determine the use of grant funds awarded by the Library Services for Indian Tribes Program. The Department will use the information to evaluate project performance.

Office of Postsecondary Education

1*Type of Review:* Extension.

Title: Application for the Fulbright-Hays Seminars Abroad Program.

Frequency: One time per application.

Affected Public: Individuals or households.

Reporting Burden: Responses: 600. *Burden Hours:* 600.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: The Fulbright-Hays Seminars Abroad Program provides opportunities for U.S. educators to participate in short-term study seminars abroad in the subject area of the social sciences, social studies, and the humanities. Applicants will use these forms to apply to this program. Collected data will be used to evaluate the applications.

[FR Doc. 94–10553 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.246C]

Braille Training Program; Notice Inviting Applications For New Awards for Fiscal Year (FY) 1994

Purpose of Program: To pay all or part of the cost of training in the use of braille for personnel providing vocational rehabilitation services or educational services to youth and adults who are blind. This program will provide support to establish or to continue projects that develop braille training materials and provide in-service or pre-service training in the use of braille and methods of teaching braille.

Eligible Applicants: State agencies and public or nonprofit agencies and organizations, including institutions of higher education.

SUPPLEMENTARY INFORMATION: The Braille Training Program is authorized under Title VIII of the Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 760–762).

Deadline for Transmittal of Applications: June 29, 1994.

Deadline for Intergovernmental Review: August 29, 1994.

Applications Available: May 11, 1994.

Available Funds: $400,000.

Estimated Range of Awards: $180,000–$210,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Statutory Requirements

The statutory requirements in section 21(b)(6), section 302(a), with the exception of the first sentence, sections 302(b) and (c), paragraphs (1) and (2) of section 302(g), section 306, and section 803(b) apply to this program.

Priorities

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priorities

(1) Training approaches that will recruit and train minority and underrepresented groups, including individuals for whom English is a second language.

(2) Training in the braille codes used for mathematics (Nemeth code) and music.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the additional 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

For Applications: Telephone (202) 205–9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

FOR FURTHER INFORMATION: Bob Werner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322 Switzer Building, Washington, DC. 20202–2649. Telephone (202) 205–8291.

Program Authority: 29 U.S.C. 774.

Dated: April 28, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–10554 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Finding of No Significant Impact for the Urgent-Relief Acceptance of Foreign Research Reactor Spent Nuclear Fuel

AGENCY: United States Department of Energy (DOE).

ACTION: Finding of no significant impact.

SUMMARY: In compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq., the Council on Environmental Quality's implementing regulations, 40 CFR parts 1500–1508, DOE's implementing procedures, 10 CFR part 1021, and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, the DOE has prepared an Environmental Assessment (DOE/EA–0912, April 1994) to evaluate the potential environmental impacts of the proposed urgent-relief acceptance of foreign research reactor spent nuclear fuel.

The Environmental Assessment analyzed the potential environmental impacts under the proposed action of accepting up to 409 spent nuclear fuel elements from eight reactors in Europe for storage in an existing DOE wet storage facility to meet the urgent needs of certain foreign research reactor operators and to avoid failure of a key United States nuclear weapons nonproliferation objective of minimizing and eventually eliminating the use of highly enriched uranium in civil programs worldwide. Specifically, the Environmental Assessment analyzed the potential impacts of transporting the spent nuclear fuel elements by commercial or chartered vessel from eight reactors in Europe to any one of five ports of entry in the United States (Wilmington, North Carolina; the Army Military Ocean Terminal at Sunny Point, North Carolina; Charleston, South Carolina; Savannah, Georgia; and Jacksonville, Florida), off-loading the spent fuel at the port of entry and transporting it by truck or rail to the Savannah River Site, near Aiken, South Carolina; and storing the spent fuel there until decisions are made regarding interim storage and ultimate disposition. The Nuclear Waste Policy Act authorizes ultimate disposal of the spent fuel in a geologic repository.

In October 1993, DOE provided a draft Environmental Assessment for comment to the States of Georgia and South Carolina, and the Commonwealth of Virginia, and interested individuals and organizations. In February 1994, DOE provided a revised draft Environmental Assessment to the States of Florida, Georgia, North Carolina, and South Carolina, the Commonwealth of Virginia, and to individuals and groups known to have an interest in the proposed action, and requested that comments on the draft Environmental Assessment be submitted by March 7, 1994. On February 10, 1994, Federal, State and local government representatives, citizen groups, individuals and members of the international community attended a meeting in Washington, DC, to present their views concerning the proposed action. DOE also held public meetings in communities potentially affected by the proposed acceptance of foreign research reactor spent fuel. On March 18, 1994, the comment period on the draft Environmental Assessment was extended until April 8, 1994, to provide an additional opportunity for stakeholders to provide comments. The Environmental Assessment has been revised, where appropriate, to reflect comments received during the comment period.

Based on an evaluation of the use of either commercial or chartered vessels, the proposed ports of entry and alternative modes of transporting the spent nuclear fuel (truck or train) from the port of entry to the Savannah River Site, DOE has concluded that no significant impact would result from receipt of the spent fuel at any of the five proposed ports and overland transport by rail or truck from the port of entry to the Savannah River Site. Therefore, based on the analysis in the Environmental Assessment and after careful consideration of all comments from Federal, State and local officials, members of the public and from the international community, DOE has determined that the acceptance of up to 409 spent nuclear fuel elements from eight foreign research reactors in Europe for storage at the Savannah River Site does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act. Accordingly, an Environmental Impact Statement is not required and the DOE is issuing this Finding of No Significant Impact.

However, upon further consideration, and in an effort to balance the domestic and international interests at stake, DOE has decided to implement the proposed action as follows. The spent fuel will be shipped either by commercial or chartered vessel from Europe to the Army's Military Ocean Terminal at Sunny Point, North Carolina to the maximum extent practicable (rather than allowing the shipper to select from among any one of the five proposed ports as described in the Environmental Assessment), and transported overland by rail (rather than truck). Should DOE determine that another port or mode of transport (from among those considered as the proposed action) is necessary, DOE will provide direct notice of the change to State and local government officials of the affected States and will notify the public through local media and other means, as appropriate.

ADDRESSES AND FURTHER INFORMATION: Persons requesting additional information regarding this action or desiring a copy of the Environmental Assessment should contact: Mr. David Huizenga, Office of Environmental Management, U.S. Department of Energy (Mail Stop EM–30), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9441. Copies of the Environmental Assessment are available for public review at the following DOE reading rooms and public libraries:

Aiken, South Carolina
- DOE Public Reading Room, Gregg-Graniteville Library, 171 University Parkway, Aiken, SC 29801, (803) 641–3465

Charleston, South Carolina
- Charleston County Public Library, 404 King Street, Charleston, SC 29403, (803) 723–1645

Savannah, Georgia
- Chatham County Public Library, 2002 Bull Street, Savannah, GA 31499–4301, (912) 234–5127

Jacksonville, Florida
- Haydon Burns Public Library, Attn: Technical Services Dept., 122 N. Ocean Street, Jacksonville, FL 32202, (904) 630–2665

Wilmington, North Carolina
- New Hanover County Public Library, Attn: Daniel Horn, 201 Chestnut Street, Wilmington, NC 28401, (910) 341–4390

Brunswick County, North Carolina
- Brunswick County Manager's Office, Attn: Joyce Johnson, P.O. Box 249, 45 Courthouse Drive, Bolivia, NC 28422 (910) 253–4331

Washington, DC
- DOE Freedom of Information, Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020

For general information regarding DOE's National Environmental Policy Act process, please contact: Ms. Carol M. Borgstrom, Office of National Environmental Policy Act Oversight, U.S. Department of Energy (Mail Stop EH–25), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: In the 1950's, as part of the "Atoms for Peace" program, the United States began providing assistance in the peaceful application of nuclear technologies to countries that agreed to forego the development of nuclear weapons. This assistance included the provision of highly enriched uranium for use in research reactors around the world. After irradiation in the reactor, the used (spent) fuel was transported to the

United States, where it was reprocessed to extract the uranium still remaining in the spent fuel. In this way, the United States maintained control of the highly enriched uranium, which otherwise could be used to make nuclear weapons.

To reduce the danger of nuclear weapons proliferation, the United States began a program in 1978 aimed at minimizing and eventually eliminating the use of highly enriched uranium in civilian reactor programs worldwide. This effort (the Reduced Enrichment for Research and Test Reactors Program) was directed at replacing the highly enriched uranium used in research reactors with low enriched uranium, a material that is not directly usable in nuclear weapons. Research reactors are of particular interest because the major civilian use of highly enriched uranium is as fuel in research reactors. If research reactors worldwide were to convert to low enriched uranium fuels, highly enriched uranium essentially would be eliminated from use in civil commerce.

For research reactors converting to low enriched uranium fuel, acceptance of spent fuel by the United States was viewed as essential to offset the substantial expenses and reduction in reactor efficiency and capability resulting from conversion. The United States accepted highly enriched uranium spent fuel for several decades, until the program was allowed to expire in 1988.

DOE decided in mid-1993 to prepare an Environmental Impact Statement on a new proposed policy to accept, over a 10–15 year period, up to 15,000 spent fuel elements containing uranium enriched in the United States. The goal of the proposed long-term policy would be to recover highly enriched uranium exported from the United States, while giving foreign research reactor operators sufficient time to develop their own long-term solutions for storage and disposal of spent fuel. Although the Environmental Impact Statement is under preparation, DOE does not expect to complete the analysis and make a decision on whether to implement the policy until mid to late 1995.

Because DOE has not accepted any spent fuel containing uranium enriched in the United States for more than five years, several foreign research reactor operators are running out of storage capacity and facing safety and regulatory issues associated with the presence of spent fuel at their sites. If the United States is unable to commit now to the near-term acceptance of a small amount of foreign research reactor spent fuel, several reactor operators soon will either shut down their reactors or ship their spent fuel offsite for reprocessing. Neither option would serve the nonproliferation interests of the United States. Thus, at the urging of the Department of State, DOE is proposing to accept a small number of highly enriched uranium spent fuel elements in the near term for storage in an existing federal facility in South Carolina.

DOE believes that preparation of the Environmental Assessment, which analyzes the potential environmental impacts of the proposed urgent-relief acceptance of a small number of spent fuel elements before the Environmental Impact Statement is completed, fully complies with the National Environmental Policy Act and its implementing regulations. The proposed near-term acceptance is justified independently of the decision on whether to establish a new policy on the proposed long-term acceptance of foreign research reactor spent fuel. Until the Environmental Impact Statement is completed and a decision made whether to implement the proposed long-term acceptance policy, the proposed acceptance of a small number of spent fuel elements is necessary to maintain the United States program of encouraging the conversion by research reactors to low enriched uranium fuel. Further, while there is an obvious relationship between the two proposals, a decision to accept such a small number of fuel elements does not foreclose or prejudice future decisions regarding establishment of a new spent fuel acceptance policy, or the decisions regarding interim storage or ultimate disposition of spent nuclear fuel. (In the Programmatic Spent Nuclear Fuel Management Environmental Impact Statement, due to be completed by June 1995, DOE is considering where to manage all spent fuel within the DOE complex nationwide for the interim period prior to ultimate disposition.)

In October 1993, to ensure that countries currently possessing spent fuel continue to support the nonproliferation initiatives of the United States embodied in the Reduced Enrichment for Research and Test Reactor Program until the ongoing Environmental Impact Statement can be completed, DOE issued for comment a draft Environmental Assessment which evaluated the proposed urgent-relief acceptance of up to 700 elements of foreign research reactor spent nuclear fuel containing uranium enriched in the United States. It was apparent from the comments that DOE received in response to the October 1993 draft that many people did not agree that there is a need for the United States to accept this spent fuel. Others expressed concerns regarding DOE's plans for implementing the proposed action. Subsequent to the release of the October 1993 draft Environmental Assessment and after consideration of comments received, teams of experts from the United States visited foreign research reactors in Europe and Australia to assess the near-term need for acceptance of foreign research reactor spent fuel elements before the Environmental Impact Statement on the proposed long-term acceptance policy is completed.

In February 1994, a revised draft Environmental Assessment, which included revisions made in response to comments received on the October 1993 draft Environmental Assessment, was prepared and issued for public review and comment. The proposed action evaluated in the February draft Environmental Assessment was to accept 448 highly enriched uranium spent fuel elements shipped by sea to any one of seven ports (Newport News, Norfolk, or Portsmouth, Virginia; Charleston, South Carolina; Wilmington, North Carolina; Savannah, Georgia; and Jacksonville, Florida) and then by truck to DOE's Savannah River Site near Aiken, South Carolina, for storage. The comment period on the revised draft Environmental Assessment was scheduled to close on March 7, 1994. On February 10, 1994, DOE and the Department of State co-hosted a meeting of stakeholders from State and local governments, Congress, environmental and non-proliferation public interest groups, other private sector interest groups, foreign research reactor operators and key affected communities. The purpose of that meeting was to involve stakeholders in a meaningful and constructive dialogue on the proposed urgent-relief acceptance of a small number of spent fuel elements from foreign research reactors. Subsequent to that meeting and based on concerns raised by local communities potentially affected by the proposed action, DOE extended the comment period on the February draft Environmental Assessment until April 8, 1994.

Proposed Action

The DOE proposes to accept up to 409 spent nuclear fuel elements containing highly enriched uranium of United States origin from eight research reactors in seven European countries (Austria, Denmark, Germany, Greece, Netherlands, Sweden and Switzerland). The spent fuel would be shipped across the ocean in up to 15 spent fuel transportation casks from the country of origin to one or more United States eastern seaboard ports. The casks are

expected to be transported in the next several months either by commercial container ships or chartered ships. Several casks could be transported together on a single ship to any one of the five proposed ports of entry: Wilmington and the United States Army's Military Ocean Terminal at Sunny Point, North Carolina; Charleston, South Carolina; Savannah, Georgia; and Jacksonville, Florida.

After arriving in the United States, the casks would be transported to DOE's Savannah River Site near Aiken, South Carolina, where the fuel elements would be stored underwater in an existing storage facility (the Receiving Basin for Offsite Fuels).

Environmental Impacts of the Proposed Action

Routine Operation: During routine (non-accident condition) ocean transport, there would be no impact to the marine environment. Radiation exposure from the very small radiation fields being emitted from the casks—about 1 millirem per hour at 1 meter from the cask surface—would be limited primarily to crew members who inspect the cargo on a daily basis to ensure secure stowage and structural safety of the vessel. Incident-free dose estimates to these crew members would be essentially the same regardless of the port of entry, largely because the exposure is proportional to the numbers of inspections over time. Distances and time of transit are similar from the European ports to the proposed United States ports of entry. Assuming that the ship makes three intermediate port stops and then unloads at the fourth stop, the incident-free dose to a ship cargo inspector is estimated to be 4.3 millirem for shipments into Sunny Point and Wilmington, North Carolina; 4.5 millirem for shipments into Charleston, South Carolina; and 4.6 millirem for shipments into Jacksonville, Florida and Savannah, Georgia. The likelihood of a single fatal cancer among the entire crew of all the ships used in the proposed action is approximately one in 450,000. If no intermediate port stops are assumed, the collective dose would be reduced by approximately 30 percent.

Because container cargo handling is relatively uniform throughout the world, exposure to port workers (handlers/inspectors) also would be essentially the same regardless of the port of entry. Using a conservative assumption, i.e., the same handler/inspector inspects all shipments, the maximally exposed port worker would receive a dose of approximately 5.2 millirem. The collective exposure (assuming the same crew of handlers/inspectors for all shipments) to the handlers/inspectors is estimated as 0.078 person-rem (0.0052 rem × 15 workers). The likelihood of a single individual port worker dying from cancer as a result of the proposed action is about 1 in 380,000. Dose to members of the general public during port operations would be extremely low because residences are separated from dock facilities by buffer spaces such as parking lots, warehouses and other port facilities.

During truck transport of the spent fuel from the port of entry to the Savannah River Site, the maximally exposed individual truck crew member (assuming the same person is involved in all truck shipments) would receive 2.4 millirem for shipments from Charleston, South Carolina; 2.7 millirem for shipments from Savannah, Georgia; 4.1 millirem for shipments from Wilmington, North Carolina; 4.5 millirem for shipments from Sunny Point, North Carolina; and 3.9 millirem for shipments from Jacksonville, Florida. The likelihood of a single crew member dying from cancer as a result of transporting spent fuel from Sunny Point to the Savannah River Site is about 1 in 440,000.

The maximum exposure to an individual not actively involved in shipping the spent fuel during routine transport was estimated for two cases: (1) a member of the public who lives beside the highway route (this individual was assumed to be exposed to each of the 15 truck shipments at a distance of 30 meters); and (2) an individual located near a stopped truck, e.g., in a traffic jam. The maximum in-transit dose under the first instance was calculated to be 0.002 millirem for routine operations. A dose of 0.002 millirem would increase the risk of a latent cancer fatality by 1 in one billion. For the second case, an individual could receive doses higher than 0.002 millirem depending on the duration of the stop and the distance of the individual from the truck. For example, in the unlikely event that a person was standing outside a stopped truck for a period of 1/2 hour at a distance of two meters, the person could receive a dose of one millirem.

Since port workers, inspectors, and truck drivers are not considered radiation workers, as defined by the Nuclear Regulatory Commission (NRC), the maximum annual allowable exposure for these personnel would be 100 millirem, the same radiation dose limit established by the NRC to protect the individual members of the general public. As discussed above, during normal transport of the spent nuclear fuel, the maximum annual exposure to the public, port workers, inspectors, and truck drivers would be well below the 100 millirem dose limit, and no doses large enough to result in acute health effects are predicted among either the workers or general public for the proposed action. The cumulative annual incident-free dose from the proposed activity to all persons potentially exposed would range between 0.12 person-rem (Charleston and Savannah) and 0.16 person-rem (Sunny Point).

Currently, the average annual individual worker dose at the Receiving Basin for Off-Site Fuels (RBOF) for all operations (unloading, handling and storage of the spent nuclear fuel elements) is approximately 150 millirem. Based on very conservative assumptions, i.e., all 409 spent fuel elements are received in a one-year period and the same individuals unload all 15 casks, the maximum annual increase in the average individual dose to a worker at RBOF is estimated to be 60 millirem. This dose would be well below both the DOE limit of 5,000 millirem per year for radiation workers and the DOE Administrative control level of 2,000 millirem per year per person, for all DOE activities. Once the spent fuel elements were stored under water in the RBOF, the increase in radiation exposure to facility personnel from the storage of the foreign spent fuel elements would not be detectable.

Only minor environmental impacts would be expected from the proposed action because the receipt and storage of up to 409 spent fuel elements represents only a small increase to existing site activity and involves no new construction. Approximately 15 cubic feet of laundry type waste and 5.5 cubic feet of solid waste would be generated per cask. The proposed action would add less than 4 percent to the average annual solid waste normally generated at RBOF. Receipt and storage of foreign research reactor spent nuclear fuel would have no effect on the types, quantities or utilization of hazardous compounds stored at RBOF, and no incremental risk to workers would be expected.

Accident Conditions: The Environmental Assessment evaluates the potential for accidents during ocean transport (port departure, ocean crossing, and port arrival), overland transport, and storage at RBOF.

In the extremely unlikely event of an accidental fire at sea in which a cask was sufficiently damaged by the fire to release its contents, members of the ship crew near the fire would be exposed to the released radioactive material.

However, any crew member close enough to the fire to suffer a significant radiation dose likely would be more severely injured from the fire than the radiation dose. If crew members were to survive the fire, radiological impacts would be similar to those resulting from a severe accident in port, which would result in a maximum exposure to workers and the public of approximately 0.21 person-rem. This exposure would result in an approximately one in 9,500 chance of one additional cancer in the entire exposed population. If such an accident were to occur at sea, however, there would be essentially no exposure to members of the public, and all released activity would be deposited in the ocean. Assuming that the spent fuel cask lay on the ocean floor where it slowly released its radioactive inventory, the peak doses to biota residing on the ocean floor in or near the uppermost sediment layer are estimated to be 0.11 rad (radiation adsorbed dose) per year for fish, 0.17 rad per year for crustaceans and 7.3 rad per year for mollusks. The radioactive material would be expected to disperse and to be diluted due to the influence of ocean currents. Since deleterious effects of chronic irradiation have not been observed in natural populations at dose rates of less than 365 rad, no significant impacts would be expected. Further, uranium, the major constituent of the spent fuel, has not been found to bioaccumulate in fish and bioaccumulates only slightly in crustaceans and mollusks. No significant chemical hazard would be expected from the release of the contents of the spent fuel elements into the open ocean.

Spent fuel casks are designed to withstand at least a 15-meter immersion, and it has been demonstrated that the cask seals will remain intact at much greater depths. Further, damaged and undamaged casks can be recovered readily from water up to 200 meters deep. Recovery from depths of up to 2,000 meters may be possible, but would be costly.

In an extreme situation, where the accident occurs in coastal wasters, the spent fuel is not recovered, and both the spent fuel and cask are damaged, the peak dose to an individual is estimated to be 11 millirem per year. This individual is assumed to reside near the shore and to eat seafood (fish, mollusk, seaweed) harvested from the area in the immediate vicinity of the spent fuel cask.

In the event of the most severe port accident (major mechanical damage, fire, oxidation of 100 percent of the fuel, and release of radioactive material from a cask containing 33 spent fuel elements), the dose to a maximally exposed individual, i.e., an individual assumed to be standing outside approximately 100 feet away from the event and remaining there for 24 hours, would be 25 rem. At such close distance, it is highly probable that the individuals, if not evacuated, would be harmed more by the explosion and fire engulfing the cask than by the radiation dose. If the individual were inside a building approximately 100 feet away and remained there for 24 hours after the accident, the dose would be reduced to 0.22 rem. At a more likely distance, where an individual may be located outside for a period of 24 hours after the accident, the dose at 0.6 miles would be 0.21 rem. If the person were inside at the same distance, the dose would be 0.002 rem. When considered in conjunction with the unlikely probability of occurrence (approximately 1 chance in 7.7 million), the accident has an extremely small risk. For example, the risk of developing a single fatal cancer for the most severe case, i.e., individual outside, 100 feet away for 24 hours receiving 25 rem, is about 1 chance in 600 million.

In the event of an overland accident, assuming the surrounding population remains there for a 24-hour period, the estimated population dose risk is 0.0000015 person-rem for transport from Savannah, 0.0000018 person-rem from Charleston, 0.0000028 person-rem from Wilmington, 0.0000024 person-rem from Jacksonville, and 0.0000035 person-rem from Sunny Point. While there would be slightly different risks among the different ports, no significant impacts would result.

Four hypothetical accidents at RBOF were evaluated that could potentially release radionuclides to the atmosphere. These accidents include: (1) A nuclear criticality incident; (2) a fire and explosion at RBOF; (3) accidental cutting of fuel element cores; and (4) rupture or failure of fuel elements during underwater storage. The maximum dose was attributed to the unlikely accident of 1000 foreign fuel elements rupturing during storage at RBOF. This event would result in an 8.3 millirem maximum dose to the individual at the site boundary and a 70 person-rem dose for the offsite population. The probability of such an accident occurring, however, would be less than one in 2000 years. When the probability is taken into account, there would be an additional 1 in 500 million chance that the individual at the site boundary would develop a fatal cancer, and a 1 in 55,000 chance that a single fatal cancer would occur in the exposed populations.

Environmental Impacts of Alternatives

Alternatives considered in the Environmental Assessment include no action, receipt of a greater or lesser number of spent fuel elements, alternate ports of entry, alternative modes of transport from the receiving port to the Savannah River Site, and reprocessing abroad and transport of low or highly enriched uranium to the United States.

No Action: Under the No Action Alternative, there would be no environmental impact in the United States. However, United States nonproliferation policy would be adversely affected. Foreign reactor operators will try to avoid shutting down their reactors. The operators of two reactors can elect to reprocess their spent fuel at an existing facility in Scotland, although one of the two would need United States authorization to do so. Reprocessing would allow the uranium to be extracted for reuse, and thus would increase the threat of nuclear proliferation. Reactor operators in Belgium and Germany resorted to reprocessing on four occasions in 1993 and 1994.

Six of the eight research reactors from which DOE proposes to accept spent fuel either do not have the option to reprocess their spent fuel or could not obtain regulatory authority to reprocess in time to avoid shutdown. Shutdown of these reactors would severely undermine the United States' credibility as a reliable partner in matters of nuclear cooperation. This, in turn, could influence other reactor operators to cease their conversion to low enriched fuel or to revert to the use of highly enriched fuel if they have already converted. In fact, several reactor operators have stated that, if the United States is unable to accept spent fuel, they will cancel or delay their reactor conversions to low enriched uranium fuel. Such actions would encourage development of a world market for highly enriched uranium, thereby undermining a key aspect of the United States nonproliferation program.

Selection of the No Action Alternative would also adversely affect the upcoming 1995 international conference on the Treaty on the Non-Proliferation of Nuclear Weapons. The conference will consider the indefinite extension of the Treaty, which the United States strongly supports. Other Treaty parties will want assurance that the United States has fulfilled its obligations under the Treaty to share the benefits of peaceful nuclear cooperation. If several countries that are parties to the Treaty

are compelled to shut down their research reactors, thereby foregoing the benefits from these reactors, the United States may be accused, fairly or unfairly, of not sharing the benefits of peaceful nuclear cooperation. Such an accusation, however ill-founded, could create or increase opposition to the indefinite extension of the Treaty, which is the foundation for the international nuclear weapons nonproliferation regime.

Greater or Lesser Number of Spent Fuel Elements Accepted: In addition to the proposed action (shipment of up to 409 spent nuclear fuel elements), the environmental impacts of shipping alternative numbers of spent fuel elements (i.e., 953, 359, 291, and 248 spent fuel elements) were also considered in the Environmental Assessment. The risks for the 953-element alternative are slightly more than double the risks for shipping 409 elements through the proposed ports. Conversely, the risks of shipping 359, 291 and 248 elements are less than the risks for shipping 409 elements. While there are differences in the risks depending upon the number of elements shipped, the impacts associated with the shipment of any alternative number of elements are extremely small.

Acceptance of up to 409 spent fuel elements would allow the foreign research reactors to ship full casks, and would not force the two reactors that can ship spent fuel to Scotland for reprocessing to do so. (Acceptance of 359 spent fuel elements, i.e., shipment in partially full casks, also would not force these two reactors to reprocess.) In proposing to accept full casks, DOE took note of the fact that there is no significant difference in the environmental impacts between shipping full and partially full casks. Further, shipping full casks is the customary shipping procedure, and more cost-effective. Accordingly, proposing to accept full casks appeared to be a prudent course to encourage the continued participation of foreign research reactors in the Reduced Enrichment for Research and Test Reactors Program.

Other Ports of Entry: The Environmental Assessment also evaluated the impacts of shipping 409 spent fuel elements through alternate commercial and military ports using two assumptions: (1) No intermediate port stops and eight casks per vessel; and (2) three intermediate port stops and one cask per vessel. Dose to handlers and port workers would be essentially the same from port to port. During ocean transport, dose to the ship's crew would be generally the same regardless of the port of entry. However, dose to the truck's crew showed some slight variation consistent with the distance of travel, i.e., slightly higher doses are associated with greater distances traveled. The dose to the ship's crew and the dose to the truck crew would be well below the 100 millirem limit for nonradiation workers.

None of the alternate ports appeared as advantageous for the proposed receipt of spent fuel as the five proposed ports based on the application of screening criteria drawn from the National Defense Authorization Act for Fiscal Year 1994, and additional criteria recommended by a panel of maritime experts at a DOE-sponsored workshop on port selection criteria for shipments of spent fuel. While there are comparative advantages and disadvantages among the five proposed ports, all five of the proposed ports appear comparatively more advantageous than other United States seaports for the proposed action.

Other Modes of Overland Transport: The spent nuclear fuel could be transported by rail from the port of entry to the Savannah River Site. The incident-free dose to spent fuel cask handlers would depend on how the casks were handled in port. If two casks are shipped per rail car, the handler would continue to receive a small dose from the first loaded cask as the second cask is loaded. Dose would also be influenced by the number of cargo transfers required. For example, if the spent fuel cask cannot be off-loaded directly from the ship to a rail car, spent fuel cask handlers would receive an additional small dose during the transport by truck to the rail car and from the transfer of the cask from the truck to the rail car. In addition, rail cargo is inspected after loading and prior to off-loading. As a result, transport by rail would result in a slightly higher dose to port handlers/inspectors and rail crew than transport by truck. Dose to the public, however, would be generally lower, partly because rail stops would normally occur in rail yards (removed from the general population). For example, rail transport from Sunny Point to the Savannah River Site would result in an annual dose of 0.16 person-rem total to port handlers/inspectors, other port workers and rail crew, and in a dose of 0.0017 person-rem to members of the public. Truck transport of the spent fuel from Sunny Point to the Savannah River Site would result in an annual dose of 0.08 person-rem to port handlers/inspectors, other port workers and truck crew and a dose of 0.067 person-rem to members of the public. Neither mode of transport would result in a significant health effect.

Reprocessing Abroad and Transport of Low or Highly Enriched Uranium to the United States: The potential environmental impact of transporting low enriched uranium by ship to the United States after reprocessing the spent fuel abroad was analyzed in detail in two recently issued Environmental Assessments prepared by the United States Enrichment Corporation. Low enriched uranium was found to be a common commercial product that has been shipped safely around the world in large quantities by air, water, and land transport modes for over 30 years without significant impact. Consequently, if the spent nuclear fuel elements were reprocessed in Europe (i.e., at Dounreay, Scotland), blended down to low enriched uranium, and the low enriched uranium was returned to the United States, no significant impacts would be expected.

If the spent fuel were reprocessed in Scotland, but not blended down, then highly enriched uranium could be transported from Scotland to the United States for blending. The shipment of highly enriched uranium would require extensive security activities and would involve the use of military assets for protection and safety. The military has had considerable experience in shipment of highly enriched uranium and has safely transported such materials throughout the world without significant impact.

These options, however, would not serve the nonproliferation interests of the United States. As discussed above and in greater detail in the Environmental Assessment, reprocessing would likely result in reactor operators postponing conversion from highly enriched uranium fuel, or reverting back to its use if conversion has already been completed. This is because the only current reprocessor of highly enriched uranium does not reprocess low enriched uranium fuel, and reactor operators have only limited capacity to store spent fuel generated as a result of operating. Thus, to continue operating, research reactors would have to continue to use highly enriched uranium fuels. In addition, for those reactors for which United States consent is not required for reprocessing to occur, there is no mechanism to implement or to enforce a blending requirement by the reactor operators or reprocessors. Consequently, reactor operators could elect to have their fuel reprocessed, but not blended. This would result in the continued use of highly enriched uranium fuel by research reactors,

contrary to United States nonproliferation policy.

Enhanced Storage in Europe: DOE considered but rejected as unreasonable the alternative of assisting foreign research reactors to expand spent fuel storage capacity at the reactor sites or at other sites in Europe. By the time new facilities could be constructed and licensed, or existing facilities modified, the reactors from which DOE proposes to accept spent fuel would have been forced to send their spent fuel to Scotland for reprocessing, where that is an option, or to shut down. For the reasons discussed above and in greater detail in the Environmental Assessment, forcing research reactors to shut down or reprocess would undermine the gains already realized in converting to low enriched uranium fuels under the Reduced Enrichment for Research and Test Reactors Program. The governments in the countries where these reactors are located have stated that acceptance of spent fuel has become a measure of the United States' reliability in worldwide nuclear cooperation. A perceived lack of reliability could complicate upcoming negotiations for renewal of important nonproliferation agreements.

Cumulative Impact

In addition to the environmental impacts from the proposed action, the Environmental Assessment also considered the cumulative dose of transporting other shipments of spent fuel to the Savannah River Site and shipments of low-level radioactive materials to the Barnwell facility, east of the Savannah River Site. No significant cumulative effects were identified.

Determination

Based on the analyses in the Environmental Assessment, and after careful consideration of comments received, DOE has determined that the acceptance of up to 409 spent nuclear fuel elements from eight foreign research reactors in Europe for storage at the Savannah River Site does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act. Therefore, an Environmental Impact Statement is not required and DOE issues this Finding of No Significant Impact.

Based on an evaluation of the five proposed ports of entry (Jacksonville, Florida; Savannah, Georgia; the Army Military Ocean Terminal at Sunny Point, and Wilmington, North Carolina; and Charleston, South Carolina) and alternative modes of transporting the spent nuclear fuel from the port of entry to the Savannah River Site (truck or train), DOE has concluded that no significant impact would result from any combination of proposed port and mode of transport from the port of entry to the Savannah River Site.

However, upon further consideration, and in an effort to balance the domestic and international interests at stake, DOE has decided to implement the proposed action as follows. The spent nuclear fuel will be shipped by commercial or chartered vessel from Europe to the Army's Military Ocean Terminal at Sunny Point, North Carolina to the maximum extent practicable (rather than allowing the shipper to select from among any one of the five proposed ports as described in the Environmental Assessment) and transported overland by rail (rather than truck). Should DOE determine that another port or mode of transport (from among those considered as the proposed action) is necessary, DOE will provide direct notice of the change to State and local government officials of the affected states and will notify the public through local media and other means, as appropriate.

Issued at Washington, DC, this 22nd day of April, 1994.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–10569 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Award of a Grant, Noncompetitive Financial Assistance

AGENCY: U.S. Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Richland Operations Office (RL) announces that pursuant to Public Law 95–224, The Federal Grant and Cooperative Agreement Act of 1977, it intends to make a discretionary financial assistant award based on the criterion set forth in 10 CFR 600.7(b)(2)(i)(B) to the Institute for Science and Society, Inc., (ISS), Ellensburg, Washington, under Grant Number DE–FG06–94RL12929. The primary purpose of the grant is to help "K through 12" teachers improve math and science education classes for their students and to assist in strengthening math and science education in the public sector. This two year effort will have an estimated cost of $300,000 for the first budget year.

FOR FURTHER INFORMATION CONTACT: Questions regarding this announcement should be addressed to the U.S. Department of Energy, Richland Operations Office, Procurement Division, Mail Stop A7–80, P.O. Box 550, 825 Jadwin Avenue, Richland, Washington 99352, Attn: Jo Laughlin, Contract Specialist.

SUPPLEMENTARY INFORMATION: In support of DOE's Math/Science Education Action Conference Report of May 1990 which emphasized the critical need for a technologically informed citizenry and the need for American elementary and secondary students to receive increased preparation in math and science in every grade and that teachers must become empowered to prepare this generation of children for lives in the 21st Century, various methods are being explored and pursued to accomplish these aims. Surveys have found that many K–12 teachers have little or no background in science or need to enhance and update their skills in this field. A science literacy course covering such fields as astronomy, geology, chemistry, math, physics, origins of life, evolution, global warming, electromagnetic fields, population explosion, ionizing radiation and the health effects of radiation, has been developed to increase and stimulate a teacher's interest and understanding of the sciences and the concept of the scientific approach to societal issues involving science and/or technology. Some simple, inexpensive experiments are offered which can be used by the teachers in the classroom to demonstrate scientific principles. Experts in various science fields are utilized as lecturers to provide quality instruction. Teachers who complete the course generally overcome their fears of science and transfer a sense of excitement in science to their students.

Dated: April 22, 1994.

P.E. Rasmussen,

Acting Director Procurement Division, Richland Operations Office.

[FR Doc. 94–10571 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance: County of Lake, CA

Grant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office,

announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a renewal for Grant Number DE–FG07–93ID13257 to the County of Lake, Lakeport, California. The objective of the work to be performed under this grant is to provide funds to hire a project management firm and a final design engineer on a plan to use treated wastewater effluent for injection as a means of increasing the recovery of energy from The Geysers geothermal field. The Federal Domestic Catalog Number is 81.087.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Stallman, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563, (208) 526–7038.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is the Geothermal Energy Research, Development and Demonstration Act (Pub. L. 93–410); the Department of Energy Organization Act (Pub. L. 95–91); and the Energy and Water Development Appropriation Bill of 1993 (Pub. L. 102–377). The proposal meets the criteria for "non-competitive" financial assistance set forth in 10 CFR part 600.7(b)(2)(i)(C). The applicant represents a unit of government and the activity to be supported is related to the performance of a government function within the subject jurisdiction. The County of Lake is the leader of this project and is the appropriate agency to prepare the environmental impact statement and do the design work since they will be the owner and operator of the pipeline carrying the effluent from the county wastewater treatment plant to The Geysers. The anticipated total project period to be awarded is twelve (12) months. The Office of Utility Technologies has provided $1,450,000 to the DOE, Idaho Operations Office for support of this project. Lake County will provide $20,000. The total estimated cost of this project is $1,470,000.

Issued: April 22, 1994.

David W. Newnam,

Acting Director, Procurement Services Division.

[FR Doc. 94–10570 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–M

Kansas City Support Office; Noncompetitive Financial Assistance Award to the Wisconsin Center for Demand-Side Research

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetitive financial assistance award to the Wisconsin Center for Demand-Side Research, to continue activities initiated through a cooperative agreement between the Center and the DOE that seek to develop market information electric motor systems and facilitate collaboration between DOE, state governments, industries, utilities, electric motor equipment manufacturers, and other stakeholders on technical and market related issues of electric motor systems.

SUPPLEMENTARY INFORMATION: The Wisconsin Center for Demand-Side Research is a non-profit organization which sponsors and conducts cooperative research and technology transfer efforts aimed at cost effective and customer sensitive energy efficiency initiatives. The Center has worked in partnership with Wisconsin utilities, DOE, national and state based energy research organizations, and Canadian utilities on a wide range of energy efficient technology and market issues. Through the existing cooperative agreement the Center and the DOE are working together to develop a Midwest Electric Motor Systems Collaborative Project which encourages implementation of energy efficient motor-driven systems in a ten state region. This award will further that effort and the objectives of the DOE, Industrial Electric Motor Systems Program in promoting the use of efficient electric motor systems. Therefore, the application is being accepted because DOE knows of no other opportunity to conduct such a project by any other organization or entity.

The project period for this award is 12 months and is expected to begin in May 1994. DOE plans to provide funding in the amount of $99,000 for continuing this effort.

FOR FURTHER INFORMATION CONTACT: Chris Cockrill, Technology Marketing Division, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, Kansas City, MO 64106–2024. (816) 426–4772.

Issued in Golden, Colorado on April 15, 1994.

Christine A. Phoebe,

Director, Administrative Division, Golden Field Office.

[FR Doc. 94–10572 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

Proposed Rate Adjustment for Eklutna Project

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice of proposed rate adjustment for Eklutna Project, notice of public forum and opportunity for review and comment.

SUMMARY: Alaska Power Administration (APA) is proposing to adjust the rates for the Eklutna Project. Rates of 17 mills per kilowatthour for firm energy, 10 mills per kilowatthour for non-firm energy and .3 mills per kilowatthour for wheeling expire September 30, 1994. APA proposes to raise the rate for firm energy to 18.9 mills per kilowatthour beginning October 1, 1994 for a period of up to five years. Rates for non-firm energy and wheeling would remain the same. APA will finalize the proposal giving full consideration to comments received. The final proposal may differ from the present. The proposed rates will be submitted to the Deputy Secretary of Energy for interim approval and to the Federal Energy Regulatory Commission for review and final approval.

DATES: Written comments will be considered for 90 days from the date of this publication.

ADDRESSES: Written comments should be submitted to Mr. Lloyd A. Linke, Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd A. Linke, Director, Power Division, Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, AK 99802, (907) 586–7405.

SUPPLEMENTARY INFORMATION: The proposed rates apply for power sold from the Eklutna Hydroelectric Project to three electric utilities serving the Anchorage and Matanuska Valley areas of Alaska.

Details of the proposed rates, including supporting studies, are available for inspection at Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska; and the Eklutna Project Office, Mile 4.0, Old Glenn Highway, Palmer, Alaska.

A public information and comment forum is scheduled to be held June 14, 1994, at 7 p.m., in the public conference room of the Loussac Library, 3600 Denali, Anchorage, Alaska. APA is requesting that the parties interested in attending the public information and comment forum notify APA of this intent in writing by June 7, 1994. If APA

has not received any written notices of intent to attend the forum the APA Administrator will cancel the forum, as allowed in 10 CFR 903.15(c) and 10 CFR 903.16(c).

Authorities for the proposed rate action are the Eklutna Project Act of July 31, 1950 (64 Stat. 382, as amended) and the Department of Energy Organization Act (Pub. L. 95–91). Alaska Power Administration is developing these rates in accordance with DOE financial reporting policies, procedures and methodology (DOE Policy RA 6120.2 [September 20, 1979]), and the procedures for public participation in rate adjustments found in 10 CFR Part 903 (1987) as amended.

The present rates went into effect in October 1990. APA has repaid over 75% of the project investment. Since the last rate action Operation and Maintenance (O&M) costs have increased. The major contributors to this increase are the addition of the Government's unfunded liability for the Civil Service Retirement System in the repayment studies, and an increase in the number of staff dealing with environmental compliance issues. The proposed rate results in an 11% rate increase. This is below the rate of inflation from 1990 to 1994. APA has notified its customers that a rate was being developed. One of the customers has asked that APA look at the increased O&M costs and to verify the need for the increases. APA is in the process of doing this and will include the results of this evaluation in the final rate proposal.

Given the age of the Eklutna Project, APA expects sizeable replacement costs over the next several years. These costs have been included in the repayment study supporting the proposed rates.

The Administration continues to advocate divestiture of APA, and a legislative proposal to authorize the divestiture is under Congressional consideration. This proposed rate action continues present rate policies under existing law.

Environmental Impact

The proposed rate action will have no significant environmental impact within the meaning of the National Environmental Policy Act of 1969. The proposed action meets the requirements of a categorical exclusion as defined in 40 CFR 1508.4 and is listed as a categorical exclusion for DOE in 10 CFR 1021, Appendix B4.3. An Environmental Assessment and an Environmental Impact Statement is not required.

Issued at Juneau, Alaska, April 21, 1994.

Michael A. Deihl,

Administrator.

[FR Doc. 94–10576 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG94–22–000, et al.]

Inversores De Electricidad S.A., et al.; Electric Rate and Corporate Regulation Filings

April 22, 1994.

Take notice that the following filings have been made with the Commission:

1. Inversores de Electricidad S.A.

[Docket No. EG94–22–000]

Take notice that on April 6, 1994, pursuant to section 365.7 of the Commission's regulations, 18 CFR 365.7, Inversores de Electricidad S.A. filed notification that it surrenders its status as an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

2. Hermiston Generating Company, L.P.

[Docket No. EG94–48–000]

On April 11, 1994, Hermiston Generating Company, L.P. ("Hermiston"), a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Hermiston intends to own and operate a multi-unit, natural gas-fired combined cycle generating plant with automatic generation control and related transmission and interconnection equipment with a bus bar rating of approximately 474 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by PacifiCorp, an electric utility.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments must be served on the applicant.

3. TIFD VIII–L Inc.

[Docket No. EG94–49–000]

April 13, 1994, TIFD VIII–L Inc. ("Applicant"), with its principal place of business at 1600 Summer Street, Stamford, Connecticut 06927, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant has represented that it will be engaged indirectly, through an affiliate that is a Philippine company, and exclusively in the business of owning and operating electricity generating facilities to be located near Iligan City in Mindanao, Philippines and selling electric energy at wholesale. The electric energy generated by those facilities will be delivered at wholesale to the National Power Corporation, a Philippine electric utility wholly-owned by the Philippine government. Retail sales to Philippine industrial customers may occur in the future, although no such arrangements currently exist.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequancy or accuracy of the application. All such motions and comments must be served on the applicant.

4. SEI Inversora S.A.

[Docket No. EG94–52–000]

On April 20, 1994, SEI Inversora S.A. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant is jointly owned by SEI Bahamas Argentina I, Inc. ("SEI Bahamas Argentina"), which owns 65% of the voting securities of the Applicant, and by COE Argentina I Corp., a Connecticut corporation, which owns 35% of the voting securities of the Applicant. The Applicant is participating in several bids for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The currently identified facilities consist of several hydroelectric generating stations with a total combined installed capacity of approximately 650 MW produced by several generating units and associated interconnection facilities. The facilities are located on the Atuel and Diamante River Systems in the Province of Mendoza and other provinces in the Republic of Argentina.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional as-yet unidentified eligible

facilities and/or EWGs. These development activities will be limited to activities associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in section 32 of the Public Utility Holding Act of 1935.

Comment date: May 13, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequancy or accuracy of the application. All such motions and comments must be served on the applicant.

5. Florida Power & Light Company

[Docket No. ER93–939–000]

Take notice that Florida Power & Light Company (FPL), on March 31, 1994, tendered for filing the Amendment Number One the AES Cedar Bay Parallel Operations Agreement Between Florida Power & Light Company and Jacksonville Electric Authority.

FPL states that copies of the filing were served upon the Jacksonville Electric Authority and the Florida Public Service Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER94–963–000]

Take notice that on April 19, 1994, Portland General Electric Company (PGE) tendered for filing a request for deferral of Commission action for thirty (30) days in the above Docket, to allow PGE to respond to Commission staff questions concerning the filed Round Butte/Cove Interconnection and Operation Agreement.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Equitable Resources Marketing

[Docket No. ER94–1029–000]

Take notice that on April 12, 1994, Equitable Resources Marketing Company (Equitable) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a revised petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Rate Schedule No. to be effective May 9, 1994.

The revised reflects filing makes two minor changes to the filing made March 10, 1994 in Docket No. ER94–1029–000. First, Equitable clarifies that a small, affiliated owned cogeneration unit sells its output to another affiliate under a long-term contract committing the full output of the plant. Second, the proposed Rate Schedule is modified to explicitly exclude sales to affiliates.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER94–1135–000]

Take notice that on April 4, 1994, Boston Edison Company (Edison) tendered for filing a letter agreement dated March 29, 1994, with New England Power Company (NEP) extending the term of the Transmission Facilities Support Agreement between Edison and NEP, dated May 25, 1988 and accepted by the Commission in Docket No. ER89–658–000. Boston requests that this letter agreement be allowed to become effective as of June 1, 1994.

Edison states that it has served the filing on NEP and the Massachusetts Department of Public Utilities.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Delmarva Power & Light Company

[Docket No. ER94–1136–000]

Take notice that on April 5, 1995, Delmarva Power & Light Company (DPL) tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Pennsylvania Power & Light Company (PP&L) and DPL dated March 16, 1994. This contract sets forth the terms under which DPL will sell PJM installed capacity credits to PP&L. DPL requests that the Commission permit this Agreement to become effective on May 30, 1994.

DPL states that a copy of this filing has been served by mail up PP&L, the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER94–1149–000]

Take notice that on April 12, 1994, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), filed a Service Schedule EP (Economic Energy Participation) to the Interchange Contract between those companies and the Tennessee Valley Authority (TVA). Under that Service Schedule, Southern Companies will provide transmission service for economic energy to TVA from certain third-party utilities. Southern Companies request an effective date of April 13, 1994.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Rainbow Energy Marketing Corporation

[Docket No. ER94–1061–000]

Take notice that on April 19, 1994, Rainbow Energy Marketing Corporation tendered for filing revised FERC Electric Rate Schedule No. 1.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER94–1162–000]

Take notice that on April 15, 1994, Duke Power Company (Duke) tendered for filing copies of the true-up filing for calendar year 1993 under Article II.3 of the Settlement Agreement in Docket No. ER90–315–000.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power Corporation

[Docket No. ER94–1163–000]

Take notice that on April 18, 1994, Florida Power Corporation (Florida Power) filed a contract for the provision of interchange service between itself and Alabama Electric Cooperative, Inc. Florida Power requests that the contract become effective on June 17, 1994, which is 60 days after the contract was tendered for filing.

Florida Power states that a copy of the filing has been posted as required by the Commission's Regulations, and a copy has been mailed to the customer affected by the filing, to the Florida Public Service Commission and to the Alabama Public Service Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. WestPlains Energy, a division of UtiliCorp United, Inc.

[Docket No. ER94–1164–0000]

Take notice that on April 18, 1994, WestPlains Energy, a division of UtiliCorp United, Inc. (WestPlains) tendered for filing an "Interconnection and Interchange Agreement between WestPlains Energy and Colorado Springs Utilities" ("the Agreement"). Under the Agreement, WestPlains and

Colorado Springs Utilities ("CSU") agree to install facilities to interconnect their systems in order to provide service between the parties under the rates, terms and conditions of the Revised Inland Power Pool Agreement. An effective date of June 1, 1994, was requested.

WestPlains states that a copy of the filing was served on CSU, the Public Utilities Commission of the State of Colorado and the Chairman of the Inland Power Pool Executive Committee.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric Company

[Docket No. ER94–1165–000]

Take notice that on Apil 19, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing a rate schedule change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

The rate schedule change establishes recorded-cost based rates for true-up for Western's withdrawals of energy from the Energy Account No. 2 (EA2), an energy account established by Western's Contract No. 14–06–200–2948A with PG&E, and maintained by PG&E, for return of previously banked energy to Western. PG&E has previously billed Western for withdrwals for the years 1985 through 1992 at rates based on estimated costs, and is now filing revised rates. This true-up process is part of a rate methodology specified in a PG&E-Western Letter Agreement dated February 7, 1992, and previously accepted by the Commission in FERC Docket No. ER92–457–000.

Copies of this filing have been served upon Western and the CPUC.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Mississippi Power Company

[Docket No. ER94–1166–000]

Take notice that on April 18, 1994, Mississippi Power Company filed a letter agreement dated April 6, 1994, revising the Contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Mississippi Power Company. The letter agreement extends the term of the existing Contract for six (6) months to allow the parties to continue negotiations of a new arrangement.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Metropolitan Edison Company

[Docket No. ER94–1167–000]

Take notice that on April 19, 1994, Metropolitan Edison Company (Met-Ed) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) amendments to its existing rate schedule, for borderline service to Pike County Light & Power Company (Pike). Under such existing rate schedule, Met-Ed has been providing borderline service to Pike.

By an Order issued July 30, 1993 in Commission Docket No. PL93–2–002, the Commission held that, in recognition of the character of the borderline service provided, the Commission had adopted as the wholesale rate the neighboring utility's retail rate, provided that the utility documents the state commission's approval of the retail rate.

Under the tendered amendments, Met-Ed would (1) terminate its Borderline Service Agreement, dated July 22, 1980, with Pike, and (2) file as its Borderline Rate Schedule for borderline service to Pike the Met-Ed retail Rate Schedule that is currently on file with the Pennsylvania Public Utility Commission (PaPUC) which was approved by the PaPUC.

Copies of the filing have been served on the Pennsylvania Public Utility Commission and Pike.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Vesta Energy Alternatives Company

[Docket No. ER94–1168–000]

Take notice that on April 19, 1994, Vesta Energy Alternatives Company (VEA) submitted for filing pursuant to Rule 205, 18 CFR 385.205, an application for waivers and blanket approvals under various Commission regulations and authorizations enabling VEA to engage in electric power and energy transactions as a marketer and broker. VEA also requests an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than June 18, 1994.

VEA states that it will act as both a broker (introducing buyers and sellers without taking title to electric power) and a marketer (buying and selling electric power). VEA states that it will develop market-based transactions that meet its customers' needs. Prices for capacity and energy would be competitively set, based on market conditions. These transactions may vary in terms of duration (possibly ranging from hourly to long-term sales), in terms of a firm or interruptible nature, and in terms of energy and capacity or energy-only services.

VEA states that it neither owns, operates, nor controls any electric power transmission or distribution facilities. It is not affiliated with any entity that owns, operates, or controls any electric power transmission or distribution facilities. Neither VEA nor any of its affiliates holds a franchise or service territory for transmission, sales or distribution of electric power.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER94–1169–000]

Take notice that on April 19, 1994, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Agreement (Agreement) between APS and Citizens Utilities Company (Citizens) (APS–FERC Rate Schedule No. 49).

Current rate levels are unchanged from those currently on file with the Commission, and no other significant change in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Citizens and the Arizona Public Corporation Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. Central Maine Power Company

[Docket No. ER94–1170–000]

Take notice that on April 20, 1994, Central Maine Power Company (CMP) tendered for filing executed Service Agreements entered with the following: Bangor Hydro-Electric Company, Boston Edison Company, Central Vermont Public Service Corporation, Connecticut Municipal Electric Energy Cooperative, Green Mountain Power Corporation, Massachusetts Municipal Wholesale Electric Company, Unitil Power Corp., Fitchburg Gas and Electric Light Company, Montaup Electric Company and North American Energy Conservation, Inc. Service will be provided pursuant to CMP's previously accepted Power Sales Tariff, designated rate schedule CMP–FERC Electric Tariff, Original Volume No. 2. An effective date for commencement of service of April 1, 1994, is requested for each of the Service Agreements.

CMP has served a copy of the filing on the affected customers and on the Maine Public Utilities Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Arizona Public Service Company

[Docket No. ER94–1171–000]

Take notice that on April 20, 1994, Arizona Public Service Company (APS) tendered for filing the Reciprocal Transmission Service Agreement (Agreement) between APS and PacifiCorp.

The enclosed Agreement essentially proposed two transmission service arrangements: (1) APS will provide 30 MW of interim firm transmission service for PacifiCorp over the Cholla/Four Corners System until PacifiCorp's Four Corners/Borah-Brady System is able to accommodate additional transmission for APS; and (2) at such time as PacifiCorp's Four Corners/Borah-Brady System has sufficient capacity to accommodate additional transmission for APS, the Agreement then converts to a classical "reciprocal" type arrangement whereby APS and PacifiCorp will each provide 30 MW of firm unidirectional reciprocal transmission to the other.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. Boston Edison Company

[Docket No. ER94–1173–000]

Take notice that on April 20, 1994, Boston Edison Company (Edison) tendered for filing for informational purposes a letter agreement dated April 12, 1994, with Wellesley Municipal Light Plant (WMLP) implementing the terms and conditions of Exhibit C, Section V, of the October 26, 1992, Agreement between Boston Edison and WMLP, which was approved by the Commission in Docket Nos. ER86–562–000, ER87–122–000 and ER91–149–000.

Edison states that it has served the filing on WMLP and the Massachusetts Department of Public Utilities.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10532 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. QF92–54–006]

Polk Power Partners, L.P.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

April 26, 1994.

On April 14, 1994, Polk Power Partners, L.P. (Polk) of 1027 South Rainbow Boulevard, Las Vegas, Nevada 89128, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Polk County, Florida. On December 23, 1991, in Docket No. QF92–54–000, Mulberry Energy Company, Inc. filed a notice of self-certification for a natural gas-fueled 123 MW combined-cycle cogeneration facility. In Docket No. QF92–54–001, Polk was granted certification with a power production capacity of 118.7 MW. Thermal energy from the facility was to be used by an affiliated host for the production of liquified carbon dioxide [61 FERC ¶ 61,030 (1992), *order denying rehearing*, 61 FERC ¶ 61,300 (1992), *appeal pending sub nom. Liquid Carbonic Corp.* v. *FERC* (D.C. Cir. Nos. 93–1095 *et al*)]. In Docket No. QF92–54–003, Commission granted certification to reflect change in ownership and use of thermal output for the product of fuel grade ethanol [65 FERC ¶62,136 (1993)]. On September 3, 1993, in Docket No. QF92–54–004, Polk filed a notice of self-certification. In Docket No. QF92–54–005, the Commission granted a limited waiver of Commission's operating and efficiency standards [66 FERC ¶ 61,116 (1994)]. Instant recertification is submitted to reflect change in the maximum net electric power production capacity to 134 MW, change in facility's ownership and possible operational changes in the facility's thermal host.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10485 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–715–000, CP92–715–001, CP92–719–000, CP92–719–001, CP92–720–000, CP92–720–001, CP93–108–000, CP93–108–001, CP92–721–000, CP92–721–001, CP92–730–000, CP92–730–001, CP92–734–000, and CP92–734–001]

Liberty Pipeline Company; et al. Liberty Pipeline Project: Second Notice of Postponement of Draft Environmental Impact Statement

April 26, 1994.

The Federal Energy Regulatory Commission (Commission) staff notifies all parties that Liberty Pipeline Company (LPC) filed a request on April 5, 1994, to suspend work on the Draft Environmental Impact Statement (DEIS) of the Liberty Pipeline Project (Liberty Project). LPC states that the postponement for at least 90 days is necessary to change the upstream Liberty Project facilities in response to changing market requirements.

We regret any difficulties to the public and all parties and agencies that might result from this second revision by the Liberty Project applicants to the proposed project.

After the Commission's staff receives and analyzes the information in the forthcoming amended applications, it will announce an EIS schedule as soon as it is practicable.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10486 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–352–000]

Columbia Gulf Transmission Co.; Application

April 26, 1994.

Take notice that on April 12, 1994, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP94–352–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Tennessee Gas Pipeline Company, a Division of Tenneco Inc., which was authorized in Docket No. CP83–197–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia Gulf proposes to abandon transportation service performed under a gas transportation agreement dated January 10, 1983, as amended, and pursuant to Columbia Gulf's Rate Schedule X–86. Columbia Gulf states that it has been transporting up to 12,000 Dekatherms of natural gas per day from South Marsh Island Block 99, Offshore Louisiana, to the interconnection of its line and the Blue Water System in South Marsh Island Block 74. It is stated that the transportation is subject to a monthly demand charge.

Columbia Gulf explains that by letter dated December 8, 1993, Tennessee requested conversion of the transportation service to Part 284 service, and the parties executed an Order No. 636, FTS–2 Transportation Service Agreement effective February 1, 1994, providing for the conversion of Part 157 service to service provided under part 284. Columbia Gulf requests an effective date for the abandonment of January 31, 1994, in order that service under part 284 may commence on February 1, 1994.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 17, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10487 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–367–000]

Texas Eastern Transmission Corporation; Request Under Blanket Authorization

April 26, 1994.

Take notice that on April 20, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–367–000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act for authorization to construct a new delivery point to enable Texas Eastern to deliver natural gas to Middle Tennessee Natural Gas Utility District (Middle Tennessee) under the certificate issued in Docket No. CP82–535–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that Middle Tennessee has requested that Texas Eastern install two 2-inch diameter hot taps and appurtenant facilities on Texas Eastern's 30-inch diameter Line Nos. 25 and 15 in Wilson County, Tennessee. Texas Eastern indicates that the cost of the proposed hot taps will be approximately $53,195 and that Middle Tennessee will pay all of such costs. Texas Eastern further states that after receipt of the authorization requested in the instant application, it will render interruptible transportation service for Middle Tennessee under Texas Eastern's Rate Schedule IT–1. Texas Eastern states that peak and average day deliveries at the proposed delivery point will be 10,000 dekatherms per day. It is indicated by Texas Eastern that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10488 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Armstrong Air Conditioning Inc. (Case No. F–070)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Armstrong Air Conditioning Inc. (Armstrong) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Armstrong. Armstrong's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification.

Armstrong seeks to test using a blower delay time of 30 seconds for its GUK and GCK condensing gas furnaces and GUJ, GCJ, and GHJ non-condensing gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than June 2, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F-070, Mail Stop EE-43, room 5E-066, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7140

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPAct), Public Law 102-486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On March 11, 1994, and the addendum of April 6, 1994, Armstrong filed an Application for Interim Waiver regarding blower time delay. Armstrong's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Armstrong requests the allowance to test using a 30-second blower time delay when testing its GUK and GCK condensing gas furnaces and GUJ, GCJ, and GHJ non-condensing gas furnaces. Armstrong states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an increase in AFUE of 1.2 percentage points for GUK and GCK condensing gas furnaces, and 0.8 percentage point for GUJ, GCJ, and GHJ non-condensing gas furnaces. Since current DOE test procedures do not address this variable blower time delay, Armstrong asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Armstrong an Interim Waiver for its GUK and GCK condensing gas furnaces and GUJ, GCJ, and GHJ non-condensing gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Armstrong was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, April 20, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

Mr. Bruce R. Maike,

Vice President, Product Engineering, Armstrong Air Conditioning Inc., 421 Monroe Street, Bellevue, OH 44811.

Dear Mr. Maike: This is in response to your March 11, 1994, and the addendum of April 6, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Armstrong Air Conditioning Inc. (Armstrong) GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Armstrong's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Armstrong will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Armstrong's Application for an Interim Waiver from the DOE test procedure for its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces regarding blower time delay is granted.

Armstrong shall be permitted to test its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t−) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

March 11, 1994.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Subject: Petition for Wavier and Application of Interim Waiver.

Gentlemen: This is a Petition for Waiver and application of Interim Waiver submitted pursuant to Title 10 CFR 430.28. Waiver is requested from the test procedure for measuring Furnace Energy Consumption as found in appendix H to subpart B of part 430.

The current test requires a 1.5 minute delay between burner ignition and the start of the circulating air blower. Armstrong Air Conditioning Inc. is requesting waiver and authorization to use a timed on delay instead of the specified 1.5 minutes for blower start-up after main burner ignition. Armstrong intends to use a fixed timing control on our GUK and GCK condensing gas furnaces and on our GUJ, GCJ, and GHJ non-condensing gas furnaces to gain additional energy savings that are achieved with the use of shorter blower on times.

Test data for these furnaces with a timed on delay indicates an increase in AFUE. The use of a timed on delay reduces flue losses thus increasing furnace efficiency. Copies of confidential test data confirming these energy savings will be forwarded to you upon request.

The current test procedure does not give Armstrong credit for the energy savings that can be obtained using fixed timing. ASHRAE 103–1993 test procedure that is under consideration by D.O.E. addresses the use of timed blower operation. Section 9.6.1 of ASHRAE 103–1993 requires testing of a furnace with this type of control to be set to its maximum setting. Armstrong's intent would be to request testing at this maximum setting. Granting of this Waiver permits testing of similar competitive products to be rated on a comparable basis to that of Armstrong.

Armstrong is confident that this Waiver will be granted, and therefore requests an Interim Waiver be granted until a final ruling is made. Armstrong, as well as other manufacturers of domestic furnaces, have been granted similar waivers.

Manufacturers that domestically market similar products have been sent a copy of

this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Armstrong Air Conditioning Inc.

Bruce R. Maike,

Vice President Product Engineering.

April 6, 1994.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Attention: Mr. Cyrus Nasseri.

Subject: March 11, 1994 Petition for Waiver Addendum.

Sir: Inadvertently in our Petition for Waiver and application for Interim Waiver, the delay on timing and the additional increase in AFUE was left out. Our intent is to use a 30 second delay between burner ignition and the start of the circulating air blower. An increase of 1.2 percentage points in AFUE can be achieved on the GUK and GCK condensing furnaces and an increase of .8 percentage points on the GUJ, GCJ, and GHJ furnaces.

Please consider this information upon reviewing the Petition for Waiver and application for Interim Waiver. Should you require any additional information, please feel free to contact me.

Sincerely,

Armstrong Air Conditioning Inc.

Bruce R. Maike,

Vice President Product Engineering.

[FR Doc. 94–10577 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–M

(Case No. F–069)

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From DMO Industries

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to DMO Industries (DMO) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's HDS series gas furnaces.

Today's notice also publishes a "Petition for Waiver" from DMO. DMO's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. DMO seeks to test using a blower delay time of 30 seconds for its HDS series gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than June 2, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–069, Mail Stop EE–43, room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On March 4, 1994, DMO filed an Application for Interim Waiver regarding blower time delay. DMO's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, DMO requests the allowance to test using a 30-second blower time delay when testing its HDS series gas furnaces. DMO states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an increase in AFUE of 2.0 percentage points. Since current DOE test procedures do not address this variable blower time delay, DMO asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR

19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting DMO an Interim Waiver for its HDS series gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to DMO was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC April 19, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

April 19, 1994.

Mr. Kyu S. Hwang, P.E.,

Manager of Engineering, Research, and Development, DMO Industries, P.O. Box 900, Wallaceburg, Ontario N8A 5E5.

Dear Mr. Hwang: This is in response to your March 4, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for DMO Industries (DMO) HDS series gas furnaces. Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

DMO's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage DMO will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, DMO's Application for an Interim Waiver from the DOE test procedure for its HDS series gas furnaces regarding blower time delay is granted.

DMO shall be permitted to test its HDS series gas furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless:

(1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or

(2) The furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or

(3) The delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

March 4, 1994.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Subject: Petitions for Waiver and Interim Waiver.

Dear Secretary: Please consider this letter as a Petition for Waiver and Application for Interim Waiver, submitted pursuant to Title 10 CFR 430.27. DMO Industries is requesting a waiver from the furnace test procedure which requires a 90 second delay between burner ignition and blower start-up.

DMO requests authorization to reduce the 90 second delay to 30 seconds when testing our HDS series, high efficiency, residential gas furnaces. The HDS series includes the following models as listed in the GAMA (Gas Appliance Manufacturers Association) certification program:

HDS 40MS
HDS 50MS (60/50MS)
HDS 60MS
HDS 60M (70/60M)
HDS 70M
HDS 80M (90/80M)
HDS 90M
HDS 90MF (100/90M)
HDS 100M
HDS 110M (120/110M)
HDS 120M

DMO is currently switching all controls on this series to a 30 second blower-on delay by a timed controller, which cannot be adjusted by the installer, or service person.

Our tests indicate that by using the 30 second delay, AFUE values increase by up to 2.0 points, depending on the model. We feel that this is a substantial benefit to our customers and would like to reflect this through the higher AFUE values. Confidential Test data is available upon request which confirms the above claim.

We are confident that both an Interim Waiver and final Waiver will be granted us on the basis that many similar petitions have already been granted on our competitors.

A copy of this petition for Waiver and Application for Interim Waiver is being sent to manufacturers who market similar equipment.

Sincerely,

Kyu S. Hwang, P. Eng.,

Manager of Engineering, Research and Development.

[FR Doc. 94–10578 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–071]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Rheem Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Rheem. Rheem's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Rheem seeks to test using a blower delay time of 20 seconds for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than June 2, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–071, Mail Stop EE–43, room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is

sooner, and may be extended for an additional 180 days, if necessary.

On March 23, 1994, Rheem filed an Application for Interim Waiver regarding blower time delay. Rheem's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Rheem requests the allowance to test using a 20-second blower time delay when testing its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces. Rheem states that the 20-second delay is indicative of how these furnaces actually operate. Such a delay results in an average increase in AFUE of 2.0 percentage points. Since current DOE test procedures do not address this variable blower time delay, Rheem asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Rheem an Interim Waiver for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Rheem was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, April 19, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

April 19, 1994.

Mr. Daniel J. Canclini,
Vice-President,
Product Development and,
Research Engineering,
Rheem Manufacturing Company,
P.O. Box 17010,
Fort Smith, AR 72917–7010.

Dear Mr. Canclini: This is in response to your March 23, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Rheem Manufacturing Company (Rheem) GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Rheem's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Rheem will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Rheem's Application for an Interim Waiver from the DOE test procedure for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces regarding blower time delay is granted.

Rheem shall be permitted to test its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are

achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless:

(1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or

(2) The furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or

(3) The delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

March 23, 1994.

Mr. Cyrus Nasseri,

Assistant Secretary, Conservation, and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dear Mr. Nasseri: This is a petition for waiver and application for interim waiver submitted pursuant to title 10 CFR 430.27. Waiver is requested from the furnace test procedure as prescribed in appendix N to Subpart B of Part 430. The test procedure requires a 1.5 minute delay between burner and blower start-up. Rheem is requesting authorization to use a 20 second delay instead of 1.5 minutes for our series (−)GDG upflow, (−)GLH downflow, (−)GVH horizontal, and (−)GPH upflow/horizontal residential gas-fired furnaces.

Rheem will be manufacturing these appliances with an electronic device that controls the blower operation on a timing sequence as opposed to temperature.

Improved energy efficiency is achieved by reducing on cycle losses. Under the Appendix N procedures, the stack temperature is allowed to climb at a faster rate than it would with a 20 second blower on time, allowing energy to be lost out of the vent system. This waste of energy would not occur in actual operation. If this petition is granted, the true blower on time delay would be used in the calculations.

The current test procedures do not give Rheem credit for the energy savings which averages approximately 2%. This improvement is an average reduction of 20% of the normal on cycle energy losses. Rheem is of the opinion that a 20% reduction is a worthwhile energy savings.

Rheem has been granted previous waivers regarding blower on time to be used in the efficiency calculations for our (−)GEB and (−)GKA series condensing furnaces and/or (−)GDE, (−)GLE, (−)GDG, (−)GLG and (−)GVG series furnaces. Several other manufacturers of gas furnaces have also been granted a waiver to permit calculations based on timed blower operation. Also, ASHRAE Standard 103–1993, paragraph 9.5.1.2.2 specifically addresses the use of timed blower operation.

Confidential and comparative test data is available to you upon your request, confirming the above energy savings.

Manufacturers that domestically market similar products are being sent a copy of this petition for waiver and petition for interim waiver.

Sincerely,

Daniel J. Canclini,

Vice-President, Product Development and Research Engineering.

[FR Doc. 94–10579 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140220; FRL–4772–5]

Access to Confidential Business Information by Information Dynamics, Inc. and General Sciences Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Information Dynamics Inc. (IDI) of Washington, DC and subcontractor General Sciences Corp. (GSC) access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 260–1024, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D3–0145, contractor Information Dynamics, Inc. (IDI) of 600 Maryland Avenue, SW., Suite 308E, Washington, DC and subcontractor General Sciences Corp. (GSC) of 6100 Chevy Chase Drive, Laurel, MD will assist the Office of Pollution Prevention and Toxics (OPPT) in developing computer-based models to support performance of chemical exposure assessments. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D3–0145, IDI and GSC will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. IDI and GSC personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under section 4, 5, 6, and 8 of TSCA that EPA may provide IDI and GSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

IDI and GSC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

In another, unrelated matter, the Consumer Product Safety Commission (CPSC) has moved its TSCA CBI storage facility from 5401 Westbard Avenue, Bethesda, MD to 4330 East West Highway, Bethesda, MD. The EPA TSCA Security Staff will perform the required inspection of CPCS's facility, and ensure that the facility is in compliance with the *TSCA Confidential Business Information Security Manual*

List of Subjects

Environmental protection, Access to confidential business information.

Dated: April 25, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–10552 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4880–2]

Clean Water Act (CWA) 304(l): Availability of List Submissions and Proposed Approval Decisions

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice correction.

SUMMARY: This notice announces corrections to the availability of lists submitted to USEPA pursuant to section 304(l)(1)(C) of the Clean Water Act ("CWA") as well as USEPA's proposed approval decisions, and requests for public comment.

DATES: Comments must be submitted to USEPA on or before June 2, 1994.

ADDRESSES: Copies of these items can be obtained by writing or calling: Mr. Howard Pham, USEPA-Region 5, 304(l) Coordinator U.S. Environmental Protection Agency-Region 5, Water Division (Mail Code WQP–16J), 77 West Jackson Blvd., Chicago, Illinois 60604–3507, Telephone: (312) 353–2310.

Comments on these items should be sent to Howard Pham, USEPA—Region 5 at the address given above.

FOR FURTHER INFORMATION CONTACT: Howard Pham at the address and telephone number given above.

SUPPLEMENTARY INFORMATION: The March 16, 1994, notice document, 59 FR 12322, page 12325, 12326 and 12327 contained a number of errors that occurred during the typesetting process. The following tables correct those errors found in the March 16th notice regarding the availability of the State lists pursuant to section 304(l)(1)(C) of the CWA:

Corrections to USEPA Region 5, Section 304(l) Additional Listing/Revisions

Page 12325 as published: Wisconsin; Lower Fox River; W10001848; Fort Howard Paper Company; PCBs.

Correction: deleted

U.S. EPA REGION 5, SECTION 304(L) ADDITIONAL LISTINGS/REVISIONS—CONTINUED

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	Cuyahoga River (Big Cr. to Lake Erie).	OH0000957	LTV Steel Cleveland East Side	Pb, Zn, CN, Phenolics, Naphthalene.
OH	(Same as above)	OH0000850	LTV Steel Cleveland West Side	CN, Zn, Pb, Phenolics.
OH	(Same as above)	OH0000990	DuPont/Cleveland	Cd, Cr, Pb, Zn.
OH	Cuyahoga River (Tinkers Cr. to Big Cr.).	OH0000655	Harshaw Chemical	Ni, Cu.
OH	(Same as above)	OH0024651	NEORSD Southerly WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Tinkers Cr. (Pond Brook to Cuyahoga River).	OH0024058	Bedford Heights WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0027863	Twinsburg WWTP	Cu, Pb, Ni, Zn, Hg.
OH	Beaver Meadow Cr.	OH0027430	Solon Central WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Euclid Cr.	OH0000281	Argo-Tech (TRW)	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Grand River (Paine Cr. to Lake Erie)	OH0026948	Painesville WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg. Phenolics.
OH	Fields Brook	OH0000442	RMI Extrusion Plant	Cd, Cr, Cu, Pb, Ni, Zn.
OH	(Same as above)	OH0003205	RMI Titanium Metals Plant	Cr, Cu, Pb, Mo, Zn.
OH	(Same as above)	OH0029149	Occidental Electrochemical	Organics, CN, Cr.
OH	(Same as above)	OH0001872	Detrex Chemical	Cd, Cu, Zn.

Corrections U.S. EPA Region 5, section 304(l) Revisions to original listings

Page 12325, 12326 and 12327 as published: Ohio; Lytle Cr.; OH0028134; Wilmington WWTP; Cd, Cr, Cu, Pb, Ni, Zn, Hg; through Ohio; Second OH0021733; Blanchester WWTP; Cu, Pb, Ni, Zn.

Correction: Deleted

U.S. EPA REGION 5, SECTION 304(I) REVISIONS TO ORIGINAL LISTINGS

State	Waterbody name	NPDES,	Discharger name	Pollutants of concern
MI	Saginaw River	MI0000868	Dow Chemical U.S.A.-Midland[1]	2,3,7,8—TCDD.
MN	Mississippi River	MN0000418	Koch Refinery[2]	Hg.
MN	Mississippi River	MN0029815	MWCC/MC Metro[2]	PCB, Hg.
MN	St. Louis Bay	MN0049786	Western Lake Superior SD[2]	PCB, Hg, Pb.
OH	Mahoning River (Meander Cr. to Duck Cr.).	OH0011363	Thomas Steel Strip[2]	Cr, Cu, Pb, Ni, Zn, CN, Tetrachloroethylene.
OH	Red Run	OH0083852	Sharon Steel[2]	CN, Cr, Zn, Cd, Cu, Pb, Ni.
OH	Big Darby Cr. (Buck Run to Sugar Run).	OH0004502	Ranco/Plain City[2]	CN, Cd, Cr, Cu, Ni, Zn.
OH	Cuyahoga River (Little Cuyahoga Rv. to Yellow Cr.).	OH0023833	Akron WWTP[2]	Cd, Cu, Pb, Ni, Hg, Phenolics, Zn.

[1] Facility listed in the original list and with revision to waterbody's name.
[2] Facility listed in the original list with revision of pollutants of concern.

Dated: April 21, 1994.

Howard Pham,

Region 5, 304(l) Coordinator.

[FR Doc. 94–10438 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for each of the financial institutions specified in **SUPPLEMENTARY INFORMATION.** The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estates are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institutions in Receivership Determined to Have Insufficient Assets to Satisfy All Claims:

Guaranty Bank, #2825, Dallas, Texas

Sabinal Bank, #4335, Sabinal, Texas

First Comanche Bank, #4278, Comanche, Texas

Northshore Bank, #2513, Houston, Texas

Dated: April 26, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–10515 Filed 5–2–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Crowley American Transport, Inc. Et. Al; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–006190–073.

Title: Venezuelan American Maritime Association.

Parties:

Crowley American Transport, Inc.
A/S Ivarans Rederi
Consoricio Naviero de Occidente, C.A.
A.P. Moller-Maersk Line

Synopsis: The proposed amendment adds a new article 14(c) pertaining to service contracts that are for the account of an individual ocean common carrier that becomes a party to the Agreement.

Agreement No.: 232–011321–002.

Title: Maersk/Sea-Land Pacific Agreement.

Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment adds a new article 5.11 which would allow the parties to discuss and agree upon, on a voluntary basis, rate and service items, terms and conditions of service contracts and tariffs. It also revises article 9.3 to provide that a party's withdrawal from the Agreement may not be effective prior to December 31, 1995.

Agreement No.: 203–011449.

Title: Agreement for Settlement and Release of Bottacchi Claims Relating to the Argentina/U.S. Atlantic & Gulf Pool Agreements 1987–1991.

Parties:

American Transport Lines, Inc.
A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed Agreement would settle disputes between the parties over revenue pool accounting payments for the years 1987–1991 under pooling Agreements No. 212–010386, 212–010388, 212–010389, and 212–010382.

Agreement No.: 217–011450.

Title: Space Charter Agreement Between Kyowa Shipping Co., Ltd./ Nippon Yusen Kaisha.

Parties:

Kyowa Shipping Co., Ltd. ("Kyowa")
Nippon Yusen Kaisha ("NYK")

Synopsis: The proposed Agreement permits NYK to charter space on vessels owned, operated or chartered by Kyowa in the trade between ports in the Far East and South East Asia, on the one hand, and ports of Guam and Saipan, on the other hand. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: April 26, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–10491 Filed 5–2–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank South Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bank South Corporation, Atlanta, Georgia; to acquire 100 percent of the voting shares of Citizens Express Company, Gainesville, Georgia, and thereby indirectly acquire The Citizens Bank, Gainesville, Georgia.

B.Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mountain West Financial Corp., Helena, Montana; to become a bank holding company by acquiring in excess of 80 percent of the voting shares of Mountain West Bank of Helena, N.A., Helena, Montana.

Board of Governors of the Federal Reserve System, April 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10523 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

CBA Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. CBA Bankshares, Inc., Americus, Georgia; to engage *de novo* through its subsidiary Community Bank Data Systems, Inc., Americus, Georgia in providing to others data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10524 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

Compass Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Compass Bancshares, Inc., Birmingham, Alabama; to engage *de novo* in making, acquiring and servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Commercial Corporation, Little Rock, Arkansas; to engage *de novo* in the making, acquiring or servicing of loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10493 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

Consolidated Equity Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1994.

A. Federal Reserve Bank of Kansas City (Stephen McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Consolidated Equity Corporation, Purcell, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of American Interstate Bancshares, Inc., Woodward, Oklahoma, and thereby indirectly acquire 85.89 percent of the voting shares of American National Bank, Woodward, Oklahoma, and 98.27 percent of the voting shares of First American Bank and Trust Company, Purcell, Oklahoma. Applicant also proposes to retain mortgage and other notes receivable pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; to acquire 100 percent of the voting shares of Continental Bank Corporation, Chicago, Illinois, and thereby indirectly acquire Continental Bank, N.A., Chicago, Illinois.

In connection with this application, Applicant has also applied to acquire Continental Illinois Energy Devlopment Corporation, and thereby engage in commercial lending pursuant to § 225.25(b)(1) of the Board's Regulation Y; Continental Illinois Trust Company of Florida, N.A., Sarasota, Florida, and thereby engage in limited purpose national bank performing trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y; Continental Equity Capital Corporation, Chicago, Illinois, and thereby engage in commercial financing pursuant to § 225.25(b)(1) of the Board's Regulation Y; Repechage Partners Ltd., Chicago, Illinois, and thereby engage in asset management, servicing and collection for third parties pursuant to Board Order effective July 26, 1993 (79 Federal Reserve Bulletin 888 (September 1993); and acquire Continental Illinois Commercial Corporation, Chicago, Illinois, and thereby engage in making, acquiring and servicing for its own account or for the account of others secured and unsecured loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10494 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

F&M National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. F&M National Corporation, Winchester, Virginia; to merge with PNB Financial Corporation, Warrenton, Virginia, and thereby indirectly acquire The Peoples National Bank of Warrenton, Warrenton, Virginia.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Hibernia Corporation, New Orleans, Louisiana; to merge with First Bancorp of Louisiana, Inc., West Monroe, Louisiana, and thereby indirectly acquire First National Bank, West Monroe, Louisiana, and Southern National Bank at Tallulah, Tallulah, Louisiana.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Madison Bancorp, Inc., Madison Heights, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Madison National Bank, Madison Heights, Michigan.

2. NorthWest Indiana Bancorp, Munster, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank SB, Munster, Indiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Commercial Corporation, Little Rock, Arkansas; to acquire at least 80 percent of the voting shares of United American Bancshares, Inc., Palestine, Texas, and thereby indirectly acquire The First National Bank of Palestine, Palestine, Texas.

Board of Governors of the Federal Reserve System, April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10495 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

Thomas F. Farrell, et al. ; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §

225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 19, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Thomas F. Farrell, Prairie du Chien, Wisconsin; to acquire 45.20 percent of the voting shares of Peoples Bancorp, Inc., Prairie du Chien, Wisconsin, and thereby indirectly acquire Peoples State Bank, Prairie du Chien, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Eddie A. Sturzl and Peggy J. Sturzl, Trustee, for the Sturzl Revocable Trust, Laona, Wisconsin; to retain 26.8 percent of the voting shares of Northern Wisconsin Bank Holding Company, Laona, Wisconsin, and thereby indirectly acquire Laona State Bank, Laona, Wisconsin.

Board of Governors of the Federal Reserve System, April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10496 Filed 5-3-94; 8:45 am]

BILLING CODE 6210-01-F

Hudson City Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Hudson City Bancorp, Inc., Paramus, New Jersey; to become a bank holding company by acquiring up to 100 percent of the voting shares of Hudson City Savings Bank, Paramus, New Jersey.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. F&M National Corporation, Winchester, Virginia; to acquire 100 percent of the voting shares of Hallmark Bank and Trust Company, Springfield, Virginia.

2. FNB Corp., Asheboro, North Carolina; to acquire 100 percent of the voting shares of Randleman Savings Bank, SSB, Randleman, North Carolina.

3. First Citizens BancShares, Inc., Raleigh, North Carolina; to acquire 100 percent of the voting shares of Bank of Marlinton, Marlinton, West Virginia.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Hibernia Corporation, New Orleans, Louisiana; to merge with First Continental Bancshares, Inc., Gretna, Louisiana, and thereby indirectly acquire First National Bank of Jefferson Parish, Gretna, Louisiana.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Amcore Financial, Inc., Rockford, Illinois; to merge with First State Bancorp of Princeton, Princeton, Illinois, and thereby indirectly acquire First State Bank of Princeton, Princeton, Illinois; First Bank of Ashton-Rochelle, Ashton, Illinois; and First Bank of Gridley, Gridley, Illinois.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Charter Bancorporation, Inc., Newport, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Buffalo Holding Company, Scottsdale, Arizona, and thereby indirectly acquire The Bank of Arizona, Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, April 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10525 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

J.P. Morgan & Co. Incorporated, et al.; Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the

offices of the Board of Governors not later than May 27, 1994.

A. Federal Reserve Bank of New York, (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. J.P. Morgan & Co. Incorporated, New York, New York; to retain a partnership investment of 39.6 percent of equity and to increase its interest to 59.4 percent, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Citco Community Bancshares, Inc., Elizabethton, Tennessee; to acquire Small Business Resources, Inc., Panama City, Florida, pursuant to section § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to merge its current subsidiaries Citizens Federal Savings Bank, Rockwood, Tennessee, into Trans Financial Bank of Tennessee, F.S.B., Tullahoma, Tennessee, pursuant to section 225.25(b)(9) of the Board's Regulation Y. Citizens and Trans Financial are subsidiaries of Applicant.

Board of Governors of the Federal Reserve System, April 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10526 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Stocking Change of SF 529, Medical Record—Muscle Function By Nerve Distribution: Trunk and Lower Extremities

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is changing the stocking requirement of SF 529, Medical Record—Muscle Function By Nerve Distribution: Trunk and Lower Extremities. This form is now authorized for local reproduction. You can request a camera copy of SF 529 from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, GSA Forms Management Branch, (202) 501–0581.

DATES: Effective May 3, 1994.

Dated: April 22, 1994.

Theodore D. Freed,

Chief, Forms Management Branch.

[FR Doc. 94–10561 Filed 5–2–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Disability Process Reengineering Proposal: Notice of Public Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Disability Process Reengineering Team of the Social Security Administration (SSA) will hold a public meeting to discuss the proposal to redesign the disability claims process that was issued on March 31, 1994 and published as a notice in the **Federal Register** on April 15, 1994. This proposal was developed by the Disability Process Reengineering Team—comprised of SSA and State Disability Determination Services (DDS) employees—and is intended to achieve dramatic improvements in customer service to the public. This public meeting is being held in conjunction with a national dialogue period to obtain the views, concerns, and ideas of all interested parties before the Team makes a final recommendation to the Commissioner of Social Security on what changes should be made to the disability claims process. The national dialogue period will end on May 27, 1994.

DATES: May 16, 1994, 1:00 p.m. to 4:00 p.m.

ADDRESSES: VOA Auditorium, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Disability Process Reengineering Team, Room 4–N–3, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410)966–8255.

SUPPLEMENTARY INFORMATION: The aim of the proposal to redesign the disability claims process is to achieve dramatically improved levels of service to the public. For purposes of this initiative, the process considered begins with the initial contact of the claimant when an intent to file an application for disability benefits is expressed, and continues through the payment of benefits or the final administrative appeal.

The proposed redesigned process is characterized by opportunities for claimants to participate fully throughout the process, enabled by information about the process and personal contact with a single employee during the initial claims process. The appeals process is streamlined, with more efficient management of pre-hearing development and an opportunity for claimants to receive favorable decisions without a hearing if the evidence so warrants, or faster decisions if a hearing is held. The decision methodology used at all levels would be simplified and streamlined to be more understandable by lay persons and medical persons alike, and there is an emphasis on individualized functional assessment. Employees work in an atmosphere characterized by teamwork, contributions by claimants and interested third parties, adequate training and quality feedback, and technological supports.

The Team's proposal intends to make the process more efficient and customer friendly for all claimants for Social Security or Supplemental Security Income disability benefits; to give claimants the right decision at the earliest point possible in the process. It is the Team's intention that claims for benefits which are correctly paid today will continue to be paid, but in a more expedited manner. The Team's proposal is not intended to affect the benefits of current disability beneficiaries, to reduce the percentage of cases that are allowed under the current process, or to make it more difficult for an individual to be found disabled.

The Disability Process Reengineering Team is interested in receiving public comments on the concepts in the proposal, particularly the public's response to the following questions about the proposal's goals:

- Does the proposal have the potential to provide a process that is easy for claimants and those who assist claimants to access and understand?
- Will it enable SSA and the State DDS to make the right decision the first time a case is adjudicated?
- Will it result in dramatically improved processing times?
- Will it result in a more efficient use of SSA and State DDS personnel?
- Will it create jobs for employees in the process that are satisfying?

In considering these questions, interested parties are encouraged to identify factors that would assure that the proposed concepts will achieve

these goals. To the extent that the proposal is not seen as achieving these goals, alternative suggestions about how to do so are of particular interest to the Team.

The Commissioner of Social Security or her designee will preside over the public meeting and chair a panel including members of the Disability Process Reengineering Team. The meeting will be open to the public to the extent that space is available. Individuals who would like to present comments to the panel should contact the Project Team at 410–966–8255 by COB May 11, 1994 to sign up for a specific time for their presentations. Times for presentations will be scheduled on a first-come, first-served basis. Time allowing, each presenter will be given 5 minutes to make a presentation to the panel. Participants in this meeting are asked to submit 1 written copy of their full presentation on the day of the public meeting and be prepared to give an abbreviated statement at the public meeting.

While we will try to provide all interested parties with an opportunity to present comments to the panel, individuals who do not pre-register to make a presentation may not be able to be accommodated within the three hours reserved for the meeting. In such cases, written statements may be submitted on the day of the public meeting. A sign language interpreter will be available; the room is accessible for wheelchairs.

Written comments on the proposed disability claims process published in the April 15, 1994 **Federal Register** should be directed to: SSA—Disability Process Reengineering Project, P.O. Box 17052, Baltimore, MD 21235. Written comments can also be telefaxed to 410–966–9884. Comments should be sent by May 27, 1994 to ensure that they will be considered.

The transcript of the meeting will be available at cost. Transcripts may be ordered from the Project Team. The transcript will become part of the record of this meeting.

Dated: April 25, 1994.

Rhoda M. G. Davis,

Director, Process Reengineering Program.

[FR Doc. 94–10466 Filed 5–2–94; 8:45 am]

BILLING CODE 4190–29–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, (Outside OH) 800–338–0166/(Inside OH) 800–362–8913, (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535, (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609, (moved 6/16/93)

EXPRESSLAB, INC., 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories),

HealthCare/MetPath 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142 / Outside MI: 800–225–9414, (formerly: HealthCare/Preferred Laboratories)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699–0008, 419–381–5213

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 NE. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)

National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272

Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211

Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286

Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986

Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940

Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800

Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520

SmithKline Beecham Clinical Laboratories, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006, (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories 400 Egypt Road, Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)

South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052

St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92)

UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory is voluntarily withdrawing from the Program on May 1, 1994:

SmithKline Beecham Clinical Laboratories 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–10597 Filed 5–2–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–41–5700; WYW106365]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW106365 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW106365 effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Superivsory, Land Law Examiner.

[FR Doc. 94–10470 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–22–M

[ID–010–04–332A–02; IDI–29516]

Realty Action; Ada and Owyhee, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—IDI–29516; Exchange of public and private lands in Ada and Owyhee Counties, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Boise Meridian, Idaho

T. 1 N., R. 2 E.
Sec. 5: SE¼NW¼
T. 2 N., R. 2 E.
Sec. 7: Lot 4, SE¼SW¼
Sec. 8: SE¼SW¼
Sec. 14: NW¼NW¼
Sec. 17: SW¼NW¼, NE¼SW¼
Sec. 18: S½NE¼, SE¼NW¼.

Aggregating 403.40 acres, more or less, in Ada County.

In exchange for the above described public lands, BLM will acquire the following described private lands from Thomas Nicholson and Ronald Yanke:

Boise Meridian, Idaho

T. 4 N., R. 2 E.
Portions of Sections 34 and 35.

Containing 13.02 acres, more or less, in Ada County.

T. 8 S., R. 6 E.
Sec. 36: All.

Containing 640 acres, more or less, in Owyhee County.

The purpose of this exchange is to dispose of public lands that have no legal access, limited resource values, are difficult and uneconomic to manage, and would better be managed in private ownership, in exchange for private lands that contain important wildlife, riparian, and recreation values in Hulls Gulch and along the Bruneau River Canyon. The public interest will be well served by the completion of this exchange, as the consummation thereof will fulfill the Secretary's Fish and Wildlife 2000, Recreation 2000, and riparian management initiatives.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be accomplished prior to closing through either acreage adjustment or cash payment in an amount not to exceed 25 percent of the value of the lands to be transferred out of Federal ownership.

DATES: On or before June 17, 1994, interested parties may submit comments to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705. Objections to this proposal will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Resource Management Specialist, at (208) 384–3338.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

Lands to be transferred from the United States will be subject to valid existing rights and the following reservations, terms, and conditions:

Excepting and Reserving to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

Subject To:

2. Those rights for power transmission purposes granted to Idaho Power Company, its successors or assigns, by Rights-of-Way No. IDI–017143 and IDI–9195, pursuant to the Act of March 4, 1911 (43 U.S.C. 961).

3. Those rights for buried telephone line purposes granted to AT&T, its successors or assigns, by Right-of-Way No. IDI–26291, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

4. Those rights for railroad purposes granted to Union Pacific Railroad, its successors or assigns, by Right-of-Way No. IDB–026801, pursuant to the Act of March 3, 1875 (43 U.S.C. 934–939).

Dated: April 19, 1994.

Barry C. Cushing,

Acting District Manager.

[FR Doc. 94–10564 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–04–406A–02]

Idaho: Filing of Plats of Survey; Idaho

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 22, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 23, Township 14 North,

Range 1 East, Boise Meridian, Idaho, Group No. 864, was accepted April 20, 1994.

This survey was executed to meet certain administrative needs of the U.S.D.A. Forest Service.

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 22, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–10565 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–04–321A–02]

Idaho: Correction to the Filing of Plats of Survey; Idaho

The original plat of T. 20 N., R. 22 E., Boise Meridian, Idaho Was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 1, 1994.

This notice is necessary to correct Township 20 South, Range 22 East, as indicated on the notice of April 1, 1994, to Township 20 North, Range 22 East, Boise Meridian, Idaho, Group No. 811, 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 22, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–10566 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–GG–M

Geological Survey

Technology Transfer Act of 1986; Proposed Cooperative Research and Development Agreement Negotiations

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter a cooperative research and development agreement with several major oil companies. The purpose of the CRADA is to conduct geological field studies on Devonian and Carboniferous carbonate reefs and carbonate platforms in Kazakhstan that will lead to the development of predictive petroleum-focused models that can serve as useful analogs for interpreting the subsurface nature of facies belts, stratigraphic cyclicity, and distribution of potential reservoir, seal, and source-rock facies in the North Caspian basin and in other carbonate basins of the former Soviet Union.

Any other oil companies or organizations interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Chief, Branch of Sedimentary Processes, U.S. Geological Survey, Box 25046, MS 939, Denver Federal Center, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Dr. Harry E. Cook, Branch of Sedimentary Processes, U.S. Geological Survey, MS 999, 345 Middlefield Road, Menlo Park, CA 94025; Telephone (415) 354–3007, FAX (415) 354–3224, E–Mail hcook@octopus.wr.usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: April 18, 1994.

Benjamin A. Morgan,

Chief, Geologic Division.

[FR Doc. 94–10573 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Washington, DC 20503, telephone (202) 395–7340, with copies to Angela Cummings, Office of Policy and Management Improvement, Mail Stop 4013, Minerals Management Service, 1849 C Street, NW., Washington, DC 20240.

Title: MMS Customer Satisfaction Survey

Abstract: Annually, approximately 1,200 individuals have contact with the Minerals Management Service Gulf of Mexico Public Information Office by mail, telephone or in person. The Public Information Office provides its customers with information regarding the gas, oil, and sulphur leasing, exploration and production activities regulated by MMS in federally owned areas in the Gulf. The collection will obtain information for determining the level of satisfaction with the service provided by the Public Information Office to these individuals and to identify any areas where improvements in providing service could be made

Bureau form number: None

Frequency: On occasion, annually

Description of respondents: Individuals State and local governments, businesses and other for profit, Federal Agencies or employees, non-profit institutions, small businesses and organizations

Estimated completion time: .25 hour

Annual responses: 1,200

Annual burden hours: 300

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239.

Dated: April 20, 1994.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.

[FR Doc. 94–10567 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Central and Western Gulf of Mexico; Natural Gas and Oil Lease Sales 157 and 161

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for information and nominations, and notice of intent (Call/NOI) to prepare an environmental impact statement (EIS)

1. *Authority.* This Call is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U.S.C. 1331–1356, (1988))(OCSLA), and the regulations issued thereunder (30 CFR part 256).

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969as amended (42 U.S.C. 4321 *et seq.* (1988))(NEPA).

2. *Purpose of Call.* The purpose of the Call is to gather information for OCS Lease Sale 157 in the Central Gulf of Mexico Planning Area, tentatively scheduled for March 1995, and OCS Lease Sale 161 in the Western Gulf of

Mexico Planning Area, tentatively scheduled for August 1995.

Information and nominations on gas and oil leasing, exploration, and development and production within the Central and Western Gulf of Mexico Planning Areas are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCSLA, and regulations at 30 CFR part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the NEPA, and the OCSLA. Established departmental procedures will be employed.

3. *Description of Area.* The general area of this Call covers the entire central and western portions of the Gulf of Mexico between approximately 88 degrees W. longitude on the east and approximately 97 degrees W. longitude on the west and extends from the Federal-State boundaries seaward to the provisional maritime boundary between the United States and Mexico. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama. This area is divided into two planning areas.

The Central Gulf Planning Area is bounded on the east by approximately 88 degrees W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments consists of about 47.8 million acres.

The Western Gulf Planning Area is bounded on the west and north by the Federal-State boundary and on the east by the Central Gulf Planning Area. It extends south to the provisional maritime boundary with Mexico. It is offshore Texas and, in deeper water, offshore Louisiana. The area available for nominations and comments consists of about 35.9 million acres.

A standard Call for Information Map depicting each planning area on a block-by-block basis is available without charge from: Minerals Management Service, Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: (504) 736–2519.

4. *Areas Deferred from this Call (Western Gulf).* High Island Area, East Addition, South Extension, (Flower Gardens), Block A–375 and Block A–398.

5. *Area Under Ongoing Discussions with the Navy (Western Gulf).* The Navy has requested that two, three block groups in the Mustang Island Area be deferred from leasing in the Western Gulf so that they can conduct mine warfare operations in those areas. These six blocks are not being deferred from this Call. The MMS will continue its review to take into account possible changes in nearby oil and gas discovery and development patterns and will continue discussions with the Navy and industry representatives regarding future activities.

6. *Instructions on Call.* Indications of interest and comments must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations for Proposed 1996 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1996 Lease Sales in the Gulf of Mexico." The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above.

The standard Call for Information Map delineates the Call area, all of which has been identified by the MMS as having potential for the discovery of accumulations of gas and oil. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have considered for inclusion in proposed Sale 157 in the Central Gulf and proposed Sale 161 in the Western Gulf.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are requested to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)).

Respondents are encouraged to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 (low).

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing Activities Section at (504) 736–2761. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological, and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS gas and oil activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

7. *Use of Information from Call.* Information submitted in response to this Call will be used for several purposes. First, responses will be used to help identify the areas of potential for gas and oil development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of gas and oil exploration and development to the region and the Nation. A third purpose of this Call is to use the comments collected to initiate the scoping process for the Environmental Impact Statement (EIS) and to develop a proposed action and alternatives. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to assess potential conflicts

between offshore gas and oil activities and a State CMP.

8. *Existing Information.* Preceding this Call in the sale planning process was an Information Base Review (IBR). The purpose of an IBR is to evaluate the status of pertinent information and the information acquisition efforts. This IBR constituted an assessment of the quality and adequacy of the information available which has been found sufficient for the decision to proceed with the Call.

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of gas and oil activities. A complete listing of available study reports, and information for ordering copies, can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or telephone (703) 487–4650. In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under "Description of Area"), or telephone (504) 736–2896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region. Copies of the Gulf of Mexico OCS Regional Summary Reports may be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, at 381 Elden Street, Herndon, Virginia 22070.

9. *Tentative Schedule.* The following is a list of tentative milestone dates preceding Sale 157 and Sale 161:

	Sale 157	Sale 161
Comments due on call and notice of intent (scoping).	June 1994	June 1994.
Area Identification.	July 1994	July 1994.
Draft EIS published.	March 1995 ..	March 1995.
Proposed Notice Issued.	March 1995 ..	March 1995.
Public Hearings.	May 1995	May 1995.
Governors' Comment due on proposed notice.	June 1995	June 1995.
Final EIS published.	November 1995.	November 1995.
Consistency Determination.	November 1995.	April 1995.
Final Notice of Sale.	February 1996.	July 1996.
Sale Date	March 1996 ..	August 1996.

10. *Purpose of Notice of Intent (NOI).* Pursuant to the regulations implementing the provisions of the NEPA, the MMS is announcing its intent to prepare an EIS on the gas and oil leasing proposals known as Sale 157 in the Central Gulf, and Sale 161 in the Western Gulf, off the States of Texas, Louisiana, Mississippi, and Alabama. The NOI also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal Agencies and State and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

11. *Instructions on NOI to Prepare an EIS.* Federal Agencies and State and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area." Comments should be enclosed in an envelope labeled "Comments on the NOI to Prepare an EIS on the proposed 1995 Lease Sales in the Gulf of Mexico." Comments on the NOI should be submitted no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Tom Fry,

Director, Minerals Management Service.

Dated: April 25, 1994.

Nancy Hayes,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–10489 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 16, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 18, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Pickens County

Pickens County Courthouse, Jct. of AL 17. Phoenix St. (Co. Rd. 35) and Tuscaloosa St. (AL 86), Carrollton, 94000441

ARIZONA

Maricopa County

Encanto—Palmcroft Historic District (Boundary Increase), Roughly bounded by Encanto Blvd., Coronado Rd., 7th Ave. and 15th Ave., Phoenix, 94000461

Kitchell, Denison, House, 2912 E. Sherran Ln., Phoenix, 94000448

ARKANSAS

Boone County

Hotel Seville, NW corner of Vine and Ridge Sts., Harrison, 94000443

Chicot County

Dermott Bank & Trust Company Building, NW corner of N. Arkansas and E. Iowa Sts., Dermott, 94000466

Garland County

Beauchamp, Walter, House, 492 Prospect Ave., Hot Springs, 94000470

Hempstead County

Clinton, Bill, Birthplace, 117 S. Hervey St., Hope, 94000472

Hempstead County Courthouse, NW corner of 5th and Washington Sts., Hope, 94000442

Johnson County

Tankersley—Stewart House, E of County Rd 27, N of AR 352, Hunt vicinity, 94000464

Marion County

Marion County Courthouse, Courthouse Square, Yellville, 94000471

St. Francis County

First United Methodist Church, 101 S. Izard St., Forrest City, 94000467

Sebastian County

Birney Safety Streetcar No. 224, 100 S. Fourth St., Fort Smith, 94000465

Sevier County

First United Methodist Church, E of Jct. of 2nd St. and 5th Ave., Lockesburg, 94000468

Washington County

Old Springdale High School, Johnson St., Springdale, 94000469

CALIFORNIA

Los Angeles County

Pasadena Playhouse Historic District, 464—611 E. Colorado Blvd., 550—655 E. Green St., 21—127 S. El Molino Ave., and 150 N.—101 S. Madison Ave., Pasadena, 94000462

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Hecht Company Warehouse, 1401 New York Ave., NE., Washington, 94000446

IOWA

Dubuque County

Bishop's Block, 90 W. Main St., Dubuque, 94000477

LOUISIANA

East Baton Rouge Parish

Yazoo and Mississippi Valley Railroad Company Depot, 100 S. River Rd., Baton Rouge, 94000463

Union Parish

Moore, R.T. House, LA Alt. 2. N side, about 2 mi. W of US 167, Bernice vicinity, 94000478

MINNESOTA

Itasca County

Marcel Ranger Station, Chippewa NM, Marcell Township, Bigfork vicinity, 94000473

PENNSYLVANIA

Bucks County

Brownsburg Village Historic District, Jct. of River and Brownsburg Rds., Upper Wakefield Township, Brownsburg, 94000445

Dolington Village Historic District, Jct. of Rt. 532 and Mt. Eyre Rd. (Washington Crossing Rd.), Upper and Lower Wakefield Townships, Dolington, 94000444

SOUTH CAROLINA

Pickens County

Central High School, 304 Church St., Central, 94000475

Williamsburg County

Heller, M.F., House, 405 Academy St., Kingstree, 94000452

TEXAS

Bexar County

San Antonio Drug Company, 432 W. Market St., San Antonio, 94000453

Denton County

Johnson Farm, Johnson Branch Park, Lake Ray Roberts, 94000449

VERMONT

Franklin County

Rockledge, St. Alban's—Highgate Rd., VT 207, Swanton, 94000474

VIRGINIA

Campbell County

Blenheim Amendment (Boundary Increase), E of VA 648, 3500 ft. S of jct. with VA 604, Spring Mills vicinity, 94000457

Hanover County

Oakley Hill, VA 156 S side, 2500 ft. W of jct. with VA 643, Mechanicsville, 94000459

St. Paul's Episcopal Church, Jct. of US 301 and VA 54, SW corner, Hanover, 94000460

Rockbridge County

Kennedy—Wade's Mill Historic District, VA 606 (Raphine Rd.), 2000 ft. NE of jct. with VA 721, Raphine, 94000458

Smyth County

Scott—Walker House, VA 635 E side, 2 mi. SE of Saltville, Saltville vicinity, 94000450

Chesapeake Independent City

Wallaceton, 3509 George Washington Hwy., S, Chesapeake, 94000455

Hampton Independent City

Aberdeen Gardens, Roughly bounded by Langston and Mary Peake Blvds., and Russell, Davis, Lewis, Weaver and Walker Rds., Hampton, 94000456

Richmond Independent City

Weisiger—Carroll House, 2408 Bainbridge St., Richmond, 94000454

WASHINGTON

Adams County

Ritzville High School, 7th Ave., between Columbia and Division Sts., Ritzville, 94000476

WISCONSIN

Dane County

Larson, August Cornelius, House, 1006 Grant St., Madison, 94000451

Iowa County

Jones, David J. and Maggie, House, 201 E. Swayne St., Dodgeville, 94000447

[FR Doc. 94–10342 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 23, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 18, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Madison County

Lanford, William, House, 7400 Old Madison Pike, Huntsville, 94000499

ARIZONA

Pima County

Bates Well Ranch, Bates Well Rd. E side, Ajo vicinity, 94000493

ARKANSAS

Faulkner County

Robins, Frank E., House, 567 Locust St., Conway, 94000497

Lawrence County

Walnut Ridge Post Office, Old, 225 W. Main St., Walnut Ridge, 94000496

Perry County

Houston Methodist Episcopal Church, South, AR 60 SW side, near jct. with AR 216, Houston, 94000494

Pulaski County

Johnswood, 10314 Cantrell Rd., Little Rock, 94000495

LOUISIANA

East Baton Rouge Parish

Prince Hall Masonic Temple, 1335 North Blvd., Baton Rouge, 94000498

MISSISSIPPI

Clarke County

Akin, C. V., House (Clarke County MPS), Clarion St. S side, approximately ¼ mi. E of US 45, DeSoto, 94000512

Buckley, Judge John L., House (Clarke County MPS), Bridge St. N side at jct. with Hand Ave., Enterprise, 94000513

Carter, Benjamin H., House (Clarke County MPS), 210 Ferrill St., Quitman, 94000514

Clarke County Courthouse and Confederate Monument (Clarke County MPS), Archusa St. at head of Main St., Quitman, 94000511

East Enterprise Historic District (Clarke County MPS), Roughly bounded by S. Stonewall St., Church St., MS 513 and Tuscahoma Rd., Enterprise, 94000510

Ferrill, Capt. C. C., House (Clarke County MPS), 118 E. Franklin St., Quitman, 94000509

House on Old Mill Creek Road (Clarke County MPS), Old Mill Creek Rd. W side, between Old Mill Creek Rd. and US 11, Enterprise, 94000508
Kirkland, J.K., General Merchandise Store (Clarke County MPS), 124 Main St., Quitman, 94000507
Moore, Noah, House (Clarke County MPS), 111 Main St., Enterprise, 94000506
Quitman Depot (Clarke County MPS), Illinois Central Gulf RR tracks E side, near jct. of Main St. and Railroad Ave., Quitman, 94000505
Shubuta Methodist Episcopal Church, South (Clarke County MPS), High St. (US 45), E side, Shubuta, 94000504
Stonewall Mill Village Historic District (Clarke County MPS), Roughly, area surrounding Erwin Rd. between Alice and Allen Aves., Stonewall, 94000503
Williams, Jim, House (Clarke County MPS), N. River Rd. W side, near jct. with MS 513, Enterprise, 94000502
Wyatt, W.W., House (Clarke County MPS), 107 N. River Rd., Enterprise, 94000501

OKLAHOMA

Blaine County

Watonga Armory, 301 W. Main, Watonga, 94000491

Caddo County

Anadarko Armory, 700 W. Oklahoma St., Anadarko, 94000479

Cherokee County

Tahlequah Armory, 100 Water Ave., Tahlequah, 94000488

Custer County

Weatherford Armory, 123 W. Rainey St., Weatherford, 94000492

Grady County

Minco Armory, 407 W. Pontotoc St., Minco, 94000484

Johnston County

Tishomingo Armory, 500 E. 24th St., Tishomingo, 94000489

McIntosh County

Eufaula Armory, 48 Memorial Dr., Eufaula, 94000481

Murray County

Sulphur Armory, 500 W Wynnewood Ave., Sulphur, 94000487

Oklahoma County

Wagoner Armory, 509 E. Cherokee St., Wagoner, 94000490

Osage County

Hominy Armory, 201 N. Regan St., Hominy, 94000482
Pawhuska Armory, 823 E. 8th St., Pawhuska, 94000485

Pawnee County

Pawnee Armory, Jct. of First and Cleveland Sts., Pawnee, 94000486

Payne County

Cushing Armory, 218 S. Little Ave., Cushing, 94000480

Seminole County

Konawa Armory, 625 N. State St., Konawa, 94000483

[FR Doc. 94–10533 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–70–F–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Republic of Chile, acting through its Ministry of Housing and Urban Development ("Borrower") as part of USAID's development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Chile. At this time, the Ministry of Finance of the Republic of Chile has authorized USAID to request proposals from eligible lenders for a loan under this program of $10 Million U.S. Dollars (US$10,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Republic of Chile

Project No: 513–HG–010–$10,000,000
Housing Guaranty Loan No: 513–HG–010 A01
Attention: Mr. Jose Pablo Arellano Marin, Director de Presupuestos, Ministry of Finance, Teatinos 120, piso 12, Santiago, Chile, Telefax No.: (562) 671–3814 (preferred communication), Telephone No.: (562) 696–1368 or (562) 671–0672.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by Tuesday, May 17, 1994, at 12:00 Noon Eastern Daylight Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Thomas Nicastro, USAID Representative/Chile, USAID/Chile, American Embassy Codina Bldg., 1343 Agostinas, Santiago, Chile, Telefax No: (562) 638–0931 (preferred communication), Telephone No: (562) 671–0133 or 638–1014

and

Mr. William Yaeger, Director, RHUDO, South America, USAID/Quito, Ecuador, c/o American Embassy, Unit 5330, APO AA 34039–3420, Telefax No.: (593) 2–561–228 (preferred communication), Telephone No.: (593) 2–544–365

Mr. David Grossman/Mr. Peter Pirnie, U.S. Agency for International Development, Office of Housing and Urban Programs, G/DG/H, Room 401, SA–2, Washington, D.C. 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663–2552 (preferred communication), Telephone No.: 202/663–2548/2530.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* US$10 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years on the repayment of principal (during grace period, semi-annual payments of interest only). If *variable interest* rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed interest* rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of *fixed rate*, and *variable rate* are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6¼% U.S. Treasury Bond due August 15, 2023. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:* Offers should include options for prepayment and mention prepayment premiums, if any.

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, the Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* As early as practicable, but not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by USAID. The Republic of Chile reserves the right to not accept any bid which, in its estimation, is non-competitive. Disbursements under the loan will be subject to certain conditions required of

the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Peter Kimm, Director, Office of Housing and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: April 28, 1994.

Michael G. Kitay,

Assistant General Counsel, Bureau of Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 94–10598 Filed 5–2–94; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–651 (Final)]

Silicon Carbide from the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On December 8, 1993, the Commission instituted the subject investigation and established a schedule for its conduct (59 FR 3735, January 26, 1994). Subsequently, the President declared April 27, 1994, a day of national mourning and ordered all Federal agencies closed for business. The Commission, therefore, is revising its schedule in the investigation to adjust for the President's order.

The Commission's new schedule for the investigation is as follows: the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 2, 1994; the deadline for filing posthearing briefs is May 9, 1994.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: April 28, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–10675 Filed 4–29–94; 2:29 pm]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub-No. 163X)]

Southern Pacific Transportation Company; Abandonment Exemption; in Bexar, Karnes, and Wilson Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Southern Pacific Transportation Company of a 46.7-mile line of railroad in Bexar, Karnes, and Wilson Counties, TX, subject to standard labor protective conditions, environmental conditions, and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 2, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by May 13, 1994. Petitions to stay must be filed by May 18, 1994. Petitions to reopen must be filed by May 30, 1994. Requests for a public use condition conforming to 49 CFR 1152.28(A)(2) must be filed by May 23, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–12 (Sub-No. 163X), to : (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission; Washington, DC 20423; and (2) Petitioner's representatives: Karl Morell, Taylor, Morell & Gitomer, 919 18th Street, NW. suite 210, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: April 20, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin. Commissioner Philbin did not participate in the dispostion of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10557 Filed 5–2–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 133X)]

Virginia & Southwestern Railway Company; Abandonment Exemption; in Bristol, VA and Bristol, TN

Virginia & Southwestern Railway Company (V&S) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon 0.18 mile of track between milepost 68.24–T and milepost 68.42–T

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C2d 164 (1987).

at Bristol, VA, and 0.8 mile of track between milepost 70.6–T and milepost 71.4–T at Bristol, TN, a total distance of 0.98 mile.

V&S has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 2, 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 must be filed by May 13, 1994.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 23, 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: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

V&S has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 6, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10558 Filed 5–2–94; 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 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 the Commission to review and act on the request before the effective date of the 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 LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Meetings and Agenda

The Spring meeting of the Committee on Occupational Safety and Health Statistics of the Labor Research Advisory Council will be held on May 24, 1994. The meeting will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meeting is as follows:

Tuesday, May 24, 1994

1 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Rooms 7 and 8

1. Survey of Occupational Injuries and Illnesses: Case and Demographic data.
2. Department of Labor report on the availability and use of data on occupational injuries and illnesses to the Senate and House Appropriations Committees.
3. Occupational motor vehicle fatalities: Census of Fatal Occupational Injuries—Fatal Accident Reporting System (CFOI–FARS) linkage.
4. Survey of Employer-Provided Training—status report.
5. Other business.

The meeting is open to the public. Persons planning to attend the meeting as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5970.

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

Katharine G. Abraham,

Commissioner.

[FR Doc. 94–10594 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–24–M

Labor Research Advisory Council; Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on May 10, 11, and 12. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, May 10, 1994

9:30 a.m.—Committee on Prices and Living Conditions Meeting Room 3, PSB

1. Discussion of articles on measurement issues in the CPI published in the December 1993 issue of the Monthly Labor Review
2. Other business

1:30 p.m.—Committee on Wages and Industrial Relations Meeting Room 3, PSB

1. Current Activities in Progress
2. Discussion of the 1995 budget for Compensation and Working Conditions
3. Report of the Business and Labor Advisory Subcommittee on Employer Provided Training
4. Results from the Health Expenditures Survey
5. Other business

Wednesday, May 11, 1994

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9, PSB

1. Discussion of BLS Fiscal Year 1995 budget
2. Summary of recommendations of the Labor Market Information Review
3. BLS response to the American Statistical Association report
4. Issues regarding contingent workers
5. Lessons learned in the Current Population Survey Redesign
6. Plans for design of wage record database

Thursday, May 12, 1994

1 p.m.—Committee on Productivity, Technology and Growth—Meeting Rooms 9 and 10

1. Review of recent program developments in the Office of Productivity and Technology (OPT)
2. Planned adoption of alternative index numbers in productivity measurement
3. Publication of alternative projections on infrastructure, health expenditures, and foreign trade.

Committee on Foreign Labor Statistics

1. Update on international price statistics program (report by staff of the Office of Prices and Living Conditions)
2. Report on BLS international cooperation activities.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5970.

Due to various scheduling difficulties, we are unable to provide the full fifteen (15) days of advance notice of this meeting.

Signed at Washington, DC this 26th day of April 1994.

Katharine G. Abraham,

Commissioner.

[FR Doc. 94–10595 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–29,715]

B and B Garment Works, Inc., Parsons, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 4, 1994 in response to a worker petition which was filed on behalf of workers at B and B Garment Works, Incorporated, Parsons, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 20th day of April 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–10588 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,567 and TA–W–29,567A]

Bravo Fashions, Mineral Wells, TX; and Employee Services, Mineral Wells, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 24, 1994, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on December 28, 1993 (58 FR 68669).

At the request of the State Agency, the Department is amending the certification to include leased employees at Bravo Fashions who were separated as a result of the adverse impact of imported ladies' jackets.

The intent of the Department's certification is to include all workers at Bravo Fashions, Mineral Wells, Texas who were affected by increased imports of ladies' jackets.

Further, as a result of the plant shutdown in November, 1993, the Department is including a termination date of April 23, 1994.

The amended notice applicable to TA–W–29,567 is hereby issued as follows:

All workers of Bravo Fashions, Inc., Mineral Wells, Texas who became totally or partially separated from employment on or after February 23, 1993 and before April 23, 1994, including leased employees of Employee Services who were employed exclusively at Bravo Fashions, Mineral Wells, Texas who were separated as a result of the impact of imported ladies' jackets on or after February 23, 1993 and before April 23, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

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

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–10589 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 18th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles producted
Fisher-Price, Inc (Co)	Murray, KY	04/18/94	04/05/94	29,748	Toys.
Fisher-Price, Inc (Co)	Medina, NY	04/18/94	04/05/94	29,749	Toys.
Fisher-Price, Inc (Co)	East Aurora, NY	04/18/94	04/05/94	29,750	Toys.
Lady Lynne Lingerie (ILGWU)	New York, NY	04/18/94	04/06/94	29,751	Ladies' underwear.
IBM, East Fishkill Facility (Wkrs)	Hopewell Jct, NY	04/18/94	04/08/94	29,752	Ceramic semiconductors.
C & R Cedar (Co)	Forks, WA	04/18/94	04/05/94	29,753	Cedar shakes and shingles.
Any Wash (Wkrs)	Hialeah, Fl	04/18/94	03/27/94	29,754	Ladies' pants, dresses, skirts and shorts.
Unifirst Corp (Co)	Haverhill, MA	04/18/94	04/04/94	29,755	Uniform rentals.
UCAR Carbon Co, Inc (Co)	Robinson, IL	04/18/94	04/08/94	29,756	Calcined petroleum coke.
The Greif Companies (Co)	Lehigh Valley, PA	04/18/94	04/05/94	29,757	Men's suits, sportcoats and pants.
The Greif Companies (Wkrs)	Shippensburg, PA	04/18/94	04/05/94	29,758	Men's suits, sportcoats and pants.
The Greif Companies (Wkrs)	Verona, VA	04/18/94	04/05/94	29,759	Men's suits, sportcoats and pants.
The Greif Companies (Wkrs)	New York, NY	04/18/94	04/05/94	29,760	Men's suits, sportcoats and pants.
Monroeville Dodge, dba Dodgeland (Wkrs).	Monroeville, PA	04/18/94	03/27/94	29,761	Autmobile dealership.
Kirschner Medical Corp (Wkrs)	Marlow, OK	04/18/94	04/04/94	29,762	Orthopedic appliances.
General Electric Co. (IUE)	Lynn, MA	04/18/94	04/04/94	29,763	Jet aircraft engines.
Koch Industries (Wkrs)	Trenton, ND	04/18/94	04/01/94	29,764	Gas and gas liquid products.
KDEX, Inc (Wkrs)	Russell, KS	04/18/94	04/01/94	29,765	Oil drilling.
USA Interprises of GA (Wkrs)	Conyers, GA	04/18/94	03/24/94	29,766	Men's pants.
Richard Warren (Wkrs)	New York, NY	04/18/94	03/30/94	29,767	Ladies' Dresses and suits.
Normandy Manufacturing Co (ILGWU)	Paducah, KY	04/18/94	04/04/94	29,768	Ladies' outer apparel.
Charles Bluestone Co (USWA)	Elizabeth, PA	04/18/94	04/08/94	29,769	Metal recycling.
Sante Fe Minerals, Inc (Co)	Dallas, TX	04/18/94	04/05/94	29,770	Oil and gas.
Milco Industries, Inc (Wkrs)	Bloomsburg, PA	04/18/94	04/08/94	29,771	Ladies' intimate apparel.
Wilmington Steel and Construction (Wkrs).	New Castle, PA	04/18/94	04/08/94	29,772	Fabricated structrual steel.
James River Corp (Co)	Old Town, ME	04/18/94	04/05/94	29,773	Hardwood and softwood pulp.
Airfoil forging Textron (UAW)	Euclid, OH	04/18/94	03/30/94	29,774	Forged Bladess for jet engines.
Airfoil Textron (UAW)	Fostoria, OH	04/18/94	03/28/94	29,775	Jet engine blades and vanes.
Harbor Casuals, Inc (ILGWU)	Plains, PA	04/18/94	04/11/94	29,776	Bathing suits and sportswear.
Sandvik Special Metals Corp (OCAW)	Kennewick, WA	04/18/94	03/28/94	29,777	Specialty tubing.
R&A, Inc (Co)	Aransas Pass, TX	04/18/94	03/29/94	29,778	Shrimp.
R. Shrimp, Inc (Co)	Aransas Pass, TX	04/18/94	03/29/94	29,779	Shrimp.
Vikki, Inc (Co)	Aransas Pass TX	04/18/94	03/29/94	29,780	Shrimp.
Murfin Drilling Co (Wkrs)	Wichita, KS	04/18/94	04/01/94	29,781	Oil and Gas Exploration and production.
Amoco Production CO., Gen Office (Co)	Chicago, IL	04/18/94	04/05/94	29,782	Oil, gas exploration and production.
Amoco Production Co., Tulsa Research (Co).	Tulsa, OK	04/18/94	04/05/94	29,783	Oil, gas exploration and production.
Amoco Production Co., Tulsa Data (Co)	Tulsa, OK	04/18/94	04/05/94	29,784	Oil, gas exploration and production.
Amoco Production Co, Offshore Unit (Co).	New Orleans, LA	04/18/94	04/05/94	29,785	Oil, gas exploration and production.
Amoco Production Co, Denver Reg Off (Co).	Denver, CO	04/18/94	04/05/94	29,786	Oil, Gas exploration and production.
Amoco Production Co, Houston Reg Of (Co).	Houston, TX	04/18/94	04/05/94	29,787	Oil, gas exploration and production.
Gerber Products Co., Inc (Wkrs)	Reesburg, WI	04/18/94	2/28/94	29,788	Infant feeding and care products.

[FR Doc. 94–10591 Filed 5–2–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,403]

Johnson Controls, Inc., Bennington, VT; Affirmative Determination Regarding Application for Reconsideration

On April 5, 1994, the workers with the support of their Congressman, requested administrative reconsideration of the Department's denial notice for workers at the subject firm. The notice was issued on March 15, 1994 and was published in the **Federal Register** on March 30, 1994 (59 FR 14876).

It's claimed that an appropriate subdivision at Johnson Controls in Bennington, Vermont was adversely affected by increased imports because Johnson Controls moved a part of the production process (the filling, charging, decorating and installing) at Bennington to a plant in Mexico. The charged batteries will then reenter the U.S. as imports.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of

Labor's prior decision. The application is, therefore, granted.

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

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–10592 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than May 13, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than May 13, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received at Governor's office	Petition No.	Articles produced
Dataproducts (Wkrs)	Norcross, GA	04/11/94	NAFTA–00077	Typewriter ribbons.
Radform Tool Company (Wkrs)	East Mckeesport, PA	04/12/94	NAFTA–00078	Machined items: nuclear replacement parts and tooling, steam generator components, power systems.
Swiss Precision Products, Inc. (Co.)	Lake Havasu City, AZ	04/13/94	NAFTA–00079	Screw machine parts.
Sushine Rope Manufacturing, Inc. (Co.)	Miami, FL	04/11/94	NAFTA–00080	Synthetic twine and rope.
Allied Signal Safety Restraints; El Paso Automotive Sector (Wkrs).	El Paso, TX	04/18/94	NAFTA–00081	Automobile seat belts/safety restraints, child seat safety restraints.

[FR Doc. 94–10590 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–30–M

Wagner-Peyser Act Final Planning Allotments for Program Year (PY) 1994

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning allotments for Program Year (PY) 1994 (July 1, 1994, through June 30, 1995) for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, 200 Constitution Avenue NW., room N–4470, Washington, DC 20210. Telephone: (202) 219–5257 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with Section 6(b)(5) of the Wagner-Peyser Act, the Employment and Training Administration is publishing final planning allotments for each State for Program Year (PY) 1994 (July 1, 1994, through June 30, 1995). Preliminary planning estimates were provided to each State on February 25, 1994. Funds are distributed in accordance with formula criteria established in Section 6 (a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 1993 are used in making the formula calculations.

The total amount of funds currently available for distribution is $832,856,000. The Secretary of Labor set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required by Section 6(b)(4) of the Act. In accordance with this provision, $24,396,018 is set aside for administrative formula allocation. These funds are included in the total planning allotment. The funds that are set aside are distributed in two steps to States which have lost in relative share of resources from the prior year. In Step 1, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. The remainder is distributed in Step 2 to all other States losing in relative share from the prior year but which do not meet the size and density criteria for Step 1.

Postage costs incurred by States during the conduct of employment service (ES) activities are billed directly to the Department of Labor by the U.S. Postal Service. The total final planning allotment reflects $19,655,400, or 2.36 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of ES business.

The Department had planned to require State Employment Security Agencies (SESAs) to convert from penalty mail systems to commercial

mail systems effective October 1, 1994, at which time the Employment and Training Administration (ETA) had planned to allocate national postage reserves to the SESAs. Based on a legal opinion, the Department cannot require this conversion. SESAs are entitled to the penalty mail privilege pursuant to 39 U.S.C. 3202(a)(1)(E). This does not impact on the change to direct accountability that SESAs implemented on October 1, 1993. States will continue to use penalty mail systems (penalty meters, penalty stamps and envelopes, permit G–12, and Business Reply Mail permit 12634) and ETA will continue to pay the SESA penalty mail costs to the U.S. Postal Service. ETA will explore with the U.S. Postal Service the possibility of having individual State penalty mail agreements with the U.S. Postal Service. This would permit ETA to allocate postage resources to the States who could then have the option of using commercial or penalty mail systems. It continues to the Departmental policy that States utilize commercial mail methods for mail which pertains to both employment security and non-employment security business. In such instances, ETA will reimburse the SESA for the employment security share of the cost.

Differences between preliminary planning estimates and final planning allotments are caused by the use of a Calendar Year data base as opposed to the earlier data used for preliminary planning estimates. Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public ES offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Signed at Washington, DC, this 8th day of April, 1994.

Robert A. Schaerfl,

Director, U.S. Employment Service.

Appendix

BILLING CODE 4510–30–M

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
FINAL PY 1994 WAGNER–PEYSER ALLOTMENTS TO STATES
(WITHOUT POSTAGE)

State	Basic Formula	3% Distribution			Total Allotment
		Step 1*	Step 2**	Total	
Alabama	11,770,628	0	0	0	11,770,628
Alaska	7,716,630	1,123,248	0	1,123,248	8,839,878
Arizona	10,216,111	0	0	0	10,216,111
Arkansas	6,463,018	0	345,263	345,263	6,808,281
California	97,552,102	0	0	0	97,552,102
Colorado	10,060,190	0	0	0	10,060,190
Connecticut	9,944,734	0	388,328	388,328	10,333,062
Delaware	2,203,102	0	68,309	68,309	2,271,411
District of Columbia	4,206,119	0	388,993	388,993	4,595,112
Florida	38,258,513	0	718,354	718,354	38,976,867
Georgia	18,862,962	0	0	0	18,862,962
Hawaii	2,933,814	0	0	0	2,933,814
Idaho	6,429,327	935,865	0	935,865	7,365,192
Illinois	35,279,161	0	715,650	715,650	35,994,811
Indiana	15,636,573	0	322,313	322,313	15,958,886
Iowa	7,676,798	0	452,443	452,443	8,129,241
Kansas	6,894,124	0	0	0	6,894,124
Kentucky	9,940,241	0	382,017	382,017	10,322,258
Louisiana	11,067,481	0	907,827	907,827	11,975,308
Maine	3,823,461	556,550	0	556,550	4,380,011
Maryland	14,837,226	0	0	0	14,837,226
Massachusetts	18,188,732	0	1,129,895	1,129,895	19,318,627
Michigan	27,148,057	0	1,599,310	1,599,310	28,747,367
Minnesota	12,940,759	0	155,783	155,783	13,096,542
Mississippi	6,789,572	0	540,674	540,674	7,330,246
Missouri	14,862,895	0	287,810	287,810	15,150,705
Montana	5,254,079	764,794	0	764,794	6,018,873
Nebraska	6,314,370	919,132	0	919,132	7,233,502
Nevada	5,107,518	743,460	0	743,460	5,850,978
New Hampshire	3,517,645	0	167,434	167,434	3,685,079
New Jersey	23,539,327	0	450,917	450,917	23,990,244
New Mexico	5,896,001	858,233	0	858,233	6,754,234
New York	51,610,634	0	836,654	836,654	52,447,288
North Carolina	18,456,819	0	465,243	465,243	18,922,062
North Dakota	5,350,224	778,789	0	778,789	6,129,013
Ohio	30,973,622	0	618,573	618,573	31,592,195
Oklahoma	9,909,261	0	916,435	916,435	10,825,696
Oregon	9,253,799	0	0	0	9,253,799
Pennsylvania	34,105,087	0	665,192	665,192	34,770,279
Puerto Rico	10,340,732	0	0	0	10,340,732
Rhode Island	3,074,338	0	134,008	134,008	3,208,346
South Carolina	10,824,335	0	0	0	10,824,335
South Dakota	4,944,837	719,780	0	719,780	5,664,617
Tennessee	13,540,630	0	256,789	256,789	13,797,419
Texas	52,928,323	0	0	0	52,928,323
Utah	10,814,959	1,574,246	0	1,574,246	12,389,205
Vermont	2,316,445	337,186	0	337,186	2,653,631
Virginia	17,629,863	0	622,024	622,024	18,251,887
Washington	15,966,406	0	0	0	15,966,406
West Virginia	5,659,854	823,860	0	823,860	6,483,714
Wisconsin	13,954,398	0	166,197	166,197	14,120,595
Wyoming	3,836,445	558,440	0	558,440	4,394,885
FORMULA TOTAL	786,822,281	10,693,583	13,702,435	24,396,018	811,218,299
Guam	380,515	0	0	0	380,515
Virgin Islands	1,601,786	0	0	0	1,601,786
Indicia Postage	19,655,400	0	0	0	19,655,400
NATIONAL TOTAL	808,459,982	10,693,583	13,702,435	24,396,018	832,856,000

* Funds are allocated to the 13 States whose relative share decreased from PY 1993 to the PY 1994 basic formula amount and which have a Civilian Labor Force (CLF) below one million and are below the median CLF density. These States are held harmless at 100% of their PY 1993 relative share.

** The balance of the 3% funds are distributed to the remaining 26 States losing in relative share from PY 1993 to their PY 1994 total allotment amount.

[FR Doc. 94–10593 Filed 5–2–94; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by May 27, 1994. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Requests for Proposals.

Affected Public: Individuals, State or local governments, Business or other for-profit, Non-profit institutions, and Small businesses or organizations.

Respondents/Reporting Burden: 260 respondents annually: 120 hours per response.

Abstract: Requests for Proposals used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Dated: April 27, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–10510 Filed 5–2–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Engineering Education and Centers.

Date & Time: May 16–18, 1994, 8:30 a.m.–5 p.m.

Place: Arlington Renaissance Hotel, 950 North Stafford Street, room 585, Arlington, Virginia 22203.

Contact person: Ms. Lynn Preston, Deputy Division Director, Engineering Education and Center Division, National Science Foundation.

Telephone: 703/306–1379.

Type of meeting: Closed.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Engineering Research Centers program.

Reasons for closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10335 Filed 5–2–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–316]

Indiana Michigan Power Co., D.C. Cook, Unit No. 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, appendix J, III.D.2.(a) and III.D.3., related to Type B and C local leak rate testing of containment isolation valves, to the Indiana Michigan Power Company (the licensee), for operation of the D.C. Cook Nuclear Plant, Unit 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one-time schedular exemption from the requirements of Appendix J, paragraphs III.D.2.(a) and III.D.3 of 10 CFR part 50 and approve an extension of the 2-year period between the performance of Type B and C leak rate test by 150 days. Appendix J to 10 CFR part 50, paragraph III.D.2.(a), states, in part, "Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years." Paragraph III.D.3., states, "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years." Taken together, these sections require Type B and C containment leakage tests to be performed at an interval not to exceed 2 years.

In a letter dated March 9, 1994, as supplemental April 13, 1994, the licensee requested an exemption to 10 CFR part 50, Appendix J, to allow the time between the performance of the required Type B and C tests to exceed the 2-year maximum by up to 150 days.

The Need for the Proposed Action

The proposed exemption is needed because compliance with paragraphs III.D.2(a) and III.D.3 of 10 CFR part 50, appendix J, would result in a unit shutdown and additional personnel radiation exposure in order to comply with the required Type B and C test frequency. The licensee last conducted the required Type B and C leak rate tests during a refueling outage in the spring of 1992. These previous leak rate tests will reach the 2-year maximum test interval imposed by Appendix J starting on May 29, 1994. The licensee's next refueling outage is scheduled to begin in August 1994. The extended interval between refueling outages is a result of an equipment problem and scheduling to avoid coincident refueling outages on both units. The exemption is requested to support the current outage schedule and to avoid the potential for an earlier reactor shutdown. If a forced outage is imposed to perform testing it would present undue hardship and cost in the form of increased radiological exposure. Furthermore, if a forced outage is imposed to perform the required testing, an additional plant shutdown and startup will be required. This action is similar to that approved for several other facilities.

Environmental Impact of the Proposed Action

The proposed action includes exemptions from performing Type B and C tests for a maximum period of 150 days beyond the required Appendix J test intervals. As stated in 10 CFR part 50, appendix J, the purpose of the primary containment leak rate testing requirements is to ensure that leakage rates are maintained within the Technical Specification requirements and to assure that proper maintenance and repair is performed throughout the service life of the containment boundary components. The requested exemption is consistent with the intent of 10 CFR 50.12(a), in that it represents a one-time only schedular extension of short duration. The required leak tests will still be performed to assess compliance with Technical Specification requirements, albeit later, and to asure that any required maintenance or repair is performed. As noted in paragraphs III.D.2.(a) and III.D.3 of Appendix J, it was intended that the testing be

performed during refueling outages or other convenient intervals. Extending the Appendix J intervals by a small amount to reach the next refueling outage will not significantly impact the integrity of the containment boundary and, therefore, will not significantly impact the consequences of an accident or transient in the unlikely event of such an occurance during the 150-day extended period.

Past Unit 2 local leak rate test data have demonstrated improving leak rate test results. Although the As Found results for the 1989 and 1990 outages were 3.0 L_a and 0.74 L_a, respectively, which exceeded the maximum limit of 0.6 L_a, the 1992 As Found was 0.18 L_a. The improved 1992 As Found result, which was a minor increase from the 1990 As Left of 0.17 L_a, followed several corrective actions by the licensee. The improving trend for the Type B and C testing, well below the allowable limit, provides reasonable assurance that the probability of exceeding the offsite dose rates established in 10 part 100 will not be increased by extending the current Type B and C testing for a maximum of 150 days.

Thus, radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. The proposed exemption will not increase the probability or consequences of any reactor accidents. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption and amendment and to require rigid compliance with the requirements of paragraphs III.D.2.(a) and III.D.3 of appendix J to 10 CFR part 50. Such action would not enhance the protection of the environment and would result in unjustified burdens and costs for the licensee and greater occupational exposure to plant personnel.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement for D.C. Cook, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The staff consulted with the State of Michigan regarding the environmental impact of the proposed action. The State had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's application and request for exemption dated March 9 and April 13, 1994. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 22nd day of April 1994.

For the Nuclear Regulatory Commission.

John B. Hickman,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10527 Filed 5–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Issuance of Environmental Assessment Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. DPR–70 and DPR–75, issued to Public Service Electric and Gas Company (the licensee), for the operation of Salem Nuclear Generating Station, Units 1 and 2.

Identification of Proposed Action

The amendments would consist of changes to the Technical Specifications (TS) that would authorize an increase to the storage capacity of the spent fuel pools (SFP) from 1170 fuel assemblies to 1632 fuel assemblies at each Salem unit.

The amendments to the TS are responsive to the licensee's application dated April 28, 1993, as supplemented by letters of August 12, 1993, November 7, 1993, February 2, 1994, and April 7, 1994. The NRC staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pools, Public Service Electric and Gas Company, Facility Operating License No. DPR–70 and DPR–75, Salem Nuclear Generating Station, Units 1 and 2, Docket Nos. 50–272 and 50–311," dated April 25, 1994.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear with the accompanying spent fuel storage. Because of the differences in SFP designs, the FGEIS recommended licensing SFP expansion on a case-by-case basis.

For Salem Units 1 and 2, the SFP modification will not create any significant additional radiological effects or measurable nonradiological environmental impacts.

In the event of a fuel handling accident, the whole body dose and thyroid dose that might be received by an individual at the site boundary is well within regulatory requirements. It is not expected that an increase in the occupational radiation dose will result from the operation of the expanded spent fuel pools. For the modification of the pools, the occupational exposure is estimated to be less than 4% of the total annual occupational exposure at the facility. To assure as low as reasonably achievable (ALARA) goals are met, during the SFP expansion activities, work, personnel traffic and movement of equipment will be monitored and controlled. Therefore, the staff concludes that the exposure to workers is ALARA and is acceptable.

The only nonradiological impact affected by the expansion of the spent fuel pools is the waste heat rejected. The increase in total plant waste heat is insignificant (less than 0.05% of the total plant heat loss to the environment). There is no significant environmental impact attributed to the waste heat from the plant because of the expansion of the spent fuel pools.

Finding of No Significant Impact

The staff has reviewed this proposed facility modification relative to the

requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed amendments to the licenses will have no significant impact on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the application for amendments to the Technical Specifications dated April 28, 1993, as supplemented by letters of August 12, 1993, November 17, 1993, February 2, 1994, and April 7, 1994, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for Salem Nuclear Generating Station, Units 1 and 2, issued April 1973, and (4) the Environmental Assessment dated April 25, 1994. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located in the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 25th day of April 1994.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10528 Filed 5–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. San Onofre Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 140.11(a)(4) to Facility Operating License No. DPR–13, a possession-only license held by the Southern California Edison Company (SCE or the licensee). The exemption would apply to the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1), a permanently shutdown plant located at the SCE site in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 140.11(a)(4) to the extent that SONGS 1 would be exempted from participation in the industry retrospective rating plan (secondary level financial protection). The licensee requested the elimination of its required participation in a letter dated February 2, 1993.

The Need for the Proposed Action

SONGS 1 was permanently shut down in November 1992, and defueling of the reactor completed in March 1993. Upon licensee certification of the defueling on March 9, 1993, Amendment No. 150 to Facility Operating License No. DPR–13 became effective, changing the license to a possession-only license. The exemption addresses withdrawal from participation in the industry retrospective rating plan.

Since SONGS 1 no longer contributes as great a risk to the retrospective rating plan participants as does an operating plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of this request would allow a more equitable allocation of financial risk.

Environmental Impact of the Proposed Action

The proposed action does not involve any environmental impacts. The proposed exemption is in a subject area, changes in surety, insurance and/or indemnity requirements, for which the Commission in 10 CFR 51.22(c)(10) has determined that a license amendment would meet the criteria for categorical exclusion from the need for either an environmental assessment or an environmental impact statement.

Since the proposed action does not involve a change in plant operation or configuration, there is reasonable assurance that the proposed action would not increase the probability or the consequences of an accident or reduce the margin of safety, no changes would be made in the types or quantities of effluents that may be released offsite, and there would be no significant increase in the allowable individual or cumulative radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Environmental Assessment related to the conversion of the Provisional Operating License to a Full Term Operating License issued to Southern California Edison Company for the San Onofre Nuclear Generating Station, Unit 1, on September 16, 1991.

Agencies and Persons Consulted

The NRC staff consulted with a representative of the State of California regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee application to amend Indemnity Agreement No. B–31, dated February 2, 1993, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room at the Main Library, University of California, Post Office Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 22nd day of April 1994.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10529 Filed 5–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co. (Fermi 2); Exemption

I

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF–43 which authorizes operation of the Fermi 2 Nuclear Plant at steady-state reactor power levels not in excess of 3430 megawatts thermal. The Fermi 2 facility is a boiling water reactor located at the licensee's site in Monroe County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.C of appendix J to 10 CFR part 50 requires, in part, that valves, unless pressurized with fluid (e.g., water, nitrogen) from a seal system, shall be tested by pressurizing with air or nitrogen at a test pressure of Pa (56.5 psig), the calculated peak containment internal pressure as a result of the design basis accident. Further, the combined leakage rate of all penetrations and valves subject to Type B and C testing shall be less than 0.60 La (La is the maximum allowable leakage rate at Pa). Leakage from containment isolation valves that are sealed with fluid from a seal system may be excluded, provided the leakage rates for these valves do not exceed the Technical Specification leakage requirements and the seal system fluid inventory is sufficient to ensure the sealing function for 30 days following an accident at a pressure of 1.10 Pa.

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated May 24, 1993, the licensee requested an exemption from the requirements of 10 CFR part 50, appendix J, III.C for performing Type C integrated leak rate tests of the containment isolation valves in the Low pressure coolant injection (LPCI) lines of the residual heat removal (RHR) system. The valves in question are the loop A and B LPCI isolation valves, which are motor-operated gate valves, outboard of containment and which are operable from the control room and are designated as E11–F015 A and B. The licensee proposed, as alternative testing, an external leakage test, with water as the test medium, at a pressure of 1045 psig with an allowable leakage value of 5 milliliters per minute (ml/min). The license also provided justification in its May 24, 1993, letter to reclassify the inboard containment LPCI valve configuration (which consists of a reverse flow swing check valve with a 1-inch, locked closed, solenoid-operated bypass valve) as other than containment isolation valves and thus no longer subject to Type C testing.

The staff evaluated the licensee's proposal for reclassification of the inboard containment valves and concluded that the licensee's proposal met the guidance in the Standard Review Plan (SRP), NUREG–0800, Section 6.2.4 for differing from the explicit requirements of General Design Criterion 55 in 10 CFR part 50, appendix A for containment isolation valves (CIVs). Subsection II.6.e allows only a single CIV outside containment, if the system is closed outside containment and certain other criteria are met. Details concerning the staff's review are contained in the staff's safety evaluation dated April 22, 1994.

Two aspects of the RHR system form the basis for the proposed exemption. It is a closed system outside of containment, and the containment penetrations will be water sealed during a loss of coolant accident (LOCA). The licensee's analyses showed that a water seal. pressurized to greater than 1.1 Pa (62.15 psig), would exist outboard of the LPCI CIV for at least 30 days following the design basis LOCA despite the most limiting single active failure. However, if one or both of the LPCI CIVs is shut, that water seal might not prevent external valve leakage (valve stem or bonnet leakage). The licensee also showed that a water seal, would exist inboard of the LPCI CIVs following a design basis LOCA. The licensee's analyses demonstrated that the volume of the water seal is sufficient to last for greater than 30 days assuming the leakage limit proposed in their alternative testing acceptance criteria. The licensee's analyses also showed that through seat leakage of the LPCI CIVs would be in toward containment and would not deplete the water seal.

Although the external leakage water seal would prevent atmosphere from leading out of containment, it does not satisfy the requirements for a water seal contained in Appendix J. Appendix J allows water sealed valves to be excepted from the normal Type C testing with air, but it requires that the water seal be pressurized to at least 1.1 Pa during an accident. The water leg inboard of the LPCI CIVs does not meet this requirement. Nevertheless, the staff has determined that the licensee's analyses of the water seals provide sufficient assurance that containment atmosphere leakage out of containment will be prevented during an accident to justify granting the requested exemption from Type C testing of the LPCI CIVs with air as the test medium. The licensee's alternative test will measure external valve leakage with a limit of 5 ml/min using water as the test medium at a pressure of 1045 psig.

IV

Accordingly, the Commission concluded that the licensee's proposed alternative testing plan and analyses provide sufficient assurance that the containment atmosphere would not leak out of containment through the LPCI CIVs during a design basis accident and that containment integrity will be maintained by granting the proposed exemption.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. As stated in part in 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of Section III.C of Appendix J is to measure containment isolation valve leakage rates. This leakage, when summed with the allowable Type A and Type B leakage is limited to a value which ensures overall containment integrity in preventing the uncontrolled release of radioactivity to the environment. The licensee has demonstrated through analyses and by proposing alternative testing criteria, that containment integrity will be maintained. Consequently, the Commission concludes that the special circumstances of 10 CFR 50.12 (a)(2)(ii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

V

Accordingly, the Commission has determined that, pursuant to CFR 50.12 this exemption as described in Section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants an exemption as described in Section III above the requirements in 10 CFR 50.12, Appendix J, III.C. for performing Type C containment integrated leak rate tests of the CIVs in the LPCI lines of the RHR system and approves the licensee's alternative testing plan.

Pursuant to CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 19028).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of April 1994.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director; Division of Reactor Projects—III/IV; Office of Nuclear Reactor Regulation.

[FR Doc. 94–10530 Filed 5–2–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new routine use applicable to a system of records.

SUMMARY: The purpose of this document is to publish notice of a new routine use applicable to the Postal Service's Privacy Act system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents. The new routine use will authorize the disclosure of information for the purpose of identifying addresses as Commercial Mail Receiving Agencies.

DATES: This proposal will become effective without further notice 30 days from the date of this publication, unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to Records Office, United States Postal Service, 475 L'Enfant Plaza SW., room 8831, Washington, DC 20260–5240, or delivered to the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Comments received may be inspected during the above hours in room 8831.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268–2924.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (e)(11) of the Privacy Act of 1974, 5 U.S.C. 552a, the Postal Service is publishing a notice of a new routine use applicable to its system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents. The new routine use will authorize disclosure of information for the purpose of identifying addresses as belonging to Commercial Mail Receiving Agencies (CMRAs). CMRAs are private entities which receive mail on behalf of other persons. Often, the address provided for a person by a CMRA appears to be a typical residential or business address.

The Postal Service, primarily through its law enforcement branch, the Postal Inspection Service, has been working with the credit card industry to prevent credit card fraud. One form of credit card fraud consists of submitting an application for a credit card under a fictitious name. Perpetrators of this type of fraud may use an address provided by a CMRA as a means of avoiding detection. Credit card companies have asked the Postal Service to help them detect such fraud by identifying CMRA addresses, and the Postal Service has concluded that the identification of CMRA addresses would be an effective tool in combatting credit card fraud and other types of consumer fraud.

The routine use will authorize disclosure of information only for the purpose of identifying an address as belonging to a CMRA, and no other information concerning CMRAs or their customers will be disclosed pursuant to the routine use. Because the routine use will not authorize the disclosure of the identities of CMRA customers, disclosures under the routine use will not invade the legitimate privacy interests of persons who receive mail through CMRAs. The information will be disclosed primarily by means of annotations to the Postal Service's Delivery Sequence File (DSF). DSF data, the use of which is made available to the public through authorized licensees, contains delivery-point addresses, and it does not include the identities of individuals.

New Routine Use

This notice adds routine use No. 1 to Postal Service system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents, as follows:

"1. Information may be disclosed for the purpose of identifying an address as an address of an agent to whom mail is delivered on behalf of other persons. This routine use does not authorize the disclosure of the identities of persons on behalf of whom agents receive mail."

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–10544 Filed 5–2–94; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33962; File No. SR–CBOE–93–57]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the CBOE Global Telecommunications Index and Long-Term Options on a Reduced-Value Global Telecommunications Index

April 25, 1994.

I. Introduction

On December 14, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Global Telecommunications Index ("Global Telecommunications Index" or "Index"). Notice of the proposal appeared in the **Federal Register** on December 30, 1993.[3] No comment letters were received on the proposed rule change. On March 16, 1994, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the Exchange's proposal.

II. Description of Proposal

A. General

The CBOE proposes to list and trade options on the CBOE Global Telecommunications Index, a new securities index developed by the CBOE

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33370 (December 22, 1993), 58 FR 69417 (December 30, 1993).

[4] Amendment No. 1 provides that the CBOE will maintain the Index such that at least 90% of the Index, by weight, will be composed of securities that are eligible for equity options trading under CBOE Rule 5.3. See Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, SEC, dated March 16, 1994 ("Amendment No. 1").

and based on stocks and ADRs[5] of international telecommunications companies that are traded on the American Stock Exchange ("Amex"), the New York Stock Exchange ("NYSE"), or are national market securities traded through the facilities of the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Global Telecommunications Index ("Global Telecommunications LEAPS" or "Index LEAPS").[6] Global Telecommunications LEAPS will trade independent of and in addition to regular Global Telecommunications Index options traded on the Exchange,[7] however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated.

B. Composition of the Index

The Index is based on securities representing twenty U.S. and foreign companies that the Exchange believes are representative of the global telecommunications industry, all of which trade domestically as either stocks or ADRs. Fourteen of these securities currently trade on the NYSE, one trades on the Amex, and five trade through NASDQ. The Index is price-weighted and will be calculated on a real-time basis using last sale prices.

As of the close of trading on February 11, 1994, the Index was valued at 149.63.[8] As of November 30, 1993, the market capitalizations of the individual securities in the Index ranged from a high of $73.61 billion (AT&T) to a low of $144.21 million (Atlantic Tele-Network, Inc.), with the mean and median being $14.79 billion and $8.14 billion, respectively. The market capitalization of all the securities in the Index was $295.74 billion. The total number of shares outstanding for the stocks and ADRs in the Index ranged from a high of 1.35 billion shares (AT&T) to a low of 12.27 million shares (Atlantic Tele-Network, Inc.). The average price per share of the securities in the Index, for the six-month period between June 1 and November 30, 1993, ranged from a high of $78.19 (Compania De Telefonos De Chile) to a low of $12.79 (Atlantic Tele-Network, Inc.). In addition, the average daily trading volume of the stocks and ADRs in the Index, for the same six-month period, ranged from a high of 1.89 million shares per day (AT&T) to a low of 51,675 shares per day (Atlantic Tele-Network, Inc.), with the mean and median being 425,652 and 252,187 shares, respectively. Lastly, no one stock or ADR accounted for more than 9.08% of the Index's total value (Compania De Telefonos De Chile) and the percentage weighting of the five largest issues in the Index accounted for 37.07% of the Index's value. The percentage weighting of the lowest weighted component was 1.27% of the Index (Atlantic Tele-Network, Inc.) and the percentage weighting of the five smallest issues in the Index accounted for 11.66% of the Index's value.

C. Maintenance

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time, subject to compliance with the maintenance criteria discussed herein, to reflect the conditions in the global telecommunications industry. If it becomes necessary to replace a security in the Index, the Exchange represents that it will make every effort to add new stocks and/or ADRs that are representative of the global telecommunications industry and will take into account a security's capitalization, liquidity, volatility, and name recognition of the proposed replacement. Further, securities may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component securities to greater than twenty-six or reduce the number of Index component securities to fewer than fourteen, the proposal provides that the CBOE will submit a rule filing with the Commission pursuant to Section 19(b) of the Act. In addition, in choosing replacement securities for the Index, the CBOE will be required to ensure that at least 90% of the weight of the Index continues to be made up of stocks and ADRs that are eligible for standardized options trading.[9] Finally, the CBOE will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S.[10]

D. Applicability of CBOE Rules Regarding Index Options

Except as modified by this order, the rules in Chapter XXIV of the CBOE Rules will be applicable to Global Telecommunications Index options and full-value and reduced-value Index LEAPS. Those rules address, among other things, the applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment for narrow-based index options.

E. Calculation of the Index

The CBOE Global Telecommunications Index is a price-weighted index and reflects changes in the prices of the Index component securities relative to the Index's base date of January 2, 1992. Specifically, the Index value is calculated by adding the prices of the component stocks and ADRs and then dividing this summation by a divisor that is equal to the number of the components of the Index to get

[5] An ADR is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. The securities underlying the ADRs included in the Index are securities issued by corporations formed under the laws of Chile, France, Hong Kong, Mexico, the Netherlands, New Zealand, Sweden, Spain, and the United Kingdom. See discussion of standards for ADR components, *infra* notes 9 and 29.

[6] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from twelve to thirty-six months from their date of issuance. See CBOE Rule 24.9(b)(1).

[7] According to the CBOE, the Global Telecommunications Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, the CBOE concludes, should offer investors a low-cost means of achieving diversification of their portfolios toward or away from the global telecommunications industry. The CBOE believes the Index will provide retail and institutional investors with a means of benefitting from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed global telecommunications industry funds, as well as a means of hedging the risks of investing in the global telecommunications industry.

[8] See Letter from Eileen Smith, Director, Product Development, Research Department, CBO, to Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, SEC, dated February 14, 1994 (::February 14 Letter").

[9] See Amendment No. 1, *supra* note 4. The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See CBOE Rule 5.3. With respect to ADRs' in addition to the above standards: (1) the Exchange must have in place a comprehensive surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded: or (2) the trading volume in the U.S. markets where the ADR is traded represents (on a share-equivalent basis) at least 50% of the worldwide trading volume in the security underlying the ADR over the three month period preceding the date of selection of the ADR for options trading; or (3) the SEC must otherwise authorize the listing. See Securities Exchange Act Release No. 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[10] See February 14 Letter, *supra* note 8.

the average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index will be calculated continuously and will be disseminated to the Options Price Reporting Authority ("OPRA") every fifteen seconds by the CBOE, based on the last-sale prices of the component stocks and ADRs.[11] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

The Index value for purposes of settling outstanding regular Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component securities in their primary market on the last trading day prior to expiration. In the case of securities traded on and through NASDAQ, the first reported sale price will be used. Once all of the component stocks and ADRs have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks or ADRs do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component security for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading day on expiration Friday.

F. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[12] Standard options trading hours (8:30 a.m. to 3:10 p.m. Central Standard time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[13] In addition, pursuant to CBOE Rule 24.9, there may be up to six expiration months outstanding at any given time. Specifically, there may be up to there expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available. As described in more detail below, the Exchange also intends to list several Index LEAPS series that expire from twelve to thirty-six months from the date of issuance.

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component securities on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

G. Listing of Long-Term Options on the Full-Value or Reduced-Value Global Telecommunications Index

The proposal provides that the Exchange may list long-term Index options that expire from 12 to 36 months from listing based on the full-value Global Telecommunications Index or a reduced value Global Telecommunications Index that will be computed at one-tenth the value of the full-value Index. Existing Exchange requirements applicable to full-value and reduced-value LEAPS will apply to full-value and reduced-value Index LEAPS.[14] The current and closing Index value for reduced-value Global Telecommunications LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 149.76 would be 14.98 for the Index LEAPS and 149.73 would become 14.97. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. Pursuant to CBOE Rule 24.9, the strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

H. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is classified as an "industry index" under CBOE rules,[15] Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of Global Telecommunications Index options and Global Telecommunications Index LEAPS. Specifically, Exchange rules governing margin requirements,[16] position and exercise limits,[17] and trading halt procedures[18] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether a given position in reduced-value Index LEAPS complies with applicable position and exercise limits, positions in reduced-value Index LEAPS will be aggregated with positions in the full-value Index options. For these purposes, ten reduced-value contract will equal one full-value contract.

I. Surveillance

Surveillence procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surviellance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[19]

[11] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the CBOE will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[12] A European-style option can be exercised only during a specified period before the option expires.

[13] For a description of the strike price intervals for reduced-value Index options and long-term Index options, See *infra*, Section II.G.

[14] See CBOE Rule 24.9(b).

[15] See CBOE Rule 24.1(i).

[16] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) for short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long term options positions, 100% of the options premium paid.

[17] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 10,500 contracts, unless the Exchange determines, pursuant to Rules 24.4A and 24.5 that a lower limit is warranted. See February 14 Letter, *supra* note 8.

[18] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options may be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

[19] The Intermarket Surveillance Group ("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

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[20] Specifically, the Commission finds that the trading of Global telecommunications Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with securities in the global telecommunications industry.[21]

The trading of options on the Global Telecommunications Index, including full-value and reduced-value LEAPS on the Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Global Telecommunications Index is a narrow-based index. The Global Telecommunications Index is composed of only twenty securities, all of which are within one industry—the global telecommunications industry.[22] Accordingly, the Commission believes it is appropriate for the CBOE to apply its rules governing narrow-based index options to trading in the Index options.[23]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component securities significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the components that compose the Index are actively traded, with a mean and median average daily trading volume of 425,652 and 252,187 shares, respectively.[24] Second, the market capitalizations of the securities in the Index are very large, ranging from a high of $73.61 billion to a low of $144.21 million as of November 30, 1993, with the mean and median being $14.79 billion and $8.14 billion, respectively. Third, although the Index is only comprised of twenty component securities, no one particular security or group of securities dominates the Index. Specifically, no one stock or ADR comprises more than 9.08% of the Index's total value and the percentage weighting of the five largest issues in the Index account for 37.07% of the Index's value.[25] Fourth, at least 90% of the twenty securities in the Index by weight must be eligible for standardized options trading.[26] The proposed CBOE maintenance requirement that 90% of the weighting of the Index be comprised of securities that are eligible for options trading will ensure that the Index is almost completely comprised of options eligible securities. Fifth, if the CBOE increases the number of component securities to more than twenty-six or decreases that number to less than fourteen, the CBOE will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of Global Telecommunications Index options and Index LEAPS. This will help protect against material changes in the composition and design of the Index that might adversely affect the CBOE's obligations to protect investors and to maintain fair and orderly markets in Global Telecommunications Index options and Index LEAPS. Sixth, the CBOE will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S.[27] This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the expense of attempting to manipulate the value of the Global Telecommunications Index in any significant way through trading in component stocks, ADRs, or securities underlying ADRs (or options on those securities) coupled with, as discussed below, existing mechanisms to monitor trading activity in those securities, will help deter such illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Global Telecommunications Index Options (including full-value and reduced-value Global Telecommunications (LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Global Telecommunications Index options and full-value and reduced-value Global Telecommunications Index LEAPS.

Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); 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 affiliated members in 1990.

[20] 15 U.S.C. 78f(b)(5) (1988).

[21] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed index options and full-value index LEAPS on the Global Telecommunications Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks and ADRs comprising the global telecommunications industry in the U.S. securities markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in the global telecommunications industry sector of the U.S. securities markets, allowing them to establish positions or increase existing positions in such markets in a cost effective manner. Moreover, the Commission believes that the reduced-value Index LEAPS, which will be traded on an index computed at one-tenth the value of the Global Telecommunications Index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

[22] The reduced-value Global Telecommunications Index, which is composed of the same component securities as the Index and calculated by dividing the Index value by ten, is identical to the Global Telecommunications Index.

[23] See *supra* notes 15 through 18, and accompanying text.

[24] In addition, for the six-month period between June 1 and November 30, 1993, no component of the Index had an average daily trading volume of less than 51,000 shares per day.

[25] For an index with a significantly greater number of securities than twenty issues, the Commission might come to a different conclusion if only a few securities accounted for a significant portion of the index's weighting. Further, if an index contained only a few stocks, the Commission might question whether it can be traded as an index product.

[26] See *supra* note 9.

[27] See February 14 Letter, *supra* note 8.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.[28] In this regard, the CBOE, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information.[29] Further, as to the foreign components of the Index, either the Exchange has comprehensive surveillance sharing agreements with the primary foreign markets for the securities underlying the ADRs or the U.S. is the relevant market for surveillance purposes.[30]

D. Market Impact

The Commission believes that the listing and trading of Global Telecommunications Index options, including full-value and reduced-value Index LEAPS, on the CBOE will not adversely impact the underlying securities markets.[31] First, as described above, for the most part, no one security or group of securities dominates the Index. Second, because, at least 90% of the numerical value of the Index must be accounted for by securities that meet the Exchange's options listing standards,[32] and because each of the component securities must be subject to last sale reporting requirements,[33] the component securities generally will be actively-traded, highly-capitalized securities. Third, the 10,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns. Forth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Global Telecommunications Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[34]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 raises the maintenance standards originally proposed by the Exchange by requiring the CBOE to ensure that at least 90% of the Index, by weight, is composed of securities that are eligible for equity options trading pursuant to CBOE Rule 5.3. As stated above, the Commission believes that this requirement has the effect of ensuring that the Index is composed of highly-capitalized, actively-traded securities which serve to minimize the possibility that the Index can be easily manipulated. Additionally, the Commission notes that this is the same standard that the Commission recently approved for the listing and trading of index options and index LEAPS on the CBOE Telecommunications Index.[35] As a result, the Commission believes that good cause exists for approving Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR–CBOE–93–97 and should be submitted by May 24, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–CBOE–93–57), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10473 Filed 5–2–94; 8:45 am]

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[28] Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[29] See note 19, *supra*. If the prices of the ADR components, or the composition of the Index, should change so that greater than 20% of the weight of the Index would be represented by ADRs whose underlying securities were not the subject of a comprehensive surveillance sharing agreement with the CBOE, then it would be different for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable for the Exchange to continue to trade options on this Index. The CBOE should, accordingly, notify the Commission immediately if more than 20% of the numerical value of the Index is represented by ADRs whose underlying securities are not subject to a comprehensive surveillance sharing agreement. Such a change in the current relative weights of the Index or in the composition of the Index may warrant the submission of a rule filing pursuant to Section 19 of the Act. In determining whether a particular ADR is subject to a comprehensive surveillance sharing agreement see, *e.g.*, Securities Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1994); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[30] See Securities Exchange Act release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[31] In addition, the CBOE has represented that the CBOE and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. See Memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated February 14, 1994.

[32] See Amendment No. 1, *supra* note 4.

[33] See February 14 Letter, *supra* note 8.

[34] See Securities Exchange Act Release No. 30944 (July 21, 1994), 57 FR 33376 (July 28, 1992).

[35] See Securities Exchange Act Release No. 33473 (January 13, 1994), 59 FR 3383 (January 21, 1994).

[36] 15 U.S.C. 73s(b)(2) (1988).

[37] CFR 200.30–3(a)(12) (1993).

[Release No. 34–33958; File No. SR–DTC–93–12]

Self-Regulatory Organizations; The Depository Trust Company; Order Temporarily Approving a Proposed Rule Change Expanding the Money Market Instrument Settlement Program on a Pilot Basis

April 22, 1994.

On October 19, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change

(File No. SR–DTC–93–12) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to implement a pilot program to include additional types of money market instruments ("MMIs") in its MMI settlement program. Notice of the proposal was published in the **Federal Register** on November 8, 1993.[2] The Commission did not receive any comment letters on the proposed rule change.[3] For the reasons discussed below, the Commission is granting temporary approval of the pilot program until April 30, 1995.

I. Description

A. Generally

The proposed rule change makes DTC's existing MMI settlement services available for transactions in additional types of MMIs. New MMI programs include those for institutional certificates of deposit ("CD"), municipal commercial paper, and bankers' acceptances. The existing DTC MMI programs to be expanded or enhanced include those for corporate commercial paper, medium-term notes, preferred stock in a CP-like mode, short-term bank notes, and discount notes.

The new MMI programs, along with the existing MMI programs, are an extension of DTC's Same-Day Funds Settlement ("SDFS") system.[4] The automated operating procedures for MMIs are virtually the same as those followed by SDFS participants and by Institutional Delivery ("ID") system users for basic depository services in other eligible SDFS securities. The MMI issues being made SDFS-eligible will be distributed in book-entry-only form by the issuer's issuing agent that, as in the commercial paper ("CP") and medium-term note MMI programs, will send MMI issuance instructions to DTC electronically. Settlement of an issue will be on the same day as the issuance or on a specified future day. The issuer's paying agent, that will also serve as DTC's custodian, will hold a master or balance MMI certificate for DTC unless the issuer and its issuing and paying agent bank choose to distribute uncertificated MMIs through DTC.[5] Because SDFS-eligible MMIs will be book-entry-only, participant operating procedures for deposits and withdrawals will not apply to MMIs.

B. New MMI Programs

The fundamental risk in the SDFS system is that a participant will default in its payment obligation. The new MMI programs are offered as an extension of DTC's current SDFS system; therefore, DTC will employ the same risk management controls (*e.g.*, net debit collateralization, net debit caps, and receiver-authorized deliveries) to transactions in these new programs as are employed in the current SDFS system.[6]

Net debit collateralization requires each participant to maintain in its account throughout the processing day collateral at least equal in value to the participant's net settlement debit. If during the processing day a transaction will cause a net debit greater than the amount of collateral in the participant's account at the time the transaction is being processed, DTC will recycle the transaction until there is sufficient collateral in the participant's account. Transactions in the new MMI programs also will be subject to the participant's net debit cap.[7] The net debit cap helps to protect against abnormal intraday debit peaks that are out of line with a participant's prior month's average daily activity level. The net debit cap also reduces the possibility that the failure to settle by more than one participant will not cause DTC to exceed its liquidity resources. The new MMI programs also will utilize the receiver-authorized delivery control which allows a participant to monitor deliveries and payment orders directed to its account before the orders are posted to the account.

In addition, DTC's three failure to settle procedures applicable to the CP program will be applicable to the new MMI programs. First, DTC will employ the same procedures with regard to the sequence in which DTC will use MMI collateral and eliminate payment order debits in a failing participant's account. Second, if DTC is notified before 3 p.m. eastern standard time ("E.S.T.") that a paying agent will not pay on an MMI issuer's maturity presentments, reorganization presentments, periodic principal presentments, or periodic income presentments or if DTC is informed of an MMI issuer's bankruptcy and a participant fails to settle with DTC on that day, DTC has the authority to reduce the settlement credits of participants who had transactions on the day of default with the defaulting issuer or the defaulting participant on the day of the default. Third, if the paying agent has not settled with DTC by noon E.S.T. on the DTC business day following the settlement day or if a paying agent is determined to be insolvent according to DTC's rules, DTC will notify the issuers utilizing that paying agent and provide those issuers with information on any presentments related to their MMIs on which the PA failed to pay DTC.

C. Expanded or Improved Existing MMI Programs

DTC will be expanding its CP program to include "uncommon CP." Uncommon CP is CP paying income periodically, a variable amount of income, or a variable amount of principal. It also includes CP denominated in a foreign currency, CP with a maturity of 271 days to a year, or corporate variable-rate demand obligations in CP mode. These instruments were not included in the original CP program.

DTC also will be enhancing their MMI programs for medium-term notes, short-term notes, discount notes, and preferred stock in CP-like mode. The medium-term note program will be enhanced by DTC's collection and allocation of income, principal, reorganization, and maturity payments within the SDFS system. Paying agents will no longer have to separately wire such payments to DTC. Instead, as with maturity payments in the CP program,

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[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 33126 (November 1, 1993), 58 FR 59263.

[3] At the request of the Commission, the Federal Reserve Bank of New York ("FRBNY"), and the Board of Governors of the Federal Reserve System ("Fed") DTC issued a notice to participants requesting comment on issues raised by the regulators. DTC received ten comment letters. The issues and the comment letters will be discussed in detail later in this approval order.

[4] DTC's SDFS system currently includes the following issue types: Corporate commercial paper, municipal notes and bonds, municipal variable-rate demand obligations, zero coupon bonds backed by U.S. Government securities, continuously offered medium-term corporate notes, short-term bank notes, auction-rate and tender-rate preferred stocks and notes, collateralized mortgage obligations and other asset-backed securities, Government trust certificates and Government agency securities not eligible for the Fed's book-entry system, retail certificates of deposit, corporate and municipal variable mode obligations, corporate bonds, discount notes, and unit trusts. For a detailed description and discussion of DTC's SDFS system, including the implementation of the commercial paper program, refer to Securities Exchange Act Release Nos. 26051 (August 31, 1988), 53 FR 34853 [File No. SR–DTC–88–06] (order permanently approving DTC's SDFS system) and 30986 (July 31, 1992), 57 FR 35856 [File No. SR–DTC–92–01] (order approving implementation of commercial paper program).

[5] Uncertificated MMIs are not evidenced by any certificate whatsoever. Bills, notes, bonds, and other securities have been issued in uncertificated form by U.S. government and federal agencies for many years.

[6] *supra* note 4.

[7] Each participant's net debit is limited throughout the processing day to a net debit cap that is the least of the following four amounts: (1) an amount forty times the participant's required and voluntary deposits to the SDFS fund, (2) an amount that is equal to seventy-five percent of DTC's liquidity resources, including cash deposits to the SDFS fund and lines of credit for loans to facilitate SDFS settlement, (3) an amount, if any, determined by the participant's settling bank, and (4) an amount, if any, determined by DTC. *Supra* note 4.

these payments will be included in each paying agent's net settlement figure due to or from DTC at the end of each day. Similarly, the short-term note program will be enhanced with the inclusion in the SDFS system maturity payments and periodic income payments in the SDFS system and in the paying agents' net SDFS amounts due to or from DTC. The restriction that short-term notes must have a minimum maturity period of thirty days to be included in this program will be removed. The short-term notes program, the discount notes program, and the preferred stock in CP-like mode program will all provide for uncertificated issuer programs. However, one master note or certificate may be held for DTC by the paying agent.

II. Discussion

Section 17A(b)(3)(F)[8] of the Act requires that the rules of a clearing agency 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 the custody or control of the clearing agency or for which it is responsible. As discussed below, the Commission believes the DTC's proposed rule change is consistent with DTC's obligations under the Act.

As previously described, the new MMI programs and the expanded and enhanced programs are an extension of DTC's current SDFS system and include many of the same risk management features that are employed in the SDFS system. The Commission previously examined these features when DTC first proposed the SDFS system and again when the CP program was added.[9] At those times, the Commission found, and continues to believe, that these risk management measures are consistent with Section 17A of the Act and should minimize the impact of a default by a participant in the SDFS system.

The use of provisional credits and unwind procedures if an MMI issuer were to default, however, could increase the risk of settlement gridlock in certain circumstances. For example, if DTC were to confirm the insolvency of an MMI issuer before 3:00 p.m.,[10] DTC would reverse all participants' credits attributable to the insolvent issuer without regard to any of the risk management controls. Such reversals of credits could result in a participant having a net debit that exceeds the participant's net debit cap and DTC's liquidity resources. If such a participant then failed to settle its net debit with DTC, DTC would possibly have difficulty completing other settlements thus creating systemic risk.

As an interim solution, DTC proposed for comment the implementation of an additional $500 million line of credit dedicated to the completion of settlement in the SDFS system in the event a participant fails to settle after application of the unwind procedures. The additional line of credit would be supported by securities pledged to the SDFS fund and would not be included as a part of DTC's liquidity resources when determining a participant's net debit cap. DTC also proposed as a long term solution, a SDFS system enhancement that would conduct default scenarios to assure that unwind procedures would not cause a liquidity problem.[11]

DTC solicited comment from its participants regarding (1) the necessity of unwind procedures in the SDFS service that override risk management controls and (2) if unwind procedures are necessary, whether participants would be prepared to absorb the additional costs of mechanisms to assure that use of the unwind procedures on the same day that any DTC participant failed to settle would not deplete DTC's liquidity resources. DTC received ten comment letters from participants and two from industry organizations.[12] Generally, the comments supported the use of unwind procedures as a way to replicate the risks taken by parties to transactions in the physical MMI market (*i.e.*, to place the risk and burden of default on the appropriate party, which is on the issuer or the purchaser instead of on the issuing and paying agent). The comments also generally supported the interim solution of obtaining an additional, dedicated line of credit and allocating its cost to SDFS system participants.

Two of DTC's bank participants did not support DTC's proposals and offered alternative solutions. One of these two commentators argued that issuing and paying agents should fund presentments earlier or that unwind procedures should be employed earlier in the day.[13] The other commentator suggested that DTC should create a system similar to the procedures employed by the Clearing House Interbank Payment System.[14]

DTC has agreed to implement the dedicated line of credit as an interim solution and proceed with the necessary modifications to implement the system

[8] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[9] *Supra* note 4.

[10] If DTC cannot confirm that an MMI issuer is insolvent before 3 p.m. EST., DTC will not reverse credits attributable to that issuer because after 3 p.m. E.S.T. credits are no longer provisional in DTC's SDFS system.

[11] DTC has proposed two SDFS system enhancements that will eventually replace the additional line of credit dedicated to settlement in the SDFS system. The future system enhancements will retain unwind procedures but will allow DTC to run intraday computerized double default scenarios (*i.e.*, an MMI issuer default and an SDFS participant default due to debits created by the unwind procedures) to help assure that each participant's net debit is within DTC's liquidity resources.

Under the first system enhancement, DTC will subtract from a participant's actual overall SDFS net debit or credit amount the amount of the participant's largest provisional net credit due to transactions in any single issuer's MMIs. DTC then will limit the resulting net debit from all other SDFS transactions ("liquidity net debit") to the amount of DTC's liquidity resources ("liquidity net debit cap"), which as of April 18, 1994, was approximately $760 million. If a transaction will cause a participant's liquidity net debit to exceed DTC's liquidity net debit cap, DTC will block and recycle the transaction until credits are received from transactions in MMIs of MMI issues other than those of the issuer of the largest provisional net credit.

Under the second system enhancement, DTC will subtract the amount of a participant's largest provisional net credit due to transactions in any single issuer's MMIs from the participant's collateral monitor ("simulated collateral monitor"). If a transaction will cause the simulated collateral monitor to turn negative (*i.e.*, the participant's collateral would be insufficient to cover its simulated net debit after the transaction), the transaction will be blocked. Blocked transactions will be recycled until credits from other transactions in MMIs of issuers other than those of the largest provisional net credit cause the simulated collateral monitor to be positive.

DTC expects to implement the two system enhancements subsequent to the industry conversion to same-day funds settlement that is scheduled for implementation in 1996. Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Peter R. Geraghty, [Staff Attorney], Division of Market Regulation, Commission (April 18, 1994).

[12] Letters from Albert Howell, Vice President, Money Market Operations, Merrill Lynch, to James Reilly, Vice President, DTC (March 7, 1994); Christopher T. Amico, Assistant Vice President, Chemical Bank, to James Reilly, Vice President, DTC (February 1, 1994); Gary S. Schayne, Vice President, Citibank, to James Reilly, Vice President, DTC (January 31, 1994); Ronald M. Thalheimer, Vice President, The First National Bank of Chicago, to James Reilly, Vice President, DTC (February 3, 1994); Michael J. Stein, Vice President, State Street Bank and Trust Company, to James Reilly, Vice President, DTC (February 7, 1994); Stephen J. Melanaski, Vice President, United States Trust Company of New York, to James Reilly, Vice President, DTC (January 21, 1994); Mark Handsman, Vice President-Assistant Treasurer, Goldman Sachs, to James Reilly, Vice President, DTC (February 23, 1994); Michael J. Gardiner, Vice President, The Chase Manhattan Bank, N.A., to James Reilly, Vice President, DTC (February 28, 1994); S. Michael Barnes, Vice President, and Lloyd A. Baggs, Trust Officer, Morgan Guaranty Trust Company of New York, to James Reilly, Vice President, DTC (February 24, 1994); R. May Lee, Assistant General Counsel, Public Securities Association, to James Reilly, Vice President, DTC (March 2, 1994); Jill M. Considine, President, New York Clearing House to James Reilly, Vice President, DTC (March 23, 1994).

[13] Letter from State Street Bank and Trust Co., *supra* note 12.

[14] Letter from Bankers Trust Co., *supra* note 12.

enhancements. DTC also has agreed to continue to employ its liquidity monitoring system which simulates double default scenarios every fifteen minutes beginning at 2 p.m. E.S.T.[15]

DTC will begin the expansion of its MMI programs with the institutional CDs programs. DTC will begin the pilot program with four bank issuers and will expand the pilot program over the net two months. Until DTC secures the additional $500 million line of credit, the pilot program will be limited to: (1) 120 CD programs, (2) A value not to exceed $20 billion on deposit with DTC, (3) A percentage of the total CD market on deposit at DTC not to exceed 5.7%, and (4) A daily average face amount of CD issuances not to exceed $1 billion.[16] DTC has agreed that if prior to securing the $500 million line of credit the addition of CDs according to the schedule increases simulated breaches of its liquidity resources (currently $760 million), DTC will slow down or stop the addition of CD programs after consultation with the regulators. DTC also has agreed that if subsequent to attaining the additional line of credit, simulations show breaches of DTC's new overall liquidity resources, due to the expansion of the MMI program to include different types of MMI instruments, DTC again will slow down or stop expansion of the program after consultation with the regulators.[17]

The Commission believes that the additional risk management controls to be implemented with the new and enhanced MMI programs in conjunction with the current SDFS system risk management controls should help further reduce the possibility that a double default scenario will exceed DTC's liquidity resources. In addition, the Commission believes the controlled expansion of the SDFS program to include additional types of MMIs will reduce the costs, inefficiencies, and risks associated with the clearance and settlement of physically transferred securities by providing the benefits of centralized, automated, book-entry clearance and settlement.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–DTC–93–12) be, and hereby is, approved on a temporary basis until April 30, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10474 Filed 5–2–94; 8:45 am]

BILLING CODE 8010–01–M

[15] Letter from Richard B. Nesson, DTC to Christine M. Cumming, Vice President, Domestic Banking Department, FRBNY (March 8, 1994).

[16] *Supra* note 11.

[17] *Supra* note 15.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–20247; File No. 812–8872]

IDS Life Insurance Company of New York, et al.

April 25, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: IDS Life Insurance Company of New York ("IDS Life of New York"), IDS Life of New York Accounts 4, 5, 6, 9, 10, and 11 ("Variable Accounts"), and IDS Financial Services Inc.

RELVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act granting exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Variable Accounts under a group, fixed/variable annuity contract and related certificates to be issued in connection with retirement plans.

FILING DATE: The application was filed on March 8, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on May 20, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants: Mary Ellyn Minenko, Counsel, IDS Life Insurance Company, IDS Tower 10, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: W. Thomas Conner, Attorney, or Michael V. Wible, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The 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. IDS Life of New York is a stock life insurance company organized under the laws of New York and is a wholly owned subsidiary of IDS Life Insurance Company ("IDS Life") of Minneapolis, Minnesota. IDS Life is a wholly owned subsidiary of IDS Financial Corporation, which, in turn, is a wholly owned subsidiary of the American Express Company. IDS Financial Services Inc. is the principal underwriter of the Variable Accounts and also is a subsidiary of IDS Financial Corporation.

2. Variable Accounts 4, 5, and 6 were established on November 12, 1981. Variable Account 9 was established on February 12, 1986. Variable Accounts 10 and 11 were established on October 8, 1991. All Variable Accounts were established as separate accounts under New York law to fund variable annuity contracts issued by IDS Life of New York. The Variable Accounts are registered together as a single unit investment trust under the 1940 Act.

3. IDS Life of New York proposes to issue and distribute a group deferred annuity contract ("Contract") that is designed primarily to fund retirement plans. The owners of the group Contracts are the employers or other organizations that sponsor the plans. Participation in the Contract will be accounted for separately by the issuance of certificates showing the participants' interests under the Contract. Purchase payments may be accumulated before retirement on a variable and/or fixed basis, and annuity payments will be received after retirement on a variable and/or fixed basis. A registration statement on Form N–4 has been filed with the Commission in connection with the Contracts.

4. The Contracts provide for allocation of purchase payments to the Variable Accounts or to a fixed account of IDS Life of New York. The Variable Accounts, in turn, will invest solely in

the shares of the IDS Life Retirement Annuity Mutual Funds ("Funds"). The Funds are registered with the Commission as diversified open-end management investment companies.

5. The Contracts and related certificates provide for certain charges. IDS Life of New York will make a charge against the certificate value for any premium taxes to the extent the taxes are payable.

6. IDS Life of New York will deduct an annual administrative charge of $30 from the value of each certificate. This annual administrative charge can not be increased and does not apply after retirement payments begin. The administrative charge represents reimbursement for only the actual administrative costs expected to be incurred over the life of the certificates.

7. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts and related certificates. A contingent deferred sales charge ("surrender charge") will be assessed on certain full or partial surrenders. A surrender charge applies if all or part of the certificate value is withdrawn within the first eleven certificate years. The surrender charge is 8 percent of the amount surrendered in the first through fourth certificate years, and then declines by 1 percent from 7 percent in the fifth certificate year to 1 percent in the eleventh certificate year. In no event will the aggregate surrender charges exceed 8.5 percent of purchase payments made to a certificate. The surrender charge can not be increased during the life of the Contracts and related certificates.

8. There is no surrender charge on amounts surrendered: After the eleventh certificate year, due to a participant's retirement under the plan on or after age 55; due to the death of the participant; or upon settlement of the certificate under an annuity payment plan.

9. IDS Life of New York will assess the Variable Accounts of a daily mortality and expense risk charge equal to 1 percent of the average daily net assets of the Variable Accounts on an annual basis. IDS Life of New York estimates that two-thirds of this charge is for assumption of the mortality risk and one-third is for the assumption of the expense risk. This charge cannot be increased during the life of the Contracts and does not apply after retirement payments begin.

10. IDS Life of New York will assume certain mortality and expense risks under the contracts. IDS Life of New York assumes certain mortality risks by its contractual obligation to continue to make retirement payments for the entire life of the annuitant under annuity obligations involving life contingencies. This obligation assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the retirement payments received under the Contracts and related certificates. This assurance relieves the annuitant from the risk of outliving the amounts accumulated for retirement. The payment option tables contained in the Contracts are based on the 1983 Individual Annuity Mortality Table. The use of these tables is guaranteed for the life of the Contracts and related certificates.

11. IDS Life of New York assumes additional mortality and certain expense risks under the Contracts and certificates by its contractual obligation to pay a death benefit in a lump sum (or in the form of an annuity payment plan) upon the death of a participant prior to the retirement date.

12. IDS Life of New York assumes an expense risk because the administrative charge may be insufficient to cover administrative expenses. These include the costs and expenses of processing purchase payments, retirement payments, surrenders, and transfers; furnishing confirmation notices and periodic reports; calculating mortality and expense risk charges; preparing voting materials and tax reports; updating registration statements; and actuarial and other expenses.

13. If the administrative charge and the mortality and expense risk charge are insufficient to cover the costs and expenses assumed, the loss will be borne by IDS Life of New York. Conversely, if the amount deducted proves more than sufficient, the excess will represent a profit to IDS Life of New York. As noted above, IDS Life of New York does not expect to profit from the administrative charge. However, IDS Life of New York does expect to profit from the mortality and expense risk charge. Any profit realized from this charge would be available to IDS Life of New York for, among other things, payment of distribution expenses.

Applicants' Legal Analysis and Conditions

1. Section 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales loads) are deposited with a trustee or custodian having the qualifications prescribed by section 26(a)(1) of the 1940 Act and held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except as a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

2. Applicants request an exemption from sections 26(a)(2)(c) and 27(c)(2) to the extent necessary to permit the issuance and sale of the Contracts and related certificates providing for the 1 percent mortality and expense risk charge. Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the 1940 Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that, for the following reasons, their exemptive requests meet the standards set out in section 6(c) and, therefore, an order should be granted.

3. Applicants represent that the level of the mortality and expense risk charge is within the range of industry practice for comparable variable annuity products. IDS Life of New York has reviewed publicly available information about other annuity products, taking into consideration such factors as current charge levels, charge guarantees, sales loads, surrender charges, availability of funds, investment options avaiable under annuity contracts, market sector and the availability of retirement plans. IDS Life of New York represents that it will maintain at its principal office, and make available upon request of the Commission or its staff, a memorandum setting forth its analysis, including its methodology and results.

4. Applicants acknowledge that the surrender charge described above may be insufficient to cover all costs relating to the distribution of the Contracts and certificates and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the distribution costs of the Contracts and related certificates.

5. Notwithstanding the foregoing, IDS Life of New York has concluded that there is a reasonable likelihood that the

proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Accounts and investors in the Contracts and related certificates. The basis for such conclusion is set forth in a memorandum that will be maintained by IDS Life of New York at its principal office and will be available to the Commission or its staff on request.

6. IDS Life of New York represents that the Variable Accounts will invest only in an underlying mutual fund that, in the event the fund should adopt any plan under Rule 12b–1 to finance distribution expenses, would have such a plan formulated and approved by a board of directors, a majority of the members of which are not interested persons of such fund within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10475 Filed 5–2–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended April 22, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49514.

Date Filed: April 19, 1994.

Parties: Members of the International Air Transport Association.

Subject: CAC/RESO/177 dated April 13, 1994; Expedited Reso 801r.

Proposed Effective Date: July 1, 1994.

Docket Number: 49515.

Date Filed: April 19, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC1 Telex Mail Vote 683; Excursion fares within South America.

Proposed Effective Date: May 1, 1994.

Docket Number: 49520.

Date Filed: April 21, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 681; Iran fare increase; Reso 003m—r-1; COMP Telex Mail Vote 682; Iranian rounding units; Reso 024d—r-2; Reso 033d—r-3.

Proposed Effective Date: June 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–10512 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 22, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49517.

Date filed: April 19, 1994.

Due Date for Answers, Conforming Applications, to Motion to Modify Scope: May 17, 1994.

Description: Application of United Parcel Service Co., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests amendment to its certificate of public convenience and necessity for Route 569 so as to add a segment between San Antonio, Texas and Monterrey, Mexico. UPS further requests route integration authority so as to be able to include stops at Guadalajara (a point UPS currently has authority to serve from San Antonio) on flights serving Monterrey.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–10511 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of FAR/JAR Harmonization Working Group for Helicopters.

SUMMARY: Notice is given of the establishment of a FAR/JAR Harmonization Working Group for Helicopters for the FAA Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on noise certification issues.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE–2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202)267–3577; FAX: (202)267–5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) establishment an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Helicopters will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the FAR/JAR Harmonization Working Group for Helicopters is charged with reviewing the applicable provisions of subparts A and H, and appendices H and J of the 14 CFR part 36 and harmonizing them with the corresponding applicable provisions of JAR 36.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are properly incorporated into JAR and FAR 36.

If the ARAC determines that a Notice of Proposed Rulemaking (NPRM), an Advisory Circular (AC), or both would be appropriated, those documents are to be submitted, in the format prescribed, to the FAA. The Working Group should make recommendations to the ARAC in the following manner.

Reports

(a) Recommend a work plan for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Giver a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for aircraft noise certification, a supporting economic and other required analysis, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The FAR/JAR Harmonization Working Group for Helicopters will be comprised of experts from those organizations having an interest in the tasks assigned. A working Group member need not necessarily be a respective of one of the organizations of the ARAC. Individuals who have expertise in the subject matter and wish to become a member of the Working Group should write the person listed under the caption, **FOR FURTHER INFORMATION CONTACT**, expressing that desire, describing their interest in the task, and the expertise they would bring to the working group. The request will be reviewed by the ARAC Assistant Chair for Noise Certification and the Chair of the Working Group, and the individual will be advised if the request can be granted.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Helicopters will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on April 25, 1994.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–10533 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes.

SUMMARY: Notice is given of the establishment of a FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes for the FAA Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on noise certification issues.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE–2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3577; FAX: (202) 267–5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes is charged with reviewing the applicable provisions of subparts A, B, C, and D, and appendices A, B, and C of the 14 CFR part 36 and harmonizing them with the corresponding applicable provision of JAR 36.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are properly incorporated in JAR and FAR 36.

If the ARAC determines that a Notice of Proposed Rulemaking (NPRM), an Advisory Circular (AC), or both would be appropriate, those documents are to be submitted, in the format prescribed, to the FAA. The Working Group should make recommendations to the ARAC in the following manner.

Reports

(a) Recommend a work plan for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for aircraft noise certification, a supporting economic and other required analyses, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the ARAC. Individuals who have expertise in the subject matter and wish to become a member of the Working Group should write the person listed under the caption, **FOR FURTHER INFORMATION CONTACT**, expressing that desire, describing their interest in the task, and the expertise they would bring to the working group. The request will be reviewed by the ARAC Assistant Chair

for Noise Certification and the Chair of the Working Group, and the individual will be advised if the request can be granted.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on April 25, 1994.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–10575 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes.

SUMMARY: Notice is given of the establishment of a FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes for the FAA Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on noise certification issues.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE–2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3577; FAX: (202) 267–5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes is charged with reviewing the applicable provisions of subparts A and F, and appendices F and G of the 14 CFR part 36 and harmonizing them with the corresponding applicable provisions of JAR 36.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are properly incorporated into JAR and FAR 36.

If the ARAC determines that Notice of Proposed Rulemaking (NPRM), an Advisory Circular (AC), or both would be appropriate, those documents are to be submitted, in the format prescribed, to the FAA. The Working Group should make recommendations to the ARAC in the following manner.

Reports

(a) Recommend a work plan for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for aircraft noise certification, a supporting economic and other required analyses, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the ARAC. Individuals who have expertise in the subject matter and wish to become a member of the Working Group should write the person listed under the caption, **FOR FURTHER INFORMATION CONTACT**, expressing that desire, describing their interest in the task, and the expertise they would bring to the working group. The request will be reviewed by the ARAC Assistant Chair for Noise Certification and the Chair of the Working Group, and the individual will be advised if the request can be granted.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on April 25, 1994.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–10574 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on May 16, 1994, at 1 p.m.

ADDRESSES: The meeting will be held at 500 E Street, SW., suite 920, International Trade Commission Building, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Myres, Assistant Executive Director for General Aviation Operations, Flight Standards Service

(AFS–850), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8150; FAX: (202) 267–5230.

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 discuss general aviation operations issues. This meeting will be held on May 16, 1994, at 1 p.m., at the AOPA offices on 500 E Street, SW., suite 920, International Trade Commission Building, Washington, DC 20591. The agenda for this meeting will include a vote to recommend the publication of the committee's advisory circular concerning operations over the high seas and a progress report from the part 103 (Ultralight Vehicles) Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, 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. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Ron Myres,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–10536 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974, as Amended; System of Record

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of alteration of Privacy Act System of Records.

SUMMARY: The Treasury Department gives notice of proposed alteration to the system of records entitled Public Transportation Incentive Program Records—Treasury/DO .203, which is subject to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988. The system notice was last published in its entirety on September 21, 1992, at 57 FR 43485.

DATES: Comments must be received no later than June 2, 1994. The alteration to the system of records will be effective June 13, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to Office of Inspector General, Office of Policy, Planning and Programs, Room 7210, 1201 Constitution Avenue, NW., Washington, DC 20220. Comments will be made available for inspection and copying upon request at the Department of the Treasury library, Room 5010, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Ann Marie Gould, Management Analyst, Office of Inspector General, Office of Policy, Planning and Programs, (202) 927–5210.

SUPPLEMENTARY INFORMATION: The purpose of the alteration is to bring the existing Privacy Act notice into compliance with the requirements of the Privacy Act, as amended. The alteration increases the number of locations at which records of the public transportation incentive program are kept, identifies the system manager responsible for the records of the Office of Inspector General, and discloses the address for notification and access to the records. The Office of Inspector General will be maintaining records pertaining to its employees who have applied for, and those who have been accepted as participants in, the Public Transportation Incentive Program (PTI Program). The records ensure that only one fare incentive per month is available to eligible employees. The records are also used to generate reports on changes in the participants' commuting methods.

The specific changes to the record system being altered are set forth below:

Treasury/DO .203

SYSTEM NAME:

Public Transportation Incentive Program Records—Treasury/DO.

SYSTEM LOCATION:

* * * * *

(5) Office of Inspector General, Office of Assistant Inspector General for Policy, Planning and Resources, Office of Management Resources, Room 7137, 1201 Constitution Avenue, NW., Washington, DC 20220; Office of Inspector General, Regional Inspector General for Investigations, Northeastern Regional Office, 1255 22nd Street, NW., Washington, DC 20037; Office of Inspector General, Field Office Manager (Audit), Northeastern Region, #6 World Trade Center, room 745, New York, NY 10048; Office of Inspector General, Regional Inspector General for Investigations, Central Region, Suite 520, 55 West Monroe Street, Chicago, IL 60603; Office of Inspector General, Regional Inspector General for Audit, Northeastern Regional Office, Room 330, 408 Atlantic Avenue, Boston, MA 02110; Office of Inspector General, Regional Inspector General for Audit, Central Region, Suite 510, 55 West Monroe Street, Chicago, IL 60603; Office of Inspector General, Regional Inspector General for Audit, Capital Region Office, Suite 100, 1255 22nd Street, NW., Washington, DC 20037; Office of Inspector General, Regional Inspector General for Audit, Western Region, Room 220, 211 Main Street, San Francisco, CA 94105.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

(5) Office of Inspector General: Assistant Inspector General for Policy, Planning and Resources, Room 7119, 1201 Constitution Avenue, NW., Washington, DC 20220.

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NOTIFICATION PROCEDURE:

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(5) Office of Inspector General: Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, Room 1054 MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

* * * * *

Dated: April 26, 1994.

G. Dale Seward,

Acting Deputy Assistant Secretary (Administration).

[FR Doc. 94–10545 Filed 5–2–94; 8:45 am]

BILLING CODE 4810–31–M

Internal Revenue Service

[Delegation Order No. 228 (Rev. 2)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order authorizes the redelegation of authority to abate interest in amounts under $2,500 to first line managers.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Bob Curran, EX:E:D, room 2010, 1111 Constitution Avenue, NW, Washington, DC 20224, telephone (202) 622–4373 (not a toll-free number).

Order No. 228 (Rev. 2)
Effective date: May 3, 1994.
Authority to Abate Interest Due to IRS Error or Delay

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order No. 150–10, the following officials are authorized to abate assessed and unassessed interest due to IRS error or delay under section 6404(e)(1) of the Internal Revenue Code (Code): chiefs of appeals, division chiefs for Examination, Collection, Employee Plans and Exempt Organizations, Compliance, and Tax Accounts.

This authority may be redelegated to associate chiefs of appeals, district and service center branch chiefs (and equivalent positions) in the above divisions, and division chiefs in the Austin Compliance Center and may be redelegated to first line managers for abatements under $2,500.

In any instance in which a Code section 6404(e)(1) claim for interest abatement is immediately disallowable by statute, the assigned interest abatement coordinator is delegated authority to deny the claim. This authority may not be redelegated.

To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

This order supersedes Delegation Order No. 228 (Rev. 1) effective October 4, 1990.

Dated: April 19, 1994.

Approved:

Phil Brand,

Chief Compliance Officer.

[FR Doc. 94–10469 Filed 5–2–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

American Studies Fellowships for Scholars From Eastern Europe and the Newly Independent States

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: Prospective grantee will provide approximately twelve research fellowships for scholars from Eastern Europe and the Newly Independent States (NIS) to pursue research in American studies in U.S. universities and research institutions in the academic year 1995–1996. Participants should be teaching at the university level in humanities and social science fields of American studies, broadly defined, such as American history, law, demography, literature, sociology, or political science. Grantee is responsible for publicizing the program abroad, selecting the participants, and placing them in appropriate U.S. institutions. Grantee is also responsible for all administrative arrangements, for program evaluation, and for establishing procedures for follow-up after participants return to their home institutions.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time, on Friday, June 10, 1994. Faxed documents will not be accepted, nor will documents postmarked on June 10, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that the proposals are received by the above deadline. Grants should begin on or about August 15, 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: E/AA–94–3, Grants Management Staff, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Gretchen Christison at U.S. Information Agency, 301 4th St. SW., Study of the U.S. Branch, E/AAS room 256, (202) 619–4557 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity of American political, social, and cultural life.

Overview

The program seeks to increase the quality and amount of teaching in Eastern European and NIS countries about the United States through guided curricular research. The program will provide fellowships for approximately twelve qualified Eastern European and NIS scholars to update and enhance their knowledge of their American studies fields.

Guidelines

The program is designed for Eastern European and NIS scholars who are teaching at the university level in humanities and social science fields of American studies, broadly defined, such as American history, law, demography, literature, sociology, or political science. Participants should be chosen through a public, open competition which includes U.S. professional peer review for the final selection of participants. Selections should be made and announced in reasonable time for applicants to make plans for absence from their countries and to undertake departure formalities. USIA (E/AAS) and all posts in countries from which scholars are selected should be informed of the final selection. Proposals should demonstrate extensive contacts with and knowledge of Eastern European and NIS universities to ensure that the best possible candidates are recruited and selected.

Fellowships should be six to twelve months in duration. Family members may accompany recipients for part of the grant period, but not for a period exceeding six months. The fellowships provide for all costs of the recipients and accompanying dependents, with due account being taken of any continuing university salary transferable into U.S. dollars that recipients might be receiving.

Grantee will arrange appropriate placement in U.S. universities and research institutions for participants. To the extent possible, waivers of tuition fees should be procured.

Grantee will make all administrative arrangements, including travel, visa, disbursement of grant funds, insurance and related matters. The grantee should maintain contact with the participants and liaison with university hosts during the course of the grant to offer assistance with participant administrative concerns such as housing, travel within the U.S., or emergency matters. Grantee will develop evaluation instruments and procedures to determine the participants' scholarly activity during the course of the grant, the adequacy of the stipend, and the adequacy of grantee and university administrative arrangements. Participants should also report on their general impressions of the U.S. and how they intend to apply the materials or new information gained during the fellowship in their professional work in their own countries. The grantee will establish procedures for follow-up communication with grantees to ascertain the application of their fellowship activity to their professional responsibilities, such as new publications, workshop leadership, new positions, or new course offerings stemming from their fellowship experience.

Proposed Budget

Applicants must submit a comprehensive line item budget for which specific details are available in the application packet. A USIA-funded

budget will not exceed $150,000. Grantee organization is expected to provide significant cost sharing.

Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission and program goals.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate appropriate content and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Institution's track record/ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's office of Contracts (M/KG). The Agency will consider past performance grantees and the demonstrated potential of new applicants.

7. *Follow-on activities:* Proposals should provide a plan for continued cost-effective follow-on activity which insures that USIA supported programs are not isolated venues.

8. *Evaluation plan:* Proposals should provide a plan for evaluation by the grantee institution.

9. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: April 27, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–10586 Filed 5–2–94; 8:45 am]

BILLING CODE 8320–01–M

Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities: Exchange Programs To Promote the Strengthening of the Rule of Law in Africa Through Judicial and Public Defender Training

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchange (E/P) of the Bureau of Educational and Cultural Affairs announces a competitive grants program for nonprofit organizations to develop initiative grant projects on the theme of rule of law for audiences in selected African countries. Two separate projects are detailed below for judicial training and public defender training. USIA is particularly seeking projects linking American legal institutions and specialists with partners in Africa. Interested organizations are welcome to submit proposals for one or both projects; if submitting for both, each project should have a separate proposal.

BACKGROUND: Many African countries are striving to create and institutionalize more democratic polities by establishing multi-party systems, writing new constitutions, holding free elections, creating new legal systems and making a variety of political and economic reforms. The highest priority of U.S. Missions in Africa is supporting democratization, of which one crucial aspect is the growth of strong legal systems and legal institutions firmly committed to the rule of law.

The two projects described in this announcement are intended to engage American legal professionals, particularly judges, public defenders and training institutions, in working with African counterparts to enhance the professionalism and efficiency of the judiciary and to create or greatly expand public defender and legal aid services in the target countries. The projects should also promote long-term linkages between American and African institutions.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–24–29. Please refer to the title given above and this number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC, time on June 24, 1994. Faxed documents will not be accepted, nor will documents postmarked June 24, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline. Grant activity should begin after October 1.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: E/P–94–29, Office of Grants Management (E/XE), 301 Fourth

Street, SW.—room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchange (E/P), room 224, USIA, 301 Fourth Street, SW., Washington, DC 20547, tel. (202) 619–5319, fax (202) 619–4350, to request detailed application packages which include all necessary forms and guidelines for preparing proposals, including specific budget preparation.

SUPPLEMENTARY INFORMATION:

African Judicial Training Exchange

USIA will accept proposals designed to develop a two-way exchange program to support independent judiciaries and enhance the performance of judges and the administrative capacity of court systems in Malawi, Zambia, Tanzania, and Uganda. The project should encourage long-term relationships between African judicial systems and U.S. counterparts. USIA will consider providing funding up to approximately $250,000 of which at least $30,000 must be devoted to developing or purchasing specialized support materials for participating African institutions. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Project Themes and Objectives

1. Introduce African judges to the American legal system and the principles upon which it is based, particularly the rule of law and the independence of the judiciary;
2. Provide a formal training component for the dual purpose of benefiting the individual visiting judges and enabling them to develop improved in-service training programs for colleagues in their home countries;
3. Discuss constitutional issues including due process, rules of evidence, equal protection and criminal procedure;
4. Demonstrate various U.S. models for enhancing judicial efficiency, including caseload management and trial conduct techniques and alternative dispute resolution;
5. Promote long-term linkages between African and U.S. court systems to foster dialogue on issues of common concern and to enhance the institutional capabilities of the African judiciaries;
6. Develop and/or purchase specialized support materials for participating institutions in each of the target countries. Such materials might include but are not limited to legal reference and research books, training videos, textbooks or other instructional materials. Grant monies of $30,000 must be used for this purpose.

Participants

The African participants will be judges selected through coordination among U.S. Information Service personnel in the target countries, USIA, and the African partner institutions. All participants must have strong English-language skills.

The U.S. consultants who will travel to Africa will be selected by the grantee institution in consultation with USIA. The grantee should provide the names of American participants and brief, relevant biographical data. American participants should be selected on the basis of their experience and expertise in the thematic field. Experience in communicating to foreign audiences and general knowledge of Africa and of the countries involved in the project are highly desirable.

Recommended Program Structure

The following suggestions should not serve as a blueprint, but as a stimulus for the development of an original program design.

Phase One: The program could begin with a 3–4 week U.S. study tour for a group of approximately 10–12 judges representing the target countries. The study tour should allow the African jurists to visit several locations in the U.S. and should include cultural activities as well as the following professional components:

—A series of field visits to familiarize the visiting jurists with the operations of courts and other legal institutions such as bar associations, law schools, and legal training organizations;
—An intensive visit of several days duration to a state court system which is of a scale similar to the national courts of the target countries;
—Formal judicial training to address the program themes in both the constitutional and court administration areas;
—A concluding session to evaluate the study tour, make plans for the follow-up visit of American specialists to Africa, and discuss needs for the specialized support materials to be provided with grant funds.

Phase Two: One or more American judges, judicial training specialists and/or experienced court administrators would visit each of the target countries for consultations, workshops or other activities with local counterparts. Ideally, the Americans would work closely with Africans who participated in Phase One to build on that earlier phase. For example, they might collaborate to train and to plan professional development programs for many others. One approach might be for the Americans and their Phase One African partners to conduct week-long workshops for 10–20 African judges on selected constitutional or court management issues; another approach might be to convene 10–20 African judges to begin designing a country-specific professional development program of coursework and practical experience and technical progress. In planning these follow-up activities, the grantee should work closely with the African participants in the U.S. study tour and with U.S. Information Service personnel in Africa to ensure that the activities are tailored to meet the needs of the African countries.

Phase Three: With careful planning and cost sharing, there may be enough money to conduct a third phase, in either the U.S. or Africa, which would extend the work of the first two phases.

African Public Defender and Legal Aid Training Exchange

USIA will accept proposals for a two-way exchange project to foster the development of public defender and legal aid services in Ethiopia, Tanzania, Uganda and Zambia, and to promote linkages between legal professionals in the U.S. and these countries for this purpose. USIA will consider providing funding up to approximately $200,000, of which $10,000 must be devoted to developing or purchasing specialized support materials for participating African institutions. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Project Objectives

1. Introduce African participants to the U.S. legal system and the principles on which it is founded, particularly the rule of law and the power of courts to overrule actions of the Executive and Legislative branches, and compare the U.S. legal system with those of the target countries;
2. Examine the organizational structure and administrative operation of public defender and legal aid organizations in the U.S., and explore how U.S. models might be adapted for use in the target countries;
3. Explore techniques of alternative dispute resolution and sentencing alternatives such as probation and community service;
4. Provide a formal training component for the dual purpose of benefiting the individual visiting public defenders and legal aid attorneys, and of

enabling them to develop or enhance training programs for colleagues in their home countries;

5. Discuss the primary constitutional issues affecting criminal cases, including due process, equal protection, rules of evidence, and criminal procedure;

6. Explore strategies and modalities for challenging governmental actions, including test cases and class action lawsuits;

7. Promote long-term linkages between African public defenders and legal aid organizations and their counterparts in the U.S. in order to foster dialogue on issues of common concern and to enhance the institutional capabilities of the African organizations;

8. Develop and/or purchase specialized support materials for participating institutions in each of the target countries. Such materials might include but are not limited to legal reference and research books, training videos, textbooks or other instructional materials. Grant monies of $10,000 must be used for this purpose.

Participants

The African participants will be attorneys active in public defense work and/or legal aid in their countries, or seeking to establish such services. Participants will be nominated through coordination among U.S. Information Service personnel in the target countries, USIA, and the African partner institutions. All participants must have strong English-language skills.

The U.S. consultants who will travel to Africa will be selected by the grantee institution in consultation with USIA. The grantee should provide the names of American participants and brief, relevant biographical data. American participants should be selected on the basis of their experience and expertise in the thematic field. Experience in communicating to foreign audiences and general knowledge of Africa and of the countries involved in the project are highly desirable.

Program Structure

The following suggestions should not serve as a blueprint, but as a stimulus for the development of an original program design.

Phase One: The program could begin with a 3–4 week U.S. study tour for approximately 12 attorneys representing public defense and legal aid services in the target countries. The study tour should allow the African lawyers to visit several regions of the U.S. and should include cultural activities as well as the following professional components:

—An initial orientation to the U.S. legal system and the constitution on which it is founded;

—A series of field visits to familiarize the visiting lawyers with the operations of courts and other legal institutions such as bar associations, law schools, and legal training facilities;

—Field visits and consultations with NGOs wholly or partly dedicated to legal aid, including organizations focused on civil rights, consumer protection and public interest issues such as the environment;

—Intensive visits of several days duration to public defender or legal aid organizations representing at least two different organizational approaches to provision of legal services. Participants might be divided into two or more small groups for this portion of the program. For example, those focused on criminal defense might spend a few days with a large-city public defender's office and then travel to a smaller community which provides public defenders through a system of appointing private-practice attorneys. Those participants interested primarily in legal aid in civil cases might visit a single city to observe the various organizations providing legal aid such as legal aid societies, NGOs devoted to civil rights or public interest practice, and law school clinical programs;

—Formal training in such areas as trial advocacy skills, for the benefit of the visiting attorneys and to demonstrate training techniques they might establish for colleagues in their home countries;

—A concluding session to evaluate the study tour, make plans for the follow-up visit of American specialists to Africa, develop a framework for institutional linkages between African public defender/legal aid organizations and American counterpart institutions, and discuss needs for the specialized support materials to be provided with grant funds.

Phase Two: One or more American attorneys specializing in criminal defense or legal aid services would visit each of the target countries for consultations, workshops or other activities with local counterparts. In planning these follow-up activities, the grantee should work closely with the African participants in the U.S. study tour and with U.S. Information Service personnel in Africa to ensure that the activities are tailored to meet the needs of the African countries. Ideally, the Americans and their African partners would use this phase to involve many more African lawyers and to design or launch projects which continue after this phase.

Additional Guidelines and Restrictions

USIA is interested in supporting programs which will lay the groundwork for new and continuing relationships between American and African legal institutions. Proposals which are overly ambitious and those which are very general will not be competitive. Therefore, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well.

Bureau grants are not given to support projects whose focus is limited to technical issues, or for research projects, developing publications for dissemination in the United States, individual student exchanges, film festivals, or exhibits. Neither does the Office of Citizen Exchanges provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register** and may have different application requirements as well as different objectives.

Programmatic Considerations

Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life.

USIA will give priority to proposals from U.S. organizations with relevant institutional contacts in the countries involved in the projects described above. Partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing and transportation, interpreting, translating and other local currency costs. These institutions are also encouraged to assist with the organization of various program activities.

The grantee will be responsible for most arrangements associated with this program. These include selecting speakers, themes, and topics for discussion; organizing a coherent progression of activities; making all arrangements associated with the African follow-up portion of the program; providing international and domestic travel arrangements for all participants; making lodging and local transportation arrangements for visitors; orienting and debriefing participants; preparing any necessary support

materials; and working with host institutions and individuals to achieve maximum program effectiveness.

At the start of the U.S. portion of a program, the grantee should conduct an orientation session for the visiting delegation which addresses substantive details of the program as well as geographic, historical, and cross-cultural factors which they should consider to enhance program success.

At the conclusion of each phase, the grantee institution will conduct participant evaluations and submit to E/P a progress report. Upon conclusion of the program the grantee will be required to submit a report to E/P summarizing results of the entire program including project outcomes, anticipated follow-on activities, and any resulting institutional linkages.

Program monitoring and oversight will be provided by appropriate USIA elements. Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a nonprofit grantee institution which receives funds from corporate or other cosponsors should then use those monies to provide food, lodging, and pocket money for the participants. In no case could the intern receive a wage or be hired by the sponsoring institution. Internships should also have an American studies/values orientation component at the beginning of the exchange program in the U.S. Grantee institutions should try to maximize cost-sharing in all facets of their program design, and to stimulate U.S. private sector (foundation and corporate) support.

USIS officers in participating countries will facilitate the issuance of visas and other program-related materials.

Funding

Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to the review criteria delineated below.

While applicants must provide an all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. *Per diem:* For the U.S. program, organizations have the option of using a flat $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities. NOTE: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities overseas, the Standard Government Travel Regulations per diem rates must be used.

3. *Book and cultural allowance:* Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

4. *Consultants:* May be used to provide specialized expertise or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

5. *Room rental:* generally should not exceed $250 per day.

6. *Materials development:* Proposals may contain costs to purchase, develop and translate materials for participants, in addition to the specialized support materials to be provided to African institutions. USIA reserves the rights to these materials for future use.

7. *One working meal per project:* Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

8. *Return travel allowance:* $70 for each participant which is to be used for incidental expenditures incurred during international travel.

9. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E., "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please note: All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the appropriate geographic area offices and the budget and contract offices. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate

Director for Educational and Cultural Affairs.

Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of program idea:* Proposals should exhibit originality, substance, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Institutional reputation and ability:* Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG) will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

3. *Project personnel:* The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be relevant to the specific proposal and no longer than two pages each.

4. *Program planning:* A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic expertise:* Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

6. *Cross-cultural sensitivity and area expertise:* Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. *Ability to achieve program objectives:* Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. *Multiplier effect:* Proposed programs should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-effectiveness:* Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

11. *Follow-on activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. *Project evaluation:* Proposals should include a plan to evaluate the activity's success. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 5, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: April 22, 1994.

Barry Fulton,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–10587 Filed 5–2–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 84
Tuesday, May 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:30 a.m., Monday, May 9, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10703 Filed 4–49–94; 2:54 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, May 10, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open

MATTERS TO BE CONSIDERED:

6182A Aviation Accident Report: Uncontrolled Collision with Terrain, American International Airways Flight 808, Douglas DC–8–61, U.S. Naval Air Station, Guantanamo Bay, Cuba, August 18, 1993

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: April 29, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–10641 Filed 4–29–94; 10:54 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 2, 9, 16, and 23, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 2

Thursday, May 5

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 9—Tentative

Tuesday, May 10

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 16—Tentative

Wednesday, May 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, May 20

1:00 p.m.
Briefing by Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: George Sege, 301–492–3904)

Week of May 23—Tentative

Wednesday, May 25

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, May 26

3:00 p.m.
Briefing on Status of Thermo-Lag (Public Meeting) (Contact: Ashok Thadani, 301–504–1274)

ADDITIONAL INFORMATION: By a 4–0 vote on April 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing on Proposed Changes to NRC's Program for Protecting Allegers Against Retaliation" (Public Meeting) be held on April 26, and on less than one week's notice to the public.

By a 4–0 vote on April 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107 of the Commission's rules that "Report on International Nuclear Safety Meeting" (Closed—Ex. 1) be held on April 26, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: April 29, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–10723 Filed 4–29–94; 2:56 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
May 3, 1994

Part II

Department of Education

Direct Grant Programs and Fellowship Programs; Notice

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice of direct grant programs and fellowship programs under which the Secretary is making new awards for fiscal year 1994.

SUMMARY: The Secretary updates the list of the Department's direct grant programs and fellowship programs under which the Secretary is making new awards for fiscal year (FY) 1994 and estimates the deadline dates for the transmittal of applications for those programs for which application notices have not yet been published. The Secretary also revises the list of State Single Points of Contact (SPOCs) for programs subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs). The notice is intended to help potential applicants in planning for the remainder of this fiscal year.

DATES: The actual or estimated deadline dates for transmitting applications under these programs are listed in column four of the chart contained in this notice. If a program has yet to publish an application notice, an estimated date is listed in this notice, and the actual deadline date will appear in the application notice to be published in the **Federal Register**.

For previously announced programs that are subject to Executive Order 12372, the deadline dates for the transmittal of State Process Recommendations by SPOCs and comments by other interested parties are listed in the application notices for those programs (see column three of the chart for the respective publication dates of—and **Federal Register** volume and page references to—those notices). The deadline date will also appear in the respective application notices for those programs yet to be announced (see column three).

The date on which applications will be available for any given program is in the application notice for that program.

ADDRESSES: The address and telephone number for obtaining applications for, or further information about, an individual program are in the application notice for that program.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

The address for transmitting recommendations and comments under Executive Order 12372 is in the appendix to this notice. The appendix also contains the addresses of individual SPOCs.

SUPPLEMENTARY INFORMATION: On September 24, 1993, the Secretary published in the **Federal Register** (58 FR 50138) the Department's annual combined application notice (CAN). That notice listed almost all of the direct grant and fellowship programs under which the Secretary planned to make new awards in FY 1994 and included the application notices for many of those programs. The list included some programs for which application notices had not yet been published.

Since publication of the CAN, additional application notices have been published. In addition, on February 11, 1994, the Secretary published in the **Federal Register** (59 FR 6826) a notice extending application deadline dates for certain programs. The Secretary took this action to assist potential applicants who may have been adversely affected by severe weather conditions in various parts of the Nation or by the earthquake in California. Also, since publication of the CAN, some new programs have been added, and some other programs have been withdrawn or replaced. The Secretary therefore determined that publication of an update would be useful to the educational community.

This notice, therefore, lists all FY 1994 programs previously announced in the **Federal Register**, including those for which the deadline dates have already passed, as well as FY 1994 programs to be announced at a later date. As is the case with the CAN, this notice is designed to assist potential applicants in planning projects and activities. However, to expedite publication of this update, the Secretary has decided not to include any individual application notices. Application notices are published separately in the **Federal Register**. If additional competitions are carried out in FY 1994 because of events not known at this time, the Secretary will announce those competitions in future issues of the **Federal Register**.

As an appendix to the CAN of September 24, 1993, the Secretary published a list of State Single Points of Contact (SPOCs) for programs subject to Executive Order 12372 and the regulations in 34 CFR part 79. Since publication of that list, the names or addresses of SPOCs in a few States have changed. Therefore, as an appendix to this update, the Secretary is publishing a revised listing of SPOCs.

Organization of Notice

The chart lists all direct grant programs and certain fellowship programs under which the Secretary is making new awards in FY 1994. The listings are organized under the following principal program offices of the Department:

Office of Bilingual Education and Minority Languages Affairs.

Office of Educational Research and Improvement.

Office of Elementary and Secondary Education.

Office of Postsecondary Education.

Office of Special Education and Rehabilitative Services.

Office of Vocational and Adult Education.

The listing for each principal office includes application notices already published and those to be published at a later date. The latter are referenced with estimated dates (est.) in columns three and four of the chart. The programs are listed in order of their Catalog of Federal Domestic Assistance (CFDA) number irrespective of category. An asterisk (*) preceding a CFDA number indicates a program announced or listed since publication of the CAN and not included or referenced in that earlier combined notice.

The listing for each office contains the following information:

The CFDA number of each program.

The name of that program.

A reference to the application notice; that is, either (1) the publication date of the application notice, with a reference to the volume and page number of the **Federal Register** in which the announcement appeared, or (2) an estimated date for publication of the application notice.

The deadline date or estimated deadline date for the transmission of applications.

Programs To Be Announced at a Future Date

For FY 1994 a number of programs will be governed by new regulations or funding priorities. This notice references these types of programs with an asterisk following the respective estimated date (est.*) in column three of the chart. For further information regarding six of these programs, readers are referred to the following notices of proposed rulemaking and notices of proposed priority that have been published in the **Federal Register**:

Strengthening Institutions Program—Notice of Proposed Rulemaking—58 FR 48478 (9/16/93)

Dwight D. Eisenhower National Program for Mathematics and Science Education—(1) Model Professional Development in Use of Technology for Mathematics and Science Instruction; (2) Model Projects in Encouraging Female and Minority Students in Mathematics and Science; and Model Science-Based Professional Development Projects in Environmental Education—Notices of Proposed Priorities—58 FR 60007 (11/12/93); 59 FR 9610 (2/28/94)

Training in Early Childhood Education and Violence Counseling—Notice of Proposed Priorities for Fiscal Year 1994—59 FR 6249 (2/10/94)

Fund for Innovation in Education (FIE): Innovation in Education Program—Partnerships for Standard-Based Professional Development of K–12 Educators—Notice of Proposed Priority for Fiscal Years 1994 and 1995—59 FR 10258 (3/3/94)

National Early Intervention Scholarship and Partnership Program—Notice of Proposed Rulemaking—59 FR 10926 (3/8/94)

National Institute on Disability and Rehabilitation Research—Knowledge Dissemination and Utilization Program—Notice of Proposed Funding Priorities for Fiscal Years 1994–1995—59 FR 16486 (4/6/94)

Institute for International Public Policy—Notice of Proposed Definitions and Proposed Priority for Fiscal Year 1994—59 FR 16799 (4/8/94)

National Education Goals

On March 31, 1994, the President signed into law the Goals 2000: Educate America Act (Pub. L. 103–227). The Act enunciates eight National Education Goals for the year 2000:

Goal 1: All children in America will start school ready to learn.

Goal 2: The high school graduation rate will increase to at least 90 percent.

Goal 3: All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.

Goal 4: The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.

Goal 5: United States students will be first in the world in mathematics and science achievement.

Goal 6: Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Goal 7: Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.

Goal 8: Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

For competitions that are still open for FY 1994, the Secretary encourages applicants under these programs to consider the eight National Education Goals in developing their applications.

Applicability of Section 5301 of the Anti-Drug Abuse Act of 1988

A number of programs listed in the chart provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690; 21 U.S.C. 862) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction. This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee.

Any persons determined to be ineligible for Federal benefits under the provisions of section 5301 are listed in the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs."

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs listed in the chart make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

PART I—CHART 1—LIST OF APPLICATION NOTICES

CFDA No.	Name of program	Application notice	Application deadline date
	Office of Bilingual Education and Minority Languages Affairs		
84.003A	Transitional Bilingual Education Program	7/28/93 (58 FR 40559)	11/19/93
84.003C	Developmental Bilingual Education Program	7/28/93 (58 FR 40554)	11/19/93
84.003E	Special Alternative Instructional Program	7/28/93 (58 FR 40557)	11/19/93
84.003G	Academic Excellence Program	7/28/93 (58 FR 40554); 2/11/94 (59 FR 6826)	2/25/94
84.003J	Family English Literacy Program.	7/28/93 (58 FR 40556)	11/12/93
84.003L	Special Populations Program	7/28/93 (58 FR 40559)	10/20/93
84.162	Emergency Immigrant Education Program	9/24/93 (58 FR 50138)	5/13/94
84.195R	Educational Personnel Training Program	7/28/93 (58 FR 40555); 2/11/94 (59 FR 6826)	2/25/94
84.195T	Fellowship Program	7/28/93 (58 FR 40556)	1/12/94
84.195V	Short-Term Training Program.	7/28/93 (58 FR 40557)	11/5/93

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
	Office of Educational Research and Improvement		
	Library Programs		
84.036A	Library Education and Human Resource Development—Institutes.	9/10/93 (58 FR 47800)	11/30/93
84.036B	Library Education and Human Resource Development—Fellowships.	9/10/93 (58 FR 47800)	11/30/93
*84.039	Library Research and Demonstration: Online and Dial-in Access to a Statewide Multitype Library Data-base Demonstration Project.	2/18/94 (59 FR 8360)	4/28/94
84.091A	Improving Access to Research Library Resources Program.	7/30/93 (58 FR 40992)	10/12/93 (1) 12/9/93 (2)
84.163A	Library Services to Indian Tribes and Hawaiian Natives—Basic Grants.	7/30/93 (58 FR 40992)	10/15/93
84.163B	Library Services to Indian Tribes and Hawaiian Natives—Special Projects.	7/30/93 (58 FR 40992)	4/4/94
84.167A	Library Literacy Program.	7/30/93 (58 FR 40992)	11/19/93
84.197AD	College Library Technology and Cooperation Grants Program.	7/30/93 (58 FR 40992)	12/13/93
84.239A	Foreign Language Materials Acquisition Program	7/30/93 (58 FR 40992); 12/16/93 (58 FR 65703)	Cancelled
	Fund for the Improvement and Reform of Schools and Teaching		
	(First)		
84.211B	FIRST—Schools and Teachers Program—School-Level Projects.	11/1/93 (58 FR 58478)	1/7/94
84.215	Secretary's Fund for Innovation in Education (FIE).		
84.215A	FIE—Innovation in Education Program (General Competition).	Withdrawn.	
84.215B	FIE—Comprehensive School Health Education Program.	9/24/93 (58 FR 50138); 12/10/93 (58 FR 64933)	1/21/94
84.215C	FIE—Technology Education Program	2/11/94 (59 FR 6860); 3/2/94 (59 FR 9975)	4/29/94
*84.215E	FIE—Innovation in Education Program—State Content Standards for English, History, Geography, Civics, Foreign Languages, and the Arts Competition.	4/11/94 (59 FR 17184)	6/10/94
84.215	HFIE—Innovation in Education Program—Field Testing and Demonstrations of New or Improved Assessments of K–12 Student Performance.	Withdrawn.	
84.215J	FIE—Innovation in Education Program—Partnerships for Standards-Based Professional Development of K–12 Educators.	5/3/94	7/1/94 (est.).
	Office of Research		
84.117D	National Center for the Study of Children and Youth Placed At-Risk of Educational Failure.	3/8/94 (59 FR 10924)	6/8/94
84.117E	Educational Research Grant Program—Field-Initiated Studies.	8/31/93 (58 FR 45883)	12/10/93
84.117J	Office of Educational Research and Improvement Fellows Program.	9/24/93 (58 FR 50138)	12/10/93
	Programs for the Improvement of Practice		
84.073A	National Diffusion Network Program—New Developer Demonstrator Projects.	9/24/93 (58 FR 50138)	4/8/94
84.073C	National Diffusion Network Program—New State Facilitator Project (for Palau Only).	9/24/93 (FR 50138)	3/8/94
*84.168T	Dwight D. Eisenhower National Program for Mathematics and Science Education—(1) Model Professional Development in Use of Technology for Mathematics and Science Instruction; (2) Model Projects in Encouraging Female and Minority Students in Mathematics and Science; and Model Science-Based Professional Development Projects in Environmental Education.	5/3/94	7/1/94 (est.)
84.203A	Star Schools Program—Distance Education Projects.	2/23/94 (59 FR 8766); 3/11/94 (59 FR 11659)	4/18/94
*84.203B	Star Schools Program—Special Statewide Project	2/23/94 (59 FR 8766); 3/11/94 (59 FR 11659)	4/18/94

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.203C	Star Schools Program—Dissemination Grants	2/23/94 (59 FR 8766)	4/18/94
	National Center for Education Statistics		
84.999A	Independent Evaluation of the National Assessment of Educational Progress (NAEP) Trial State Assessment.	11/9/93 (58 FR 59610)	12/27/93
84.999B	National Assessment of Educational Progress (NAEP) Data Reporting Program.	9/24/93 (58 FR 50135)	12/13/93
*84.999J	National Assessment of Educational Progress (NAEP) (Test Development, Field Testing, and Planning for the 1996 NAEP).	11/29/93 (58 FR 63008)	1/13/94
	Office of Elementary and Secondary Education		
84.061A	Educational Services for Indian Children	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.061B	Indian Education Resource Centers	Withdrawn	
84.061F	Indian Education—Educational Personnel Development.	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.062A	Educational Services for Indian Adults	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.072A	Indian-Controlled Schools—Enrichment Projects	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.083A	Women's Educational Equity Act Program—General Significance Grants.	9/24/93 (58 FR 50138)	3/11/94
84.083B	Women's Educational Equity Act Program—Challenge Grants.	9/24/93 (58 FR 50138)	3/11/94
84.123A	Law-Related Education Program	9/24/93 (58 FR 50138); 1/31/94 (59 FR 4271)	2/11/94
84.144A	Chapter 1 Migrant Education Coordination Program	Withdrawn	
84.214A	Migrant Education Even Start Program	9/24/93 (58 FR 50138); 2/10/94 (59 FR 6252)	Cancelled
84.233A	Drug-Free Schools and Communities Emergency Grants Program.	9/24/93 (58 FR 50138); 1/31/94 (59 FR 4271)	2/11/94
84.241A	Drug-Free Schools and Communities Counselor Training Grants Program.	9/24/93 (58 FR 50138); 1/31/94 (59 FR 4271)	2/11/94
84.258A	Even Start Program—Indian Tribes and Tribal Organizations.	9/24/93 (58 FR 50138); 12/28/93 (58 FR 68638)	Cancelled
84.266A	Training in Early Childhood Education and Violence Counseling.	5/6/94 (est.*)	7/8/94 (est.)
	Office of Postsecondary Education		
84.015A	National Resource Centers and Fellowships	9/3/93 (58 FR 46948)	11/3/93
84.016A	Undergraduate International Studies and Foreign Language.	7/28/93 (58 FR 40413)	11/5/93
84.017A	International Research and Studies	7/28/93 (58 FR 40413)	11/5/93
84.019A	Fulbright-Hays Faculty Research Abroad	8/10/93 (58 FR 42530)	11/1/93
84.021A	Fulbright-Hays Group Projects Abroad	7/28/93 (58 FR 40412)	10/22/93
84.022A	Fulbright-Hays Doctoral Dissertation Research Abroad.	8/10/93 (58 FR 42530)	11/1/93
84.031A	Strengthening Institutions Program	3/28/94 (59 FR 14504)	5/16/94
84.031G	Endowment Challenge Grant Program	9/24/93 (58 FR 50138)	6/14/94
84.031H	Strengthening Institutions Program and Endowment Challenge Grant Program—Designation as an Eligible Institution.	9/24/93 (58 FR 50220)	12/3/93
84.044A	Talent Search	11/5/93 (58 FR 59153)	12/22/93
84.055A	Cooperative Education Program—Administration, Part A Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)
84.055B	Cooperative Education Program—Demonstration Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)
84.055C	Cooperative Education Program—Research Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.055D	Cooperative Education Program—Training and Resource Center Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)
84.055E	Cooperative Education Programs—Administration, Part B Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)
84.066A	Educational Opportunity Centers	1/18/94 (59 FR 2664)	3/14/94
84.094B	Patricia Roberts Harris Fellowship Program	Withdrawn.	
84.097A	Law School Clinical Experience Program	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404)	1/28/94; 2/23/94 (areas of Calif.)
84.103	Training Program for Federal TRIO Programs	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68881)	3/31/94
84.120	Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects.	9/24/93 (58 FR 50138)	12/17/93
84.153A	Business and International Education	7/28/93 (58 FR 40413)	11/8/93
84.170	Jacob K. Javits Fellowship Program	10/28/93 (58 FR 58090); 1/19/94 (59 FR 2835)	2/25/94
84.200A	Graduate Assistance in Areas of National Need Program.	12/16/93 (58 FR 65836); 2/4/94 (59 FR 5404)	2/14/94; 2/28/94 (areas of Calif.)
84.202A	Grants to Institutions and Consortia to Encourage Women and Minority Participation in Graduate Education Program.	9/24/93 (58 FR 50138)	12/6/93
84.204	School, College, and University Partnerships	9/24/93 (58 FR 50138)	4/1/94
*84.252A	Urban Community Service Program	4/4/94 (59 FR 15810)	6/3/94
*84.261A	Dwight D. Eisenhower Leadership Program	5/9/94 (est.)	6/23/94 (est.)
*84.262A	Programs to Encourage Minority Students to Become Teachers.	3/1/94 (59 FR 9735)	4/15/94
*84.269A	Institute for International Public Policy	6/1/94 (est.*)	7/15/94 (est.)
*84.270A	Teacher Corps Program	5/16/94 (est.)	6/30/94 (est.)
*84.271A	Faculty Development Fellowship Program	7/5/94 (est.*)	8/12/94 (est.)
*84.272A	National Early Intervention Scholarship and Partnership Program.	5/2/94 (est.*)	6/27/94 (est.)
*84.273A	Demonstration Grants for Critical Language and Area Studies.	6/10/94 (est.)	8/1/94 (est.)
*84.274A	American Overseas Research Centers	6/10/94 (est.)	8/1/94 (est.)
	Office of SpecialEducation Programs		
	Fund for the Improvement of Postsecondary Education (FIPSE)		
84.116A	Comprehensive Program (Preapplications). (3)	11/19/93 (58 FR 61080)	1/10/94
84.116B	Comprehensive Program (Applications)	11/19/93 (58 FR 61080)	4/19/94
84.116F	Fund for the Improvement of Postsecondary Education—Innovative Projects for Community Service.	9/24/93 (58 FR 50138)	12/21/93
84.183A	Drug Prevention Programs in Higher Education—Institution-Wide Program.	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68880)	2/25/94
84.183B	Drug Prevention Programs in Higher Education—Special Focus Program Competition: National College Student Organizational Network Program.	9/24/93 (58 FR 50138)	4/4/94
84.183D	Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention).	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68880)	3/11/94
84.183E	Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Projects.	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68880)	2/14/94; 3/7/94 (Calif. only)
84.183F	Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis Projects.	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68880)	2/16/94; 3/9/94 (Calif. only)

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
	Office of Special Education and Rehabilitative Services		
	Office of Special Education Programs		
84.023A	Advancing and Improving the Research Knowledge Base.	7/29/93 (58 FR 40702)	10/22/93
84.023B	Student-Initiated Research Projects	7/29/93 (58 FR 40702)	10/22/93
84.023C	Field-Initiated Research Projects	7/29/93 (58 FR 40702)	1/14/94
84.023D	School-Linked Services to Support Better Outcomes for Children with Disabilities and Their Families.	11/18/93 (58 FR 60934)	2/11/94
84.023E	Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice.	11/18/93 (58 FR 60934)	3/25/94
84.023F	State and Local Education Efforts to Implement the Transition Requirements in the Individuals with Disabilities Education Act.	Withdrawn	
84.023H	Center for Policy Research	11/18/93 (58 FR 60934)	4/8/94
84.023N	Initial Career Awards	11/18/93 (58 FR 60934)	2/18/94
84.024B	Model Demonstration Projects for Young Children with Disabilities.	9/16/93 (58 FR 48554)	1/10/94
84.024D	Outreach Projects for Young Children with Disabilities.	9/16/93 (58 FR 48554)	1/5/94
84.024K	Early Childhood Research Institute on Integration	9/16/93 (58 FR 48554)	1/10/94
84.024P	Early Childhood Model Inservice Training Projects	9/16/93 (58 FR 48554)	12/29/93
84.025S	Research Validation and Implementation Projects for Children who Are Deaf-Blind.	9/21/93 (58 FR 48039)	12/17/93
84.026A	Closed-Captioned Sports Programs	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.026C	Broadcast and Cable Television Description	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/3/94; 2/24/94 (Calif. only)
84.026D	Educational Video Selection and Captioning	10/21/93 (58 FR 54440)	1/3/94
84.026G	Research on Video Description	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.026H	Described Home Video	10/21/93 (58 FR 54440)	3/3/94
84.026M	Symposium on Exploring New Strategies for Providing Captioned Media Services.	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.026R	Research on Captioning as a Language Development Tool.	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.029A–Q	Training Personnel for the Education of Individuals with Disabilities:		
84.029A	Training Personnel to Serve Low-Incidence Disabilities.	6/3/93 (58 FR 31512)	10/1/93
84.029B	Preparation of Personnel for Careers in Special Education.	6/3/93 (58 FR 31512)	9/17/93
84.029C	Technical Assistance to Professional Development Partnerships.	8/31/93 (58 FR 45884)	10/29/93
84.029D	Preparation of Leadership Personnel	6/3/93 (58 FR 31512)	9/17/93
84.029E	Minority Institutions	6/3/93 (58 FR 31512)	1/14/94
84.029F	Preparation of Related Services Personnel	6/3/93 (58 FR 31512)	9/17/93
84.029H	Grants to State Educational Agencies and Institutions of Higher Education.	5/28/93 (58 FR 31102)	12/17/93
84.029K	Special Projects	6/3/93 (58 FR 31512)	11/19/93
84.029L	Training Educational Interpreters	6/3/93 (58 FR 31512)	1/14/94
84.029M	Parent Training and Information Centers	6/3/93 (58 FR 31512)	8/27/93
84.029Q	Training Early Intervention and Preschool Personnel.	6/3/93 (58 FR 31512)	10/1/93
84.078C	Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities.	9/14/93 (58 FR 48042); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.086D	Research Projects for Educating Children with Severe Disabilities in Inclusive Settings.	9/22/93 (58 FR 49398)	12/15/93
84.086J	Statewide Systems Change: Children with Severe Disabilities.	9/22/93 (58 FR 49398)	1/14/94
84.086R	Model Inservice Training Projects to Prepare Personnel to Educate Students with Severe Disabilities in General Education Classrooms and Community Settings.	9/22/93 (58 FR 49398); 2/11/94 (59 FR 6826)	2/3/94; 2/24/94 (Calif. only)
84.086V	Institute on Implementing Inclusive Education for Children with Severe Disabilities.	9/22/93 (58 FR 49398)	12/30/93

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.158D	Model Demonstration Projects to Identify and Develop Alternatives for Youth with Disabilities Who Have Dropped Out of School or Are at Risk of Dropping Out of School.	9/21/93 (58 FR 49154)	12/17/93
84.158Q	Outreach Projects for Services for Youth with Disabilities.	9/21/93 (58 FR 49154)	3/28/94
84.158U	Research Projects on Student Involvement in Transition Planning.	9/21/93 (58 FR 49154)	4/8/94
84.159A	State Agency-Federal Evaluation Studies Projects	10/14/93 (58 FR 53366)	3/25/94
84.159D	Technical Assistance for State Agencies Participating in the State Agency-Federal Evaluation Studies Program.	Withdrawn.	
84.159F	State Agency-Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness.	10/14/93 (58 FR 53366)	3/25/94
84.180A	Organizational Support and Professional Development in the Use of Technology, Media, and Materials with Children and Youth with Disabilities.	9/14/93 (58 FR 48041)	1/7/94
84.180G	Technology, Educational Media, and Materials Research Projects that Promote Literacy.	8/13/93 (58 FR 43190)	11/19/93
*84.180T1	Technology, Educational Media and Materials for Individuals with Disabilities Program.	2/15/94 (59 FR 7248)	5/18/94
84.237F	Preventing the Development of Serious Emotional Disturbance Among Children and Youth with Emotional and Behavioral Programs.	10/14/93 (58 FR 53372)	1/7/94
	National Institute on Disability and Rehabilitation Research		
84.133A–1	Research and Demonstration Projects	7/7/93 (58 FR 36554)	11/4/93
84.133A–4	Research and Demonstration Projects	12/8/93 (58 FR 64644)	3/8/94
84.133B–2	Rehabilitation Research and Training Centers	10/19/93 (58 FR 54006); 3/16/94 (59 FR 12268)	5/18/94
84.133B–5	Rehabilitation Research and Training Centers	12/17/93 (58 FR 66228); 1/27/94 (59 FR 3850)	3/4/94
84.133B–9	Rehabilitation Research and Training Centers	6/30/93 (58 FR 34994)	9/1/93
84.133D–1	Knowledge Dissemination and Utilization Program	12/6/93 (58 FR 64298)	3/11/94
*84.133D–2	Knowledge Dissemination and Utilization Program—Training Projects.	5/27/94 (est.*)	6/27/94 (est.)
84.133E–5	Rehabilitation Engineering Research Centers	11/12/93 (58 FR 60099)	3/4/94
84.133F	Rehabilitation Research Fellowships Program	7/7/93 (58 FR 36554)	10/15/93
84.133G–2	Field-Initiated Research	7/7/93 (58 FR 36554)	10/5/93
84.133P–1	Research Training and Career Development Program.	7/7/93 (58 FR 36554)	8/27/93
84.224A–6	State Grants for Technology-Related Assistance for Individuals with Disabilities.	5/9/94 (est.)	6/10/94 (est.)
	Rehabilitation Services Administration		
84.128A	Special Projects and Demonstrations for Providing Supported Employment—Community-Based Projects.	9/24/93 (58 FR 50138)	3/24/94
84.128B	Special Projects and Demonstrations for Providing Supported Employment—Statewide Demonstration Projects.	9/24/93 (58 FR 50138); 11/9/93 (58 FR 59453)	12/22/93
84.128G	Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities.	9/24/93 (58 FR 50138)	1/14/94
84.128J	Projects for Initiating Recreational Programs for Individuals with Disabilities.	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/25/94
84.128N	Special Projects and Demonstrations for Providing Supported Employment to Individuals with the Most Severe Disabilities—Community-Based Projects for Serving Individuals Who Are Low-Functioning and Deaf or Low-Functioning and Hard-of-Hearing.	9/24/93 (58 FR 50138)	12/1/93
84.129A–1	Rehabilitation Long-Term Training—Rehabilitation Medicine.	9/24/93 (58 FR 50138)	11/30/93
84.129A–3	Rehabilitation Long-Term Training—Rehabilitation Nursing.	9/24/93 (58 FR 50138)	11/30/93
84.129A–5	Rehabilitation Long-Term Training—Prosthetics and Orthotics.	9/24/93 (58 FR 50138)	11/30/93
84.129B	Rehabilitation Long-Term Training—Rehabilitation Counseling.	9/24/93 (58 FR 50138)	2/18/94

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.129C–1	Rehabilitation Long-Term Training—Community Rehabilitation Program Administration.	9/24/93 (58 FR 50138)	11/30/93
84.129C–3	Rehabilitation Long-Term Training—Rehabilitation Administration.	9/24/93 (58 FR 50138)	11/30/93
84.129D–1	Rehabilitation Long-Term Training—Physical Therapy.	9/24/93 (58 FR 50138)	11/30/93
84.129D–3	Rehabilitation Long-Term Training—Occupational Therapy.	9/24/93 (58 FR 50138)	11/30/93
84.129E	Rehabilitation Long-Term Training—Rehabilitation Technology.	9/24/93 (58 FR 50138)	11/30/93
84.129F	Rehabilitation Long-Term Training—Vocational Evaluation and Work Adjustment.	9/24/93 (58 FR 50138)	11/30/93
84.129G	Rehabilitation Long-Term Training—Community Rehabilitation Program Personnel.	9/24/93 (58 FR 50138)	11/30/93
84.129H	Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Mentally Ill.	9/24/93 (58 FR 50138)	11/30/93
84.129J	Rehabilitation Long-Term Training—Rehabilitation Psychology.	9/24/93 (58 FR 50138)	11/30/93
84.129K	Rehabilitation Long-Term Training—Specialized Personnel for Supported Employment.	9/24/93 (58 FR 50138)	11/30/93
84.129L	Rehabilitation Long-Term Training—Undergraduate Education in Rehabilitation Services.	9/24/93 (58 FR 50138)	11/30/93
84.129M	Rehabilitation Long-Term Training—Independent Living.	9/24/93 (58 FR 50138)	11/30/93
84.129N	Rehabilitation Long-Term Training—Speech Pathology and Audiology.	9/24/93 (58 FR 50138)	11/30/93
84.129P	Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Blind.	9/24/93 (58 FR 50138)	11/30/93
84.129Q	Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Deaf.	9/24/93 (58 FR 50138)	11/30/93
84.129R	Rehabilitation Long-Term Training—Rehabilitation Job Development and Placement.	9/24/93 (58 FR 50138)	11/30/93
*84.129U	Parent Information and Training Programs—Technical Assistance.	3/29/94 (59 FR 14614)	5/13/94
84.129V	Rehabilitation Long-Term Training—Technician Training.	9/24/93 (58 FR 50138)	1/14/94
84.132A	Centers for Independent Living	5/16/94 (est.*)	6/30/94 (est.)
84.177A	Independent Living Services for Older Individuals Who Are Blind.	5/16/94 (est.*)	6/30/94 (est.)
84.240A	Protection and Advocacy of Individual Rights	Became a formula grant competition as a result of 1994 appropriation.	
*84.246C	Rehabilitation Short-Term Training—Braille Training Program.	4/29/94	6/15/94 (est.)
84.246	Rehabilitation Short-Term Training—Training Rehabilitation Practitioners and Educators on Provisions of Titles II and XVI of the Social Security Act.	11/9/93 (58 FR 59608); 2/11/94 (59 FR 6826)	2/25/94
84.246B	Rehabilitation Short-Term Training—Training Rehabilitation Counselors, Practitioners, and Educators on Student Financial Aid and Student Support Services for Individuals with Disabilities in Postsecondary Education Settings.	11/9/93 (58 FR 59608); 2/11/94 (59 FR 6826)	2/25/94
84.250D	Vocational Rehabilitation Service Projects for American Indians with Disabilities.	9/24/93 (58 FR 50138)	4/7/94
84.263	Rehabilitation Training—Experimental and Innovative Training.	9/24/93 (58 FR 50138)	11/23/93
84.264	Rehabilitation Training—Rehabilitation Continuing Education Programs.	7/28/93 (58 FR 40414)	9/30/93
84.265A	State Vocational Rehabilitation Unit In-Service Training.	6/15/94 (est.*)	7/15/94 (est.)
	Office of Vocational and Adult Education		
84.099	Bilingual Vocational Instructor Training Program	8/5/93 (58 FR 41918)	9/20/93
84.101A	Indian Vocational Education Program	3/18/93 (58 FR 15052)	7/15/93
84.198	National Workplace Literacy Program	1/10/94 (59 FR 1418); 2/3/94 (59 FR 5223)	3/11/94
84.199G	Cooperative Demonstration Program—Community Education Employment Centers.	12/14/93 (58 FR 65434); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.199H	Cooperative Demonstration School-to-Work Opportunities State Implementation Grants Program.	2/3/94 (59 FR 5290)	4/1/94

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
(SGA/DAA 94–007).	School-to-Work Opportunities: Local Partnership Implementation Grants. (4).	3/9/94 (59 FR 11154)	5/9/94
*84.199J	Cooperative Education Program—Manufacturing Technology.	5/13/94 (est.)	6/30/94 (est.)
84.248	Demonstration Projects for the Integration of Vocational and Academic Learning Program.	6/11/93 (58 FR 32808)	7/30/93
84.255A	Life Skills for State and Local Prisoners Program	3/16/93 (58 FR 14278); 4/9/93 (58 FR 18381)	5/17/93
84.259A	Native Hawaiian Vocational Education Program	9/24/93 (58 FR 50138)	3/25/94

(1) For institutions needing to establish eligibility (Part I only).
(2) For all project descriptions (Part II).
(3) Applicants for 84.116B were required to submit preapplications under 84.116A by 1/10/94.
(4) This competition announced jointly by the Departments of Education and Labor is being funded by the Department of Labor. In accordance with the notice, applications are available from the Department of Labor.

Invitation To Comment

The Secretary welcomes comments on the usefulness of this update of the annual combined application notice and suggestions for improving this update or the combined application notice.

Please direct any comments and suggestions to Steven N. Schatken, Assistant General Counsel for Regulations, U.S. Department of Education, 400 Maryland Avenue, SW. (room 5131, FOB–6), Washington, DC 20202–2241.

Dated: April 22, 1994.

Richard W. Riley,

Secretary of Education.

Appendix

Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, EO 12372—CFDA# [commenter must insert number—including suffix letter, if any], U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

State Single Points of Contact

Note: In accordance with Executive Order #12372, this listing represents the designated State Single Points of Contact. Because participation is voluntary some States no longer participate in the process. These include: Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, and Washington.

Arizona

Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX (602) 280–1305.

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th Street, room 412, Little Rock, Arkansas 72203, Telephone (501) 682–1074, FAX (501) 682–5206.

California

Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018.

Colorado

Margaret Dubas, State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 521, Denver, Colorado 80203, Telephone (303) 866–2156, FAX (303) 866–2251.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 739–3326, FAX (302) 739–5661.

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., suite 500, Washington, D.C. 20005, Telephone (202) 727–6551, FAX (202) 727–1617.

Florida

Suzanne Traub-Metlay, Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol (room 1603), Tallahassee, Florida 32399–001, Telephone (904) 488–8114, FAX (904) 488–9005.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW, room 401J, Atlanta, Georgia 30334, Telephone (404) 656–3855 or 656–3829, FAX (404) 656–7938.

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671, FAX (217) 782–6620.

Indiana

Francis E. Williams, Intergovernmental Grant Coordinator, State Budget Agency, 212 State House, Indianapolis, Indiana 46204,

Telephone (317) 232–2972, FAX (317) 233–3323.

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 242–4719, FAX (515) 242–4859.

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone (502) 573–2382, FAX (502) 573–2512.

Maine

Joyce Benson, State Planning Office, State House Station #38, 184 State Street, Augusta, Maine 04333, Telephone (207) 287–3261, FAX (207) 287–6489.

Maryland

Mr. Roland E. English III, Chief, State Clearinghouse, for Intergovernmental Assistance, Maryland Office of Planning, 301 West Preston Street, room 1104, Baltimore, Maryland 21201–2365, Telephone (410) 225–4490, FAX (410) 225–4480.

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001, ext. 443, FAX (617) 727–4259.

Michigan

Richard S. Pastula, Director, Office of Federal Grants, Michigan Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Telephone (517) 373–7356, FAX (517) 373–6683.

Mississippi

Cathy Malette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, Department of Finance and Administration, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 949–2174, FAX (601) 949–2125.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 760, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834, FAX (314) 751–4819.

Nevada

Maud Naroll, Department of Administration, State Clearinghouse, Capitol Complex, room 200, Carson City, Nevada 89710, Telephone (702) 687–4065, FAX (720) 687–3983.

New Hampshire

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, FAX (603) 271–1728.

New Jersey

Gregory D. Adkins, Director, Division of Community Resources, New Jersey Department of Community Affairs.

Please direct all correspondence and questions about intergovernmental review to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey 08625–0814, Telephone (609) 292–9025, FAX (609) 984–0386.

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, suite 5106, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232, FAX (919) 733–9571.

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094, FAX (701) 224–2308.

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411.

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone (614) 466–0698, FAX (614) 466–5400.

Rhode Island

Kevin Nelson, Senior Planner, Statewide Planning Program, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone (401) 277–2656, FAX (401) 277–2083.

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, FAX (803) 734–0385.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, John Sevier Building, suite 309, Nashville, Tennessee 37243–0001, Telephone (615) 741–1676.

Texas

Tom Adams, Director, Intergovernmental Coordination, P.O. Box 13005, Austin, Texas 78711, Telephone (512) 463–1771, FAX (512) 463–1984.

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, room 116, State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535, FAX (801) 538–1547.

Vermont

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609, Telephone (802) 828–3326, FAX (802) 828–3339.

West Virginia

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 558–4010, FAX (304) 558–3248.

Wisconsin

William Carey, Bureau Director, Intergovernmental Relations, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone (608) 266–2125, FAX (608) 267–6931.

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574, FAX (307) 638–8967.

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone 011–671–472–2285, FAX 011–671–472–2825.

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 B. Caro, Chairman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119985, Telephone (809) 727–4444 or 723–6190, FAX (809) 724–3270 or 724–3103.

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802.

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone (809) 774–0750, FAX (809) 776–0069.

Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Donna Rivelli (Telephone (202) 395–5090) at the Office of Management and Budget and to the State in question.

[FR Doc. 94–10310 Filed 5–2–94; 8:45 am]

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federal register

Tuesday
May 3, 1994

Part III

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; Three Final Priorities for Fiscal Year 1994; Notice

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Professional Development in the Use of Technology for Mathematics and Science Instruction; Model Projects in Encouraging Female and Minority Students in Mathematics and Science; and Model Science-Based Professional Development Projects in Environmental Education

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1994.

SUMMARY: The Secretary announces three priorities for fiscal year 1994 under the Dwight D. Eisenhower National Program for Mathematics and Science Education: model professional development projects in the use of technology for mathematics and science education, model projects in encouraging female and minority students in mathematics and science, and model science-based professional development projects in environmental education.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. For information about the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Liz Barnes or Annora Dorsey, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5673. Telephone: (202) 219–2210. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The goal of the Eisenhower National Program is to support projects of national significance in elementary and secondary schools in mathematics and science education designed to improve the skills of teachers and the quality of instruction in these areas and to increase the access of all students to that instruction. The program is authorized under Title II, Part A, Subpart 1, section 2012 of the Elementary and Secondary Education Act of 1965, as amended.

The Secretary may subsequently conduct an external study or studies of the effectiveness and lessons learned from projects funded under this program. If he does so, projects will be required to cooperate with the conduct of the study, by sharing their experiences, project evaluations, and data.

Regarding priority 1, the Secretary believes that technology can be used to improve instruction and assessment in mathematics and science and provide all students with greater opportunity to learn in accordance with state content and student performance standards. The Secretary believes that developments in technology have great promise for helping to attain National Education Goal Five, that by the Year 2000, United States students will be first in the world in mathematics and science achievement; however, he sees ample evidence that many teachers are not confident about using these resources in the classroom. The scope of these projects may include professional development in the use of technology for assessment of student learning. For purposes of substantiating that two or more schools assisted under this priority serve underachieving students, the applicant may cite test scores, drop-out rates, Chapter I eligibility, or similar indices.

Regarding priority 2, the Secretary is concerned that the Nation's schools encourage too few minority and female students to study and pursue careers in the fields of mathematics and science. The Secretary believes that the well-documented underrepresentation of minorities and women in these disciplines represents a waste of human talent that the Nation can ill afford. This priority will therefore support, and learn from, projects that seek to stimulate and sustain the interest and attainments of female and minority children in mathematics and science.

Regarding priority 3, the Secretary believes that environmental education can stimulate students' interest in scientific fields and enhance their understanding of these disciplines. The Secretary also believes that environmental issues are important in their own right and are, therefore, eminently worthy of study. The Secretary finds, however, that environmental education programs of high quality are available in too few of the Nation's schools, in part because American teachers have very limited opportunities to increase their knowledge of environmental issues and to learn the most successful means of providing environmental education. The Secretary proposes, therefore, to support and learn from projects in professional development for teachers in environmental education.

The Secretary draws to the attention of potential applicants responding to priority 3 the National Consortium for Environmental Education and Training (NCEET) at the University of Michigan, an undertaking funded by the Environmental Protection Agency under Section 5 of the National Environmental Education Act of 1990. NCEET's primary emphasis is professional development for teachers in environmental education. Potential applicants should consult with NCEET to ensure that their projects are not duplicative of the National Consortium's efforts.

On November 12, 1993, the Secretary announced in the **Federal Register** (58 FR 60007) a proposed priority for the Eisenhower National Program in model professional development in the use of technology for mathematics and science instruction. After considering the intent of the Senate Report that accompanied the Fiscal Year 1994 Department of Education Appropriations Act, the Secretary proposed two additional priorities. These proposed priorities were announced on February 28, 1994 in the **Federal Register** (59 FR 9610).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of the Comments and Changes

In response to the Secretary's invitation in the notices of proposed priorities several parties submitted comments. An analysis of the comments and of the changes in the priorities since publication of the notices of proposed priorities follows.

Notice of Proposed Priority Published on November 12, 1993

Comment: One commenter pointed out that technology projects are hardware intensive. The commenter therefore suggested that the portion of grant funding available for purchase or lease of appropriate hardware, software, and communications services or tariffs for use in these projects be greater than is traditionally available in many grants. Another commenter urged that the Department allow up to 50% of the total Federal portion of the project budget, rather than the 20% stipulated in the priority, to be used for purchase of items such as hardware. This commenter believed that this change would result in greater numbers of applications from districts that have relatively few resources for the purchase of technology.

Discussion: In this priority the Secretary wishes to emphasize professional development, rather than equipment purchase, and thus does not wish to reduce the proportion of Federal

funds available for inservice education. The Secretary notes that, in their efforts to obtain additional funds to be used for purchase of hardware, software, and other such items, applicants should have available the joint resources of the partnerships that are to be formed under this priority. The Secretary acknowledges, however, that the type of projects to be supported under this priority may require a significant initial investment in technology-related resources.

Changes: The priority has been revised to state that up to one-third of the total Federal funds approved for year one and up to 15 percent of the Federal funds approved in years two and three may be expended to purchase or lease hardware, software, and communications services or tariffs.

Comment: One commenter urged that a portion of funds made available through this priority be used for preservice programs, such as those that would help faculty in schools of education to provide exemplary models of the use of technology in teaching.

Discussion: The Secretary agrees that preservice programs can play a critical role in preparing teachers to use technology effectively in the classroom. The current priority, however, was designed for inservice professional development, where ample need for improvement exists. Given the relatively limited amount of funding available for these priorities, the Secretary does not wish to dilute the purpose or effectiveness of the priority by broadening it to encompass preservice programs. The Secretary will, however, examine possible opportunities to support preservice programs in future technology-related grant priorities.

Changes: None.

Comment: One commenter suggested that partnerships formed to develop and implement project activities include representatives of the Statewide Systemic Initiative (SSI) program funded by the National Science Foundation.

Discussion: The Secretary believes that, insofar as the SSI program involves professional development, this comment is already addressed in the priority's requirement that projects coordinate their work with other professional development efforts in mathematics and science education.

Changes: None.

Comment: One commenter urged that principals be allowed to designate persons knowledgeable in technology to serve in the principal's stead on the advisory committees that will guide the projects.

Discussion: The Secretary points out that the priority does not preclude participation on the advisory committees by persons who have been chosen by principals and who are particularly knowledgeable in technology. The Secretary believes that the presence of a principal himself or herself on an advisory committee represents a personal commitment that could be vital to the undertaking's success. In addition, in light of the many-faceted professional development activities envisioned in the priority, the Secretary believes that the advisory committee needs the breadth of knowledge and management perspectives that principals can bring.

Changes: None.

Comment: One commenter suggested that the priority require the participation of teachers of English as a second language (ESL) to enhance the effectiveness of the program in schools serving underachieving students whose native language is not English.

Discussion: The Secretary notes that the priority allows for inclusion of ESL teachers in project activities. The priority requires the involvement of two or more schools serving underachieving students and the inclusion of the majority of, if not all, the mathematics and science teachers in participating schools. ESL teachers who provide instruction in mathematics and science at project site schools are thus likely to participate in the professional development activities that are part of the project. In the interest of allowing the greatest amount of flexibility and variety in the projects that are funded, the Secretary does not wish to add further requirements concerning inclusion of teachers.

Changes: None.

Comment: One commenter suggested that, in addition to requiring integration of academic content and pedagogical components, the priority should provide a focus on the interdisciplinary nature of mathematics and science education.

Discussion: The Secretary observes that the priority would not preclude such a focus. The Secretary wishes to allow potential applicants flexibility to design projects that respond to local and State needs, and thus does not desire to restrict applicants' choice of emphases.

Changes: None.

Comment: One commenter pointed out that technology provides the teacher with an opportunity to assess each student's learning on a near-continuous basis, thus enabling the teacher to adjust instruction to fit the needs of both individual learners and groups of students throughout the course of a learning sequence. Technology can thus maximize the usefulness of assessment by making it an integral part of learning, the commenter argued. The commenter urged that the priority be expanded to include attention to the use of technology for student assessment aimed at continuous monitoring and improvement of learning.

Discussion: The Secretary recognizes that technology can provide improved methods of assessing student progress and thus can contribute to student learning. The Secretary does not exclude teacher professional development in the use of technology for student assessment.

Changes: None.

Notice of Proposed Priorities Published on February 28, 1994

Comment: One commenter strongly supported the emphasis on women and minorities, as well as the emphasis on environmental education. The commenter also suggested adding a priority, or mentioning the possibility of, the development and incorporation of service learning in projects.

Discussion: The Secretary observes that the priorities would not necessarily preclude such a focus. The Secretary wishes to allow potential applicants flexibility to design projects that respond to local and State needs, and thus does not desire to restrict applicants' choice of emphases.

Changes: None.

Comment: Two commenters strongly argued against limiting one priority to environmental education. They felt that it is unnecessary and unwise to focus limited funding for professional development on a particular field of science. One commenter stated that most teachers teach more than one science and therefore need reinforcement in more than one field.

Discussion: The Secretary believes that environmental education is one way to stimulate students' interest in scientific fields. The Secretary also believes that environmental education involves several different scientific fields and will therefore enhance teachers' ability to teach science generally.

Changes: None.

Comment: One commenter supported the encouragement of women and minorities in mathematics and science. However, the commenter urged that the priority provide opportunities and funds for selected projects to do controlled studies, with longer term follow up of their impact.

Discussion: The Secretary requires these projects to evaluate lessons learned about promoting the interest and attainment of women and

minorities in mathematics and science and expects the findings to be widely disseminated. This requirement does not preclude the use of controlled evaluation studies for these purposes. However, projects funded under this priority must be "model" projects designed themselves to stimulate and sustain the interest and attainments of females and minority children in mathematics and science. The Secretary will not support projects under this priority which are solely for the purpose of conducting research and evaluation in this area.

Changes: None.

Comment: One commenter strongly supported programs attracting females and minorities to careers in mathematics and science. However, referencing the Senate report language cited in the February 28, 1994, Notice of Proposed Priority issued by the Eisenhower National Program, the commenter questioned the Secretary's intent to fund the priority on environmental education because it would dilute Congressional intent to respond to the needs of women and minorities in mathematics and science, and in any event mathematics and science high schools would be teaching environmental education.

Discussion: The Secretary believes the commenter overlooked a provision of the Senate report directing the Department of Education to support work in environmental education.

Changes: None.

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. Each application shall respond to *only one* of the three priorities, although an applicant could submit more than one application to respond to more than one priority. The Secretary funds under this competition only applications that meet one of these absolute priorities:

Absolute Priority 1—Teacher Professional Development in the Use of Technology for Mathematics and Science Education

The Secretary will support model projects that demonstrate effective ways of strengthening teachers' abilities to use technology in the classroom for the improvement of teaching and learning in mathematics and science at the elementary or secondary school levels, or both.

Required Activities: Each project must:

(a) Form a partnership to develop and implement project activities. Partnerships must include one or more of each of the following parties: local educational agency or private school(s), State educational agency, institution of higher education, and private sector party with expertise in technology. Partners must contribute resources to the operation of the project. Programming must be designed in consultation with professionals who are experts in the applicable subject matter, educational levels, and technologies to be used in the project. Projects must be coordinated with other professional development efforts in mathematics and science education, particularly with the Eisenhower State Grant Program.

(b) Establish an advisory committee to guide the project. The advisory committee must include representation from each of the partners to the application, plus principals of project site schools and classroom teachers participating in the project.

(c) Involve two or more schools serving underachieving students in the project.

(d) Involve the majority of, if not all, teachers of mathematics and science in the participating schools in project activities. Participating teachers must implement the use of technology in their teaching of mathematics and science.

(e) Provide participating teachers with sustained, intensive, high-quality professional development activities that focus on the use of technology to improve classroom instruction in mathematics and science. Project activities must reflect relevant research on teaching and learning, as well as the experiences of the partners and participating teachers. Activities must integrate academic content and pedagogical components, and be delivered largely on-site (i.e., in schools or districts) for groups of teachers working cooperatively.

(f) Provide participating teachers with forums for interaction and with access to sources of technical assistance outside their schools. Projects must require that participating teachers collaborate with each other and that they participate in electronic networking with other teachers, including teachers participating in other projects funded under this program, to share experiences and knowledge about how to improve student learning through the use of technology in instruction.

Projects may use up to one-third of the total Federal portion of the project budget for year one and no more than 15 percent in years two and three to purchase or lease appropriate hardware, software, and communications services or tariffs for use in these projects. In addition, projects must provide, using non-Federal funds, some of the hardware, software, and other requirements of the technology to be used in these projects.

(g) Evaluate lessons learned about effective teacher professional development in the use of technology to improve mathematics and science teaching and learning, and use the information to improve the project on a continuing basis. Evaluations must address the characteristics of participating teachers and students, the technologies used and their relative effectiveness, and the effects on teaching and learning of the use of technology in instruction in mathematics and science. Evaluations must include a mid-course, on-site review by an outside panel, including experts in the use of technology in instruction and classroom teachers with successful experience in using technology to improve instruction.

(h) Disseminate lessons learned to other schools participating in the program, and to others such as schools with similar needs in the project site State, institutions and organizations providing pre-service and in-service teacher development programs in the project site State, and other interested parties that could benefit from this information. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication. Applicants may request Federal funding to support dissemination activities, including travel for dissemination, in amounts not to exceed 20% of the total Federal portion of the project budget. Projects must participate in meetings of the Eisenhower Program held annually in Washington, DC.

Absolute Priority 2—Encouraging Female and Minority Students in Mathematics and Science

The Secretary will support model projects designed to stimulate and sustain the interest and attainments of female and minority children in mathematics and science.

Each project must: (a) Make use of research and the experience of projects that have achieved success in the area of the priority.

(b) Collaborate in the planning and operation of the project with the State science teachers' association and/or the State mathematics teachers' association and with at least one other party such as a school, another educational institution, a local or state educational agency, a national education organization, a science-technology

center, or private sector parties; and with these other parties, develop plans for continuing project activities after Federal support has ended.

(c) Evaluate lessons learned from the project and use them to improve activities on a continuing basis.

(d) Disseminate lessons learned to interested parties. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication.

(e) In the case of projects serving elementary and middle schools, increase teachers' own mastery of mathematics and science in order to increase their confidence and skill in teaching these subjects (including skills in providing hands-on learning).

(f) Involve parents and community members as role models and/or mentors for female and minority children.

Absolute Priority 3—Science-Based Teacher Professional Development in Environmental Education

The Secretary will support model science-based professional development projects designed to improve student achievement in environmental education.

Each project must: (a) Make use of research and the experience of projects that have achieved success in the area of the priority.

(b) Collaborate in the planning and operation of the project with at least two other parties such as schools, other educational institutions, local or state educational agencies, national education organizations, science-technology centers, or private sector parties; with these other parties, develop plans for continuing project activities after Federal support has ended.

(c) Use environmental education as a means to enhance students' interest, literacy, and achievement in science.

(d) Increase teachers' own mastery of environmental issues, including related scientific issues.

(e) Train teachers to develop varied learning experiences for students in environmental education that include field components and the study of individual themes, such as ecosystems (e.g., wetlands), the water cycle, and global climate change; and enable teachers to pilot-test these varied learning experiences with students.

(f) Evaluate lessons learned from the project and use them to improve activities on a continuing basis.

(g) Disseminate lessons learned to interested parties. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide final notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 755.

Program Authority: 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Dated: April 26, 1994.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 94–10483 Filed 5–2–94; 8:45 am]

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federal register

Tuesday
May 3, 1994

Part IV

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; Notice Inviting Applications for New Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No. 84.168T]

Dwight D. Eisenhower National Program for Mathematics and Science Education: Model Professional Development in the Use of Technology for Mathematics and Science Instruction, Model Projects in Encouraging Female and Minority Students in Mathematics and Science, and Model Science-Based Professional Development Projects in Environmental Education; Notice Inviting Applications for New Awards for Fiscal Year 1994

Purpose of Program: To award grants to support projects of national significance designed to improve instruction in mathematics and science in the nation's elementary and secondary schools, and increase the access of all students to such instruction.

Eligible Applicants: The Secretary may award grants to State educational agencies, local educational agencies, institutions of higher education, and public and private nonprofit organizations, including museums, libraries, educational television producers, distributors, and stations, and professional science, mathematics, and engineering societies and associations.

Deadline For Transmittal of Applications: July 5, 1994.

Deadline For Intergovernmental Review: September 5, 1994.

Applications Available: May 20, 1994.

Available Funds: $3,000,000.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 85 and 86; and (b) The regulations for this program in 34 CFR part 755.

Priority

The priorities in the notice of final priorities for this competition as published elsewhere in this issue of the **Federal Register** apply to this competition. Only applications under these priorities will be considered. This program and priorities support Goals 2000, the President's strategy for moving the Nation toward achievement of the National Education Goals.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 755.32.

The program regulations in 34 CFR 755.30(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 10 points. For this competition, the Secretary distributes the 10 points as follows:

Quality of Key Personnel (34 CFR 755.32(b)). Five points are added to this criterion for a possible total of 10 points.

Evaluation Plan (34 CFR 755.32(d)). Five points are added to this criterion for a possible total of 15 points.

FOR APPLICATIONS OR INFORMATION CONTACT: Liz Barnes or Annora Dorsey, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5543. Telephone (202) 219–2164. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 2992.

Dated: April 26, 1994.

Sharon Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–10484 Filed 5–2–94; 8:45 am]

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federal register

Tuesday
May 3, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 880, et al.

Preferences for Elderly Families in Certain Section 8 Housing; and Reservation of Units for Disabled Families; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 880, 881, 883, 884, and 886

[Docket No. R-94-1719; FR-3465-I-01]

RIN 2502-AG05

Preference for Elderly Families in Certain Section 8 Housing; and Reservation of Units for Disabled Families

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's section 8 regulations for newly constructed and substantially rehabilitated housing projects to provide for the system of occupancy preferences in certain section 8 assisted housing authorized by subtitle D of title VI of the Housing and Community Development Act of 1992. Subtitle D allow owners of section 8 projects originally designed primarily for occupancy by elderly families to provide preferences to elderly families in selecting tenants for available units in those projects. Owners that elect to provide preferences to elderly families as authorized by subtitle D also must reserve no less than a statutorily determined number of units for disabled families who are not elderly or near-elderly families.

The Supplementary Information section of this document provides further information on the specific amendments to be made to the section 8 regulations in parts 880, 881, 883, 884 and 886, and explains the Department's reasons for issuing this rule as an interim rule.

DATES: Effective date: June 2, 1994 through May 3, 1995.

Comments due date: July 5, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director of the Office of Elderly and Assisted Housing, Office of Housing, Department of Housing and Urban Development, room 6130, or Albert Sullivan, Director of the Office of Multifamily Management, room 6160, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708-4542 (voice) for Ms. Milner: (202) 708-3730 for Mr. Sullivan; or (202) 708-4594 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle D (sections 651-661; codified at 42 U.S.C. 13611-13620) of title VI of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (hereafter, "1992 HCD Act") is entitled "Authority to Provide Preferences for Elderly Residents and Units for Disabled Residents [1] in Certain Section 8 Assisted Housing," and allows an owner of a covered section 8 housing project to elect to provide preferences to elderly families in selecting tenants for available units in the project, subject to certain statutory requirements. An owner who elects to provide preferences to elderly families must also reserve a percentage of units, not to be less than the percentage determined according to a formula set out in the statute, for disabled families who are not elderly or near-elderly. [2]

This interim rule adopts in regulation the system of preferences for occupancy provided by subtitle D, and sets forth the standards for determining whether a project is eligible to elect the preferences for occupancy provided by subtitle D, and explains the effect of such preferences on administration of project waiting lists.

II. Eligibility To Provide Preferences for Elderly Residents

Section 651 of the 1992 HCD Act provides in relevant part, "[n]otwithstanding any other provision of law, an owner of a *covered section 8 housing project designed primarily for occupancy by elderly families*, may in selecting tenants for units in the project that become available for occupancy, give preference to elderly families who have applied for occupancy in the housing * * *." (Emphasis added.)

With regard to the phrase "designed primarily for occupancy by elderly families," the Department believes that in using the term "primarily," the Congress intended to limit the applicability of subtitle D to either the section 8 units in those covered projects in which a majority of the section 8 units were designed for elderly families (i.e., seniors [3]), or to the section 8 units in covered projects where a distinct portion of the project (e.g., a tower or a wing of a project, but not just a floor) exists in which the majority of section 8 units were restricted to seniors only. Thus, section 651 may apply to the section 8 units in an entire project originally designed primarily for occupancy by elderly families ("covered section 8 housing project"), or section 651 may apply to the section 8 units in a portion of such project, but only where the section 8 units in this project or portion of the project were designed primarily for seniors. The preamble frequently uses the term "covered section 8 units" to recognize that there are partially assisted projects whose section 8 units will be covered by this interim rule .

It is important to note that the statutory system of preferences provided by subtitle D is only available to projects which qualify as "covered section 8

[1] Definitions for "elderly families" and "disabled families" are codified in section 3(b) of the U.S. Housing Act of 1937 (1937 Act). Section 3(b) was amended by section 621 of the 1992 HCD Act. Where the definition for "elderly families" has, since 1974, encompassed disabled families, the amended section 3(b) now defines "elderly families" as families whose heads (or their spouses) or sole members are persons at least 62 years old. Thus, under the revised definition, a disabled person does not qualify as an elderly family solely because of the person's disability.

Section 3(b) defines "disabled families" to mean families whose heads (or their spouses) or sole members are persons with disabilities. "Person with disabilities" is defined to mean a person who: (1) has a disability as defined in section 223 of the Social Security Act; (2) is determined pursuant to regulations issued by the Secretary of HUD, to have a physical, mental or emotional impairment which is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions; or (3) has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

The Department's regulations for the terms defined in section 3(b) of the 1937 Act for the assisted housing programs are published at 24 CFR part 812. While the 1992 HCD Act amendments to section 3(b) of the 1937 Act require changes to 24 CFR part 812, this rule does not amend 24 CFR part 812. The Department will modify 24 CFR part 812 by separate rulemaking. Also, unless the context indicates otherwise, reference to the terms elderly families, disabled families, and near-elderly families in this preamble is reference to these terms as defined in section 3(b) of the 1937 Act, as amended by section 621 of the 1992 HCD Act.

[2] Under section 3(b) of the 1937 Act, as revised by section 621 of the 1992 HCD Act, the term "near-elderly families" is defined as families whose heads (or their spouses) or sole members are persons who are 50-61 years old.

[3] As used in this preamble, the term "seniors" refers to families whose heads of household, their spouses or sole members are 62 years or older.

housing projects designed primarily for occupancy by elderly families." The Department points out that many projects which have section 8 assistance are not "covered section 8 housing projects designed primarily for occupancy by elderly families" (as defined in Section I.A. of the preamble, which follows), and may not elect the subtitle D statutory system of preferences.

A. Covered Section 8 Housing Project: Section 659

Subtitle D and these regulations define "covered section 8 housing" to mean housing that:

(1) was constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 (1937 Act), as in effect before October 1, 1983;

(2) is assisted under a contract for assistance under such section; and

(3) was originally designed primarily for occupancy by elderly families.

1. Projects That are Newly Constructed or Substantially Rehabilitated Pursuant to Assistance Provided Under Section 8(b)(2) of the 1937 Act, as in Effect Before October 1, 1983.

The Department administers six section 8 programs that involve newly constructed or substantially rehabilitated housing. However, the system of preferences under subtitle D does not apply to all these programs.

The programs to which subtitle D applies are:

(1) The section 8 New Construction Program, 24 CFR part 880;

(2) The Section 8 Substantial Rehabilitation Program, 24 CFR part 881;

(3) The State Housing Agencies program (insofar as it involves new construction and substantial rehabilitation), 24 CFR part 883;

(4) The New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, 24 CFR part 884; and

(5) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (insofar as it involves substantial rehabilitation), 24 CFR part 886.[4]

Other programs which may involve section 8 new construction or substantial rehabilitation assistance, but which are not covered by the preferences in subtitle D are identified in section 658 of the 1992 HCD Act. Under section 658 of the 1992 HCD Act, an owner of a project (or portion of a project) that was originally designed for occupancy by elderly families, and assisted under the Section 221(d)(3) Below Market Interest Rate (BMIR) program, the Section 236 Mortgage Insurance and Interest Reduction Payment for Rental Projects program, or Section 202 Loans for Housing for the Elderly or Handicapped Program, may continue to restrict occupancy in such projects (or portion of such projects) to elderly families in accordance with the rules, standards and agreements in effect when the housing project was developed. Accordingly, under this interim rule, the subtitle D statutory system of preferences does not apply to newly constructed or substantially rehabilitated section 8 projects with HUD insurance or assistance under any of these three programs.[5] The Department emphasizes that it is critical that a project owner understand the type of assistance a project receives to determine eligibility under subtitle D and these regulations.

Project owners should note that the following types of projects or assistance would *NOT* be covered by this interim rule:

—Section 202 housing projects,
—Section 221(d)(3) BMIR housing projects,
—Section 221(d)(4) retirement service centers (because such projects have FHA mortgage insurance but no section 8 assistance),
—Section 236 housing projects,
—Housing projects with contracts for section 8 loan management set aside (unless the projects also have contracts for section 8 assistance involving new construction or substantial rehabilitation, in which case the units could be covered),
—Housing projects with project-based section 8 rental certificates, and
—Section 8 tenant-based assistance programs (rental vouchers and certificates).

2. Assisted Under a Contract for Assistance Under Section 8(b)(2)

Some newly constructed or substantially rehabilitated projects have unassisted units and assisted units. These projects are often referred to as "partially assisted projects." Because the statutory definition of "covered section 8 housing" only applies to housing that is under a contract for assistance, the subtitle D system of preferences would not apply to unassisted units in a partially assisted project. Additionally, nothing in this regulation establishes a cap on the number of unassisted units for disabled families in a partially assisted project.

While this regulation does not apply to the unassisted units in a partially assisted project, this regulation also does not relieve any owner of any project, including the owner of a partially assisted project from complying with the Fair Housing Amendments Act of 1988, section 504 of the Rehabilitation Act of 1973, the implementing regulations for these statutes, or any other applicable statutory or regulatory requirement, including the requirements of the National Housing Act, with respect to the assisted or unassisted units. However, notwithstanding the foregoing, owners may provide the preferences in accordance with this interim rule, with respect to the assisted units.

3. Originally Designed Primarily for Occupancy by Elderly Families

The final statutory requirement for qualification as a "covered section 8 housing project" is that the project must have been originally designed for occupancy by elderly families. The statute does not define the term "originally" or define the phrase "originally designed for occupancy by elderly families." However, the House Report offers some insight on this subject. The House Report suggests that to qualify as housing originally designed for occupancy by elderly families, the owner of the project must have expressed an intent to create housing for elderly tenants when the developer negotiated with the Department for Federal financial assistance. (H.R. Rept. No. 760, 102d Cong. 2d Sess. at 141 (1992).)

Because the various types of housing projects covered by this interim rule were developed under several different programs, and over a period of time which spans almost two decades, there is no uniform documentation at the Department which evidences the population group to be served by a project. In many instances, the application in response to a notice of funding availability (NOFA) shows that a project was designed as an elderly housing project. However, an indication

[4] The "Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages" (see 24 CFR part 886, subpart A) involves only existing housing. However, the "Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects" (see 24 CFR part 886, subpart C) involves substantially rehabilitated housing, in addition to existing housing. Accordingly, this rule would amend subpart C of 24 CFR part 886, but only for projects involving substantially rehabilitated housing.

[5] Although in this regard, the Department is aware of no Section 221(d)(3) BMIR projects or Section 236 projects with Section 8 new construction or substantial rehabilitation assistance. As such, by its terms, "covered section 8 housing" does not seem to encompass the Section 236 Mortgage Insurance and Interest Reduction Payment for Rental Projects program or the Section 221(d)(3) BMIR program.

of the population group to be served by the housing project does not always appear in any one document.

In addition, because one of the previous definitions of "elderly families" in section 3(b) of the 1937 Act included disabled families, it is not always clear from documents that indicate a project was developed for "elderly families" whether the project for elderly families was intended to mean housing for the broader eligible category of families (i.e., elderly families and disabled families) or for families who qualified by virtue of age alone. Further confusion may be added by the fact that for most of the period when this housing was being developed, the Department policy required all housing for the elderly (defined by age) to incorporate certain accessible features and to design a certain percentage of the units to be accessible for persons with physical disabilities. Typically, these units were made available to eligible families with physical disabilities, regardless of age.

Thus, in establishing whether a project was originally designed primarily for occupancy by elderly families within the meaning of subtitle D, two distinctions must be drawn: (1) The project was designed primarily for elderly families (as opposed to non-elderly families); and (2) the project was designed for elderly families (i.e., seniors), and not designed for elderly families under the broader meaning of this term, which formerly included elderly families and disabled families.

Recognizing all these factors, the interim rule provides for supporting documentation to be drawn from a variety of sources. These sources are identified as being either "primary" sources, or "secondary" sources. The interim rule provides that if at least one of the primary sources clearly establishes that a project was originally designed for elderly families (seniors), the owner of this project may elect the system of preferences provided by subtitle D. However, if another primary source establishes a design contrary to the primary source upon which the owner would base support that the project is a covered section 8 housing project, the owner cannot make the election of preferences provided by subtitle D without finding support in secondary sources. Secondary sources may then, as discussed in this interim rule, be used to establish the use for which the project was originally designed.

If there are no primary sources clearly establishing the original design of the project, then original design may still be established through secondary sources. At least two secondary sources must support that the project was designed as elderly (seniors) housing in the absence of primary documentation in order to establish such intention for elderly housing. Additionally, in the case of conflict between primary sources, and the owner chooses to rely on secondary sources, then at least two secondary sources must support that the project was designed as elderly (seniors) housing.

Primary sources. Primary sources that would evidence that a project was originally designed for occupancy by elderly families (seniors) include any of the following: the application in response to the notice of funding availability (NOFA); the terms of the NOFA under which the application was solicited; the regulatory agreement, the loan commitment, the bid invitation, the owner's management plan, or any other underwriting or financial document collected at or before loan closing. If any one of these project documents clearly evidence that the project was originally designed primarily for elderly families (seniors), the owner would be eligible to elect to apply the system of preferences provided under these regulations so long as the primary documents do not conflict.

Secondary sources. As discussed above, if primary sources do not evidence that the population intended to be served by the project were elderly families (seniors), an owner may elect the system of preferences provided by subtitle D if the owner is able to produce evidence from two secondary sources that clearly evidence that the project was originally designed primarily for elderly families (seniors). Secondary sources include: (1) Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse, or sole member is 62 years of age or older; (2) evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; (3) project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or (4) any other relevant type of historical data unless clearly contradicted by other comparable evidence.

As discussed above, the lack of uniform documentation, and the possible lack of distinction between: (1) Elderly projects which are seniors housing, and (2) elderly projects which planned to serve disabled families equally with seniors, make the determination of whether a project is a "covered section 8 housing project" a difficult one.

The Department is specifically interested in public comment on this issue, particularly with respect to the existence (or lack thereof) of documentation that would show the original population group intended to be served by the project, other types of evidence that might be considered, and how to distinguish between: (1) Projects for elderly families, which included, and intended to include, disabled families, from (2) projects for elderly families which served disabled families only incidentally.

B. Projects That Do Not Elect Subtitle D System of Preferences: Section 657

The Department emphasizes that the system of preferences provided by subtitle D and these regulations is not mandatory, and is available at the election of the multifamily housing owner. In accordance with section 657 of the 1992 HCD Act, an owner of a covered section 8 housing project that does not elect to implement the system of preferences provided by subtitle D would continue to provide housing for elderly families without incurring any obligation (beyond that mandated by the specific authorizing statutes and any other applicable statutory requirements) to provide housing for elderly families and/or non-elderly and disabled families.

For covered section 8 projects for which the owner does not elect the subtitle D system of preferences, the new definition of "elderly families" established by section 621 of the 1992 HCD Act would *not* apply. Rather the former definition in section 3(b) of the 1937 Act, which includes the non-elderly disabled families in the meaning of "elderly families," would be applicable, and elderly families under this broader definition (i.e., elderly families *and* disabled families) would be eligible for units in these projects for which the election of preferences was not taken to the same extent that such families were eligible before enactment of the 1992 HCD Act.

The non-election of the subtitle D system of preferences does not override any occupancy requirements affecting covered section 8 housing designed primarily for occupancy by elderly families based on the authority of regulatory agreements or statutory provisions governing the FHA mortgage insurance programs. By way of example, the enabling statute for the Section 231 Program ("Housing Mortgage Insurance for the Elderly") mandates that not less than 50 percent of the units in a Section 231 project must be designed for the use of elderly persons, meaning any person, married or single, who is 62 years of age or over. Accordingly, not all members of the entire population group encompassed by the pre-1992 HCD Act definition of "elderly families" (*i.e.*, elderly families and non-elderly disabled families), are eligible for elderly units in Section 231 projects.

Application of the pre-1992 HCD Act definition could make it impossible to meet the statutory percentage requirement of the Section 231 Program or a higher percentage that may have been specified in the regulatory agreement or in other authority. Therefore, owners of Section 231 projects (where the projects are also covered section 8 housing designed primarily for occupancy by elderly families) who do not make an election to be covered by the subtitle D system of preferences will continue to follow the standards of Section 231 of the National Housing Act and the terms of their regulatory agreement or other controlling documentation in determining the eligibility of elderly families for occupancy in their projects. This position is consistent with section 657 of subtitle D which provides that where the owner does not elect the preference scheme, "elderly families" as defined by the pre-1992 HCD Act definition, shall be eligible for occupancy "*to the same extent* that such families were eligible before the date of enactment [of the 1992 HCD Act.] (emphasis added.)"

III. Implementation of Preferences for Elderly Families

An owner who elects to provide preferences for elderly families in accordance with section 651, and who can compile and, on request, produce the required documentation to support a determination that the project was designed primarily for occupancy by elderly families (seniors), may, in selecting tenants for units in the project that become available for occupancy after the effective date of this regulation, give preference to elderly families who have applied for occupancy in the housing.

An owner of a covered section 8 project is not required to solicit or obtain the approval of HUD before exercising the election of preference for elderly families provided by subtitle D. The owner, if challenged on the issue of the "coverage" of the project, must be able to support the project's coverage, and the owner's eligibility to make the election of preference through the production of the supporting evidence discussed earlier in this preamble. (The owner may be challenged by, among others, existing tenants, applicants for tenancy or HUD on this issue.) Additionally, the Department reserves the right at any time to review and make determinations regarding the accuracy of the determination of the project as an eligible project. The Department can make such determinations as a result of its ongoing monitoring of activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

When establishing the preference for elderly families, an owner also must reserve units for occupancy by disabled families who are not elderly or near-elderly, as explained below. In no case, may an owner evict, without good cause, a family that is lawfully residing in a unit in a covered section 8 housing project to achieve the occupancy level that has been determined under the system of preferences or the reservation of units set forth in this interim rule. (Good cause would not exist where the eviction stemmed from the system of preferences or the reservation of units, or because of any action taken by the Secretary or owner pursuant to subtitle D.)

A. Reservation of Units for Disabled Families Who Are Neither Elderly Nor Near-Elderly: Section 652

If an owner elects to provide preferences for elderly families for admission to a project or a portion of a project that is determined to be "covered section 8 housing project" in accordance with section 651, then section 652 requires the owner also to reserve covered section 8 units in the project for occupancy by disabled families who are not elderly or near-elderly. The number of units to be reserved for disabled families who are not elderly or near-elderly is based on a calculation prescribed in section 652(b).

Under section 652(b), an owner who elects to provide preferences for elderly families must determine the percentage of covered section 8 units occupied by disabled families who are not elderly or near-elderly on October 28, 1992, which is the date of enactment of the 1992 HCD Act (the October 28, 1992 percentage). The next step is for the owner to compare the October 28, 1992 percentage to the percentage of covered section 8 units occupied by disabled families who are not elderly or near-elderly on January 1, 1992 (the January 1, 1992 percentage), in order to determine the highest occupancy percentage of disabled families who are not elderly or near-elderly in 1992. The owner must reserve the highest occupancy percentage (either the October 28, 1992 percentage or the January 1, 1992 percentage), up to a maximum of 10 percent of the covered section 8 units, for disabled families who are not elderly or near-elderly.

Under the statute and these regulations, an owner may, but is never obligated to, admit disabled families who are not elderly or near-elderly to more than 10 percent of the covered section 8 units. The actual percentage required is the highest percentage in occupancy on the two "snapshot" dates in 1992 (again October 28, 1992 or January 1, 1992), unless that number exceeds 10 percent, in which case the requirement is set at 10 percent. Thus, under the statutory formula and this interim rule, if a project did not have any disabled families who are not elderly or near-elderly residing in the covered section 8 units on both January 1, 1992 and October 28, 1992, the owner would not be required to reserve any covered section 8 units for such families. The Department believes that few, if any, projects will fall into this category.

While the percentage of covered section 8 units required to be reserved may vary between 10 percent and zero, the Department reiterates that the required percentage is not a ceiling, and owners are encouraged to reserve (or permit admission to) a higher percentage of covered section 8 units for disabled families who are not elderly or near-elderly where the need exists. Owners who choose to reserve (or permit admission to) a greater percentage of covered section 8 units than the percentage which is statutorily required for disabled families who are not elderly or near-elderly would not incur any obligation to continue maintaining the higher percentage (than statutorily required by subtitle D) as vacancies arise.

In calculating actual utilization of units reserved for disabled families who are not elderly or near-elderly, units

occupied by elderly families where a member of the family is disabled do not count as part of the required percentage. Another factor to be considered is that the percentage of units which are reserved under subtitle D for disabled families who are not elderly or near-elderly is not linked to specific units.

Since most elderly projects, even when designed for occupancy by seniors, have a portion of the units designed to be accessible and usable by persons with physical disabilities, there may be a tendency to assume that these "accessible" units will be designated to fulfill the required percentage of units reserved for disabled families who are not elderly or near-elderly. This is not the case. Disabled families who are not elderly or near-elderly and therefore qualify for the units reserved under subtitle D may have any one of a variety of disabilities, many of which will not require an accessible unit. Thus, in determining whether a project has met its obligation under subtitle D, the relevant factor is the number of disabled families who are not elderly or near-elderly in occupancy, not the units in which they reside. The accessible units may be occupied by elderly families, or by a mixture of elderly families and disabled families who are not elderly or near-elderly. Similarly, a project may have reached its required percentage of occupancy by disabled families who are not elderly or near-elderly, and have vacant accessible units. In such case, an owner is under no obligation to offer these units to disabled families before offering such units to elderly families. However, the owner must offer such vacant accessible units to current tenants who need any of the accessible features of the unit before offering it to the first elderly or non-elderly family on the waiting list. In selecting from the waiting list, the owner can give elderly disabled families who need the accessible unit a preference over elderly non-disabled families.

The Department emphasizes that when a vacancy occurs and it is a disabled family's turn to be placed in a project pursuant to the preference system, the fact that the vacant unit may not be accessible, does not entitle the housing provider to skip over the disabled family. Where the available unit is not accessible and the disabled family needs an accessible unit, the housing provider is to accommodate the family, either by (1) making that unit accessible, or (2) by transferring a tenant who is living in an accessible unit but does not need an accessible unit to the inaccessible unit and offering the disabled family an accessible unit.

B. Secondary System of Preferences: Section 653.

Under the statutory system of preferences, if there are an insufficient number of elderly families to fill vacant covered section 8 units, an owner may give a secondary preference to disabled families who are near-elderly. Similarly, if there are an insufficient number of disabled families who are not elderly or near-elderly to fill vacant covered section 8 units reserved for such disabled families, an owner may give a secondary preference to disabled families who are near-elderly to fill those units. However, in the event that there are an insufficient number of elderly families, disabled families who are not elderly or near-elderly, or near-elderly disabled families to fill vacancies that occur, the owner must make vacant covered section 8 units generally available to eligible families who apply for housing, without regard to the statutory system of preferences or reservation of units.

The statute looks to the Department to establish a standard for determining whether there are an insufficient number of families to fill vacant units subject to the preferences or reservations established in this interim rule. These standards are already in place in the existing section 8 regulations. The interim rule provides that before an owner can determine that there are an insufficient number of families to fill vacant covered section 8 units, an owner must conduct marketing to attract applicants qualifying for the preferences (including outreach to such applicants) in accordance with §§ 880.601(a), 881.601(a), 883.702(a), 884.226, or 886.321(a), as applicable. Additionally, the owner must make a good faith effort to lease to applicants qualifying for the preferences (which must include taking all feasible actions to fill vacancies by renting to such families), and not reject any such applicant family except for reasons acceptable to the Department or the contract administrator (in accordance with HUD guidelines).

C. Waiting Lists

Owners of covered section 8 housing projects designed primarily for occupancy by elderly families, which are required to have a percentage of covered section 8 units reserved for disabled families who are not elderly or near-elderly pursuant to section 652, or which have other units available to disabled families pursuant to statutory and regulatory requirements (e.g., near-elderly disabled families admitted under the secondary preferences of section 653) would not be able to use this interim rule to remove applicants from a waiting list. Moreover, an owner would have to continue to select applicants for covered section 8 vacant units in accordance with current HUD procedures with the exception noted below.

Procedures presently in effect provide that the applicant's place on the waiting list and the application of preferences determine the order of selection for admission. Section 655 provides that the existing Federal preferences apply within each group (i.e. elderly families, disabled families who are not elderly or near-elderly, and disabled families who are near-elderly) to the extent that they currently apply under each applicable multifamily housing program.[6] Local preferences also are permitted under existing rules.

However, under this interim rule, if the applicants at the top of the waiting list are disabled families who are not elderly or near-elderly, and such disabled families currently occupy the full percentage of covered section 8 units required to be reserved for them under subtitle D, the owner may, but is not required to, skip over the disabled applicants on the waiting list, and select elderly families for vacant covered section 8 units. The owner would only be required to select disabled families who are not elderly or near-elderly, and who are at the top of the waiting list for vacant covered section 8 units when: (1) The number of disabled families who are not elderly or near-elderly in covered section 8 units drops below the minimum required percentage, (2) the owner has adopted a secondary preference under section 653(a) of the 1992 HCD Act, and there are not sufficient numbers of elderly families or near-elderly disabled families to fill the elderly units (in accordance with section 654 of the 1992 HCD Act), or (3) the owner has not adopted a secondary preference under section 653(a), and there are not sufficient numbers of elderly families to fill the elderly units.

It is important to note that some projects which do not have to reserve any units for non-elderly disabled families under subtitle D may have disabled families who are not elderly or near-elderly on their waiting lists. If a project originally designed primarily for occupancy by elderly families would not have to reserve any units for disabled families who are not elderly or near-elderly under subtitle D, the owner

[6] For example, an elderly family with a Federal preference would be selected for a vacant unit before an elderly family without a Federal preference.

would not have to admit such disabled families on the waiting list to covered section 8 units, nor would any additional non-elderly families have to be added to the waiting list for covered section 8 units. The owner would, of course, have to admit disabled families who are also elderly, and provide such families with the same preference for admission as non-disabled elderly families.

Also, an owner who has adopted a secondary preference under section 653(a) would admit, and give a preference to, near-elderly disabled families, if there are insufficient numbers of elderly families to fill the elderly units. An owner who has adopted a secondary preference under section 653(a) would also admit families without regard to age (including disabled families that are not elderly or near-elderly) if there are not sufficient numbers of elderly families or near-elderly disabled families to fill the elderly units (pursuant to section 654). An owner who has not adopted a secondary preference under section 653(a) would admit applicants without regard to age (including disabled families that are not elderly or near-elderly) if there are not sufficient numbers of elderly families to fill the elderly units.

Even where there are sufficient numbers of elderly families to fill the elderly units, an owner may elect to admit disabled families who are not elderly or near-elderly to covered section 8 units, and the Department encourages this voluntary policy, particularly where the need exists and the units are available. Owners who choose to admit such disabled families in excess of the statutorily-mandated minimum may do so without incurring any continuing obligation as such disabled families voluntarily move out, and without losing their project's identification as a project designed primarily for occupancy by elderly families.

In any case, when an owner's decision to provide preferences to elderly families under subtitle D would have an adverse effect on non-elderly families on the waiting list, the owner would be required to notify those families of the new policy and how this policy may affect them. The notification requirement would be triggered if the current percentage of disabled families who are neither elderly nor near-elderly exceeds the minimum required percentage, and non-elderly families on the waiting list (including those with disabilities) may be passed over for covered section 8 units for the elderly, or if the project is one of the few which will have no units set aside for such disabled families under subtitle D.

Justification for Interim Rulemaking

It is the Department's general policy to publish a rule for notice and comment before issuing a rule for effect in accordance with the Department's own rule on rulemaking, codified at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without notice and prior public comment because the Department has determined that, with the exception of possible clarifying changes at the final rule stage, public comment will not alter the standards set forth in this interim rule for making the election of preferences provided by subtitle D, and is therefore unnecessary. The interim rule adopts the standards for the election of preferences for elderly families and reservation of units for disabled families as set forth in the statute.

Subtitle D establishes which section 8 housing projects are eligible for the election of preferences provided by subtitle D. Subtitle D establishes that the "elderly families" eligible to reside in covered section 8 housing projects for which the owner has made the election of preferences provided by subtitle D are those families who meet the definition of "elderly families" as set forth in section 3(b) of the 1937 Act, as amended by section 621 of the 1992 HCD Act. Subtitle D establishes the formula by which an owner will determine the number of units in the covered section 8 housing project that must be reserved for occupancy by disabled families who are not elderly or near-elderly. Subtitle D establishes the secondary system of preferences available to owners if there are insufficient numbers of elderly families to occupy all the units reserved for elderly families. Subtitle D also establishes the procedures to be followed if units remain vacant after the owner has elected to provide the secondary system of preferences, and the procedures to be followed concerning the order of selection within groups to whom a preference has been given. The interim rule adopts all these statutory provisions without substantive change.

The interim rule departs from the statute in providing the types of documents that an owner must be able to produce in the event the owner is challenged on the issue of whether the owner's project is eligible for the election of preferences provided by subtitle D. The statute does not provide how the owner may support that the owner's section 8 housing project was originally designed primarily for occupancy by elderly families (i.e., seniors). The interim rule provides a list of documents which the owner may rely upon as support for determining project eligibility to make the election of preferences provided by subtitle D.

The Department carefully considered which documents may evidence project eligibility for the subtitle D system of preferences. As discussed earlier in the preamble, because of the various types of housing projects covered by subtitle D and this interim rule, and because these housing projects were developed under several different programs and over a period of time which spans almost two decades, there is no uniform documentation at the Department which identifies the population group to be served by the project. Additionally, and again as discussed earlier in the preamble, the difficulty in identifying the population group to be served is added by the fact that the previous definition of "elderly families" in the 1937 Act included disabled families, and the Department's policy required all housing for the elderly (defined by age) to incorporate certain accessible features and to design a certain percentage of units to be accessible for persons with physical disabilities. The Department specifically requests comments from the public on the list of supporting documents provided in the interim rule, and this provision may change following public comment.

The Department recognizes that there may be questions concerning the Department's use of interim rulemaking for subtitle D of title VI, but not for subtitle B of the title VI. Subtitle B provides public housing agencies (PHAs) with the option, subject to certain requirements, to designate public housing projects, or portions of these projects, for occupancy by elderly families, by disabled families, or elderly families and disabled families. Under subtitle B, to elect this option, a PHA must submit an allocation plan to the Department for review and approval before designating a project for occupancy by one of the three categories of families listed in the statute. Additionally, for projects to be designated for occupancy by disabled families, the statute requires the PHA

also must submit, and receive approval of, a supportive service plan. The Department added requirements, by regulation, to the allocation plan and supportive service plan to supplement those set forth in the statute. For this reason, it was necessary to provide the public with advance notice and public comment before making those regulatory requirements effective.

Additionally, to the extent that this subtitle D rule, which concerns section 8 housing, and the subtitle B rule, which concerns public housing, address similar issues, the public comments on the subtitle B rule are applicable to this interim rule. Both statutes (subtitle D and subtitle B), which permit housing to be reserved for occupancy by elderly families, may have the affect of reducing housing assistance for non-elderly disabled persons. Subtitle D attempts to minimize the reduction of housing assistance for non-elderly disabled families by limiting the preference for elderly families to covered section 8 housing that was originally designed primarily for occupancy by elderly families. Subtitle D also requires owners of these covered projects to reserve units in the covered project for disabled families who are neither elderly nor near-elderly, and the number of units to be reserved is determined in accordance with the formula established by the statute.

Subtitle B attempts to minimize the reduction of housing assistance for non-elderly disabled families by requiring housing authorities that designate projects for elderly families to submit a plan for securing sufficient additional resources that the agency owns, controls, or has received preliminary notification that it will obtain, or for which the agency plans to apply that will be sufficient to provide assistance to not less than the number of non-elderly disabled families that would have been housed but for the designation of the project for elderly families. Further, both statutes prohibit the eviction of any tenant lawfully residing in a section 8 covered project or a public housing project because the project is to be reserved for elderly families or to be designated for elderly families.

Persons with disabilities commenting on the subtitle B rule were concerned about the possible reduction of public housing assistance for non-elderly disabled families as a result of projects designated for elderly families, and several requested that the Department not permit designated housing. The Department anticipates that persons with disabilities will have the same concerns about the subtitle D rule, and perhaps make similar comments. However, in both cases, the statute permits the reservation or designation for projects for occupancy by elderly families, and the Department cannot preclude this an as option for project owners or housing authorities.

Persons with disabilities commenting on the subtitle B rule requested that the Department carefully monitor the statutory protections provided for non-elderly disabled families. The Department anticipates that persons with disabilities commenting on the subtitle D rule will make similar comments. The Department will monitor both the subtitle D reservation, and the subtitle B designation, to ensure, to the extent possible, that there is minimum adverse impact on non-elderly disabled families.

Persons with disabilities commenting on the subtitle B rule stated that their concern about loss of access to projects designated for elderly families should be construed to mean a concern about reduction of housing assistance generally, and not concern about loss of access to "elderly" projects. These commenters stated that an integrated housing setting is not a project that houses only elderly families and disabled families. The commenters asked the Department to make available section 8 assistance to non-elderly disabled families so that they could live in housing with "mainstream" populations. The Department anticipates that similar comments will be made by persons with disabilities on the subtitle D rule. The Department will make every effort to increase section 8 housing assistance for non-elderly disabled persons.

Given the statutory framework of the system of preferences for elderly families authorized by the subtitle D rule, the Department reiterates that, except for the types of documentation a project owner should be able to produce to support a determination of eligibility to make the election of preferences, there is very little that will change at the final rule stage as a result of public comments. Given the similarity of certain issues addressed by subtitle D and subtitle B, the Department also reiterates that those comments received on the subtitle B rule and that are applicable to this rule were taken into consideration in developing this interim rule.

Although this interim rule is being published for effect within 30 days from the date of publication, the Department requests comments from the public on this interim rule, and the public comments will be considered by the Department in development of the final rule.

Additionally, in accordance with the Department's policy on interim rules, the amendments made by this interim rule to parts 880, 881, 883, 884, and 886 will expire on the twelve-month anniversary date of publication of this interim rule unless extended by notice published in the **Federal Register** or adopted by a final rule published on or before the twelve-month anniversary date of publication of this interim rule.

Other Matters

Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review. Any changes made in this interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Department's Rule's Docket Clerk, room 10276, 451 Seventh St. SW., Washington, DC.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the interim rule is directed to owners of multifamily housing projects, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the interim rule is not subject to review under the order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule does not have potential for significant impact

on family formation, maintenance, and general well-being within the meaning of the order. This interim rule implements the system of preferences authorized by subtitle D of title VI of the 1992 HCD Act, which provides that owners of certain section 8 covered projects that were originally designed primarily for occupancy by elderly families (i.e., families whose heads, spouses or sole members are 62 years or older) may elect to give preference in occupancy to vacant units in the project to elderly families. Although subtitle D provides for preferences for elderly families in projects meeting the conditions established by subtitle D, subtitle D also requires that owners of such projects must reserve no less than a minimum number of units in these projects for disabled families who are not elderly or near-elderly. The minimum number is determined in accordance with the formula established by statute.

Since the subtitle D preference system provides a primary preference for elderly families, and a secondary preference for disabled families who are near-elderly, there is the possibility that this statutory system of preferences would limit the availability of certain section 8 housing for: (1) Disabled families who are not elderly or near-elderly (if an owner gives preference to elderly families for units), and (2) such families with children, and thus adversely impact the maintenance and well-being of these families. (Although owners can apply the same preferences and reservation of units to families with children as to families without children, owners cannot restrict admission to any units solely because of familial status as long as the family qualifies for the unit on the basis of the relevant age or disability criterion for admission.) The Department believes that the number of projects that would be eligible for the preferences provided by subtitle D is limited, and thus, the impact on family maintenance and well being would not be significant within the meaning of the order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule would not have a significant economic impact on a substantial number of small entities. This interim rule reflects a system of occupancy preferences authorized by statute which applies to section 8 newly constructed or substantially rehabilitated housing without regard to the size of entities involved.

Regulatory Agenda

This interim rule was listed as sequence no. 1580 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20446) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance Programs. The Catalog of Federal Domestic Assistance program number is 14.156.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 880, 881, 883, 884, and 886 are amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for 24 CFR part 880 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

2. A new § 880.612a is added to read as follows:

§ 880.612a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of:

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 880.601(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 880.613.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for 24 CFR part 881 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

4. A new § 881.612a is added to read as follows:

§ 881.612a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1)

Election by owners of eligible projects. (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: The application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units

to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 881.601(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 881.613.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for 24 CFR part 883 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

6. A new § 883.704a is added to read as follows:

§ 883.704a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph

(c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 883.702(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 883.714.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

7. The authority citation for 24 CFR part 884 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

8. A new § 884.223a is added to read as follows:

§ 884.223a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families—(1) Evidence supporting project eligibility.* Evidence that a project assisted under this part (or

portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: The application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 884.214(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 884.226.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action

taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

11. The authority citation for 24 CFR part 886 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

12. A new § 886.329a is added to read as follows:

§ 886.329a Preferences for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project involving substantial rehabilitation and assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in

accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 886.321(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 886.337.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

Dated: April 26, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–10519 Filed 5–2–94; 8:45 am]

BILLING CODE 4210–27–P

federal register

Tuesday
May 3, 1994

Part VI

Department of Education

Fund for Innovation in Education: Innovation in Education Program—Partnerships for Standards-Based Professional Development of K–12 Educators; Notice of Final Priority for Fiscal Years 1994 and 1995

DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program—Partnerships for Standards-Based Professional Development of K–12 Educators

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal years 1994 and 1995.

SUMMARY: The Secretary announces an absolute priority for fiscal years 1994 and 1995 under the Fund for Innovation in Education (FIE): Innovation in Education Program to support innovative projects that provide K–12 teachers and other educators with sustained, high quality professional development opportunities that are aligned with challenging content and professional standards developed at the national, State or local levels. The intent of this priority is to enable school educators, working with appropriate university, community, and business partners, to create and maintain model learning environments that will help all students in elementary and secondary schools achieve challenging academic standards in subjects such as English, mathematics, science, history, geography, civics, foreign languages, economics, and the arts.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION: Jaymie Lewis or Bryan Gray, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: An essential step in achieving our National Education Goals is ensuring that we have high academic expectations for *all* students and that each student has the opportunity to fulfill those expectations. Current national, State, and local efforts to define high standards for what students should know and be able to do in the various subject areas provide a starting point for creating the type of learning opportunities that an education system of excellence must provide for all members of an increasingly diverse student population.

In order to provide learning opportunities where more rigorous and complex learning is expected of *all* students, teachers will need high-quality, career-long professional development programs. Other educators who help to create teaching and learning environments that better serve the academic and other needs of students will need similar high-quality professional development opportunities. Such educators might include school and district administrators, school and university-based teacher educators, curriculum and supervisory personnel, paraprofessionals/instructional aides, and members of school boards. To provide effective professional development programs for teachers and other educators, applicants must ensure that their proposed projects are aligned with high standards for student learning. Applicants should also consider related standards for teacher effectiveness and for the preparation, credentialling and continuing development of educators. More specifically, in designing policies and practices for professional development, applicants are urged to draw on relevant work, as appropriate, from groups such as the National Board for Professional Teaching Standards, the Interstate New Teacher Assessment and Support Consortium, the National Council for the Accreditation of Teacher Education, and the National Staff Development Council.

The Secretary recognizes that successful well-articulated programs that provide for continuous improvement of professional educators from recruitment to retirement will require educators to work together across traditionally separated roles and organizations. Therefore, projects must be carried out by partnerships. Finally, the design of professional development efforts must incorporate what is known about developing and managing high-performance school systems that support educational excellence and equity.

The Secretary proposes to direct financial assistance to projects that develop new or further develop existing innovative partnerships of school, university, community, and other entities to establish and maintain high-quality, standards-based professional development programs for teachers and other educators. The purpose of these partnerships may be to improve the entire continuum of professional development or to focus on one or more points along that continuum (e.g., preservice, induction, inservice).

In accordance with recommendations in the Senate Report that accompanied the Fiscal Year 1994 Department of Education Appropriation Act, the Secretary supports development of programs based on existing strategies, such as creating model professional development schools, or applicants' newly designed strategies. The Secretary also recognizes the need for professional development efforts, as identified in the Senate Report, that prepare educators for working with other human service professionals to address non-academic student/family problems (e.g., drugs, violence, nutrition, unemployment) as well as other conditions that place students at-risk for failure in school. The Secretary is particularly interested in projects that provide relevant professional development opportunities for educators who work in urban school communities.

The Secretary strongly encourages the development of challenging and feasible school-based collaborations that are based upon appropriate research results and exemplary teaching and professional development practices, as well as the contributions of expert school, higher education, and community practitioners. Emphases might include collegial strategies such as in-school mentoring for teachers; school-university teams integrating teacher preparation and school curriculum to effectively educate at-risk students; teacher sabbaticals to work in model schools; and practitioner-led inquiry and reform activities.

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Analysis of the Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, eight of the eleven parties submitting comments made recommendations. Three commenters expressed support for the priority without any recommendations for change. An analysis of the recommendations submitted by eight commenters follows.

Comments: One commenter recommends that the priority require projects to include representatives from State Boards of Education on the advisory committee since States set the standards and policies that serve as frameworks for professional development.

Discussion: The priority requires that the advisory committee include State education officials. This requirement ensures representation of the State and is broad enough to include State board members.

Changes: None.

Comments: Three commenters recommend that the priority use more explicit language to identify the "other" potential project partners. One commenter believes the priority should explicitly identify national organizations or associations as potential partners or applicants. Another commenter requests the inclusion of non-profit organizations.

Discussion: The Secretary supports extensive collaboration. The priority states that partnerships must be formed that involve LEAs, IHEs, and others. The examples of other potential partners does not preclude national organizations, associations, or non-profit entities.

Changes: None.

Comments: One commenter requests that the National Staff Development Council (NSDC) be cited as a resource to applicants on staff development standards in the Supplementary Information section of the priority. This same commenter encouraged inclusion of the NSDC's Standards for Staff Development under the Required Activities Section of the priority.

Discussion: The Secretary recognizes that many organizations have already developed and recommended, or are in the process of developing and recommending guidelines and standards for professional development. The NSDC is a national organization representing a key professional development audience and can appropriately be included as an example in the Supplementary Information section of the priority. The priority requires that projects consider the applicability of several types of standards, including those for teacher preparation and continuing development. The Secretary does not wish to specify particular documents or sources in the text of the priority.

Changes: The National Staff Development Council has been added under the Supplementary Information section of the priority.

Comments: Two commenters find the examples of possible ways to build upon existing strategies listed in the Supplementary Information section of the priority either too limiting or not specific enough, e.g., model professional development school, model school, and teacher sabbaticals.

Discussion: The Secretary used these terms in the Supplementary Information section to give examples of possible strategies for an applicant. The examples are illustrative only.

Changes: None.

Comments: One commenter recommends that districts and States be allowed to align professional development with performance outcomes in order to allow districts to continue to upgrade teacher skills to improve student performance in locally developed performance outcomes.

Discussion: As stated, the priority allows a project to propose this type of activity.

Changes: None.

Comments: One commenter recommends that grants up to $1 million be awarded for up to three years.

Discussion: The Secretary expects that a project could receive up to $1 million over a three-year period.

Changes: None.

Comments: One commenter recommends that methodology for teaching and understanding the dynamics of at-risk youth be emphasized more.

Discussion: The priority permits projects to address the needs of at-risk youth through this sort of focus.

Changes: None.

Comments: One commenter recommends that the Secretary support model schools located in the inner city to demonstrate existing or newly designed strategies.

Discussion: The priority does not preclude such projects provided they have a professional development focus and other requirements of the priority are met.

Changes: None.

Comments: One commenter recommends changing the language of the required activity to allow an LEA to form a partnership with either one or more institutions of higher education or with other qualified educational institutions.

Discussion: The Secretary intends that projects funded under this program form cross-institutional partnerships that will enable sites to address the career-long development of teachers and other educators in an integrated fashion. Therefore, collaboration among those entities which influence educator development from recruitment through retirement is essential.

Changes: None.

Comments: One commenter recommends that training objectives highlight the need for teachers to become more effective in motivating students to set and achieve their goals, and to help students understand the direct relationship of their success in school (i.e., traditional academic subjects) and future success in the world of work.

Discussion: The priority does not preclude projects that help teachers motivate students and help students understand the relationship between their success in school and future success in the world of work.

Changes: None.

Comments: Two commenters recommend networking and collaboration to promote the interchange of ideas among teachers, community members, parents and others involved in education.

Discussion: The priority as written requires partnerships that encourage collaboration and networking.

Changes: None.

Comments: One commenter recommends adding language under *Required Activities* that would provide for those with disabilities.

Discussion: The Secretary intended to emphasize the provision of professional development opportunities that are aligned with challenging academic content standards for *all* students.

Changes: "All" has been added to part "a" of *Required Activities.*

Comments: One commenter recommends adding language to part "c" of *Required Activities* to include those with expertise in the education of children with disabilities.

Discussion: The Secretary intended that projects funded under this program help *all* students achieve challenging academic standards. The Secretary intended that groups such as experts in the field of educating children with disabilities be involved.

Changes: The phrase "experts in the education of children with disabilities" has been added to part "c" of *Required Activities.*

Comments: One commenter recommends adding arts and cultural organizations as potential partners in these projects.

Discussion: The priority permits arts and cultural organizations to participate as partners in these projects. However, the Secretary intended to encourage broad participation.

Changes: The Absolute Priority section of the notice has been revised by adding arts and cultural organizations as potential partners in the professional development of teachers.

Priorities:

Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that design and implement innovative, high quality, standards-based preservice, induction and/or inservice professional development programs for K–12 teachers and other educators. Each project must involve one or more local education agencies (LEAs) working in partnership with one or more institutions of higher education (IHEs) and others such as State education officials and representatives from professional organizations, private schools, arts and cultural organizations, business, and the community, as appropriate. Programs and activities must be built upon relevant and current research including a demonstrated relationship between the professional development approach and lessons learned from relevant research and exemplary practice. A grounding in research findings must also be evident in the content of the professional development activities.

Required Activities

Each project must: a. Provide professional development opportunities that are aligned with challenging academic content standards for *all* students as developed through voluntary national, State, and/or local efforts in one or more subjects such as English, mathematics, science, history, geography, civics, foreign languages, economics, and the arts.

b. Consider the implications of available professional standards such as those for beginning and expert teachers and other educators, as well as for teacher preparation, credentialling, and ongoing staff development as appropriate to the particular focus of the project.

c. Establish an advisory committee composed of school and university practitioners; state education officials; experts in the education of children with disabilities; parents; professional organization, community and business representatives; and others as appropriate. The advisory committee must guide the project activities to ensure a systemic approach including cross-institutional planning, coordination, and resource allocation.

d. Evaluate the following aspects of the project:

1. The degree to which the professional development content and strategies reflect relevant research and exemplary practice;

2. The degree to which the project activities were actually implemented as compared to the original design; and

3. The nature and impact of project outcomes related to improved teaching and increased student learning and development.

The evaluation must use state-of-the-art documentation and assessment approaches.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number: 84.215J Secretary's Fund for Innovation in Education: Innovation in Education Program)

Dated: April 28, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–10555 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
May 3, 1994

Part VII

Department of Education

Fund for Innovation in Education; Notice Inviting Applications for New Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No. 84.215J]

Fund for Innovation in Education: Innovation in Education Program—Partnerships for Standards-Based Professional Development of K–12 Educators; Notice Inviting Applications for New Awards for Fiscal Year 1994

Purpose of program: To award grants to support projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary and secondary levels.

Eligible applicants: State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), private schools, and other public and private agencies, organizations and institutions.

Deadline for transmittal of applications: July 1, 1994.

Deadline for intergovernmental review: September 1, 1994.

Applications available: May 13, 1994.

Estimated available funds: $6,000,000.

Estimated range of awards: $250,000–$450,000.

Estimated average size of awards: $300,000.

Estimated number of awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition. In addition, in accordance with EDGAR 34 CFR 75.591, a grantee must cooperate in any evaluation of the program by the Secretary. This program and the priority support the National Education Goals.

Selection criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Five additional points are added to this criterion for a possible total of 20 points.

Evaluation plan (34 CFR 75.210(b)(6)). Ten additional points are added to this criterion for a possible total of 15 points.

For applications or information contact: Bryan Gray or Jaymie Lewis, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 3151.

Dated: April 28, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–10556 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
May 3, 1994

Part VIII

Department of Agriculture

Office of the Secretary

7 CFR Ch. VII

Semiannual Regulatory Agenda; April 1994 Correction; Proposed Rule

DEPARTMENT OF AGRICULTURE (USDA)

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Ch. VII

Semiannual Regulatory Agenda, April 1994; Correction

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda; correction.

SUMMARY: This document corrects the Proposed Rule Stage section of the Agricultural Stabilization and Conservation Service's agenda, which was published in the **Federal Register** on Monday, April 25, 1994. The entries listed in the table of contents under Sequence Numbers 54-74 were inadvertently omitted from the text starting on page 20035.

The three indexes appearing at the end of the Unified Agenda do include the appropriate references to the omitted entries.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, (202) 720-7583.

DATED: April 26, 1994.

Jacquelyn C. Patterson,

Acting Chief, Legislative, Regulatory, and Automated Systems Division.

In proposed rule document 94-6355, beginning on page 20008 in the issue of Monday, April 25, 1994, make the following correction:

On page 20035, Sequence Number 54 was only partially printed and Sequence Numbers 55-74 were omitted. The table of contents of the Proposed Rule Stage section for the Agricultural Stabilization and Conservation Service and the text of all the entries in that section (Sequence Numbers 50-75) are printed below in their entirety.

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE—PROPOSED RULE STAGE

Sequence Number	Title	Regulation Identifier Number
50	Amendments to the Production Adjustment Regulations—Reconstitution of Bases, Allotments and Quotas	0560-AC99
51	Pilot Voluntary Production Limitation Program	0560-AD00
52	Amendments to CCC Debt Settlement Regulations Regarding Waiver of Restriction on Program Eligibility and Collection of Judgments by Administrative Offset	0560-AD09
53	Amendment to the U.S. Warehouse Act Regulations—License and Inspection Fees	0560-AD13
54	1994 Wool and Mohair Program	0560-AD19
55	1995 Feed Grain Program	0560-AD37
56	1995 Rice Program	0560-AD38
57	1995 Upland Cotton Program	0560-AD39
58	1995 Wool and Mohair Program	0560-AD40
59	1995 Extra Long Staple Cotton Program	0560-AD42
60	90-Day Rule	0560-AD43
61	Colorado River Basin Salinity Control Program Amendments	0560-AD45
62	Amendments to Regulations Regarding Payments to Persons Convicted of Controlled Substance Violations	0560-AD47
63	1994 Options Pilot Program	0560-AD48
64	Nonemergency Haying and Grazing on Conservation Reserve Program Grasslands	0560-AD54
65	Program Ineligibility for Noncompliance With Boll Weevil Eradication Program	0560-AD57
66	1995-Crop Marketing Quota and Price Support Level For Flue-Cured Tobacco	0560-AD62
67	1995-Crop Marketing Quota and Price Support Level For Burley Tobacco	0560-AD63
68	1995-Crop Market Quota and Price Support Levels For Six Kinds of Tobacco	0560-AD64
69	1995-Crop Marketing Quotas For Three Kinds of Tobacco	0560-AD65
70	1995-Crop Peanuts National Poundage Quota and Minimum Commodity Credit Corporation (CCC) Export-Edible Sales Price for Additional Peanuts	0560-AD66
71	Amendment to the Price Support Regulations Regarding Losses to Farm-Stored Loan Collateral Due to Flood	0560-AD69
72	Cooperative Marketing Association Eligibility Requirements for Price Support	0560-AD70
73	Technical Corrections to the Wheat, Feed Grain, Cotton and Rice Program Regulations	0560-AD72
74	Wool and Mohair Recourse Loan Program	0560-AD75
75	1995 Wheat Loan Rate and Acreage Reduction Program	0560-AD76

DEPARTMENT OF AGRICULTURE (USDA)

Proposed Rule Stage

Agricultural Stabilization and Conservation Service (ASCS)

50. AMENDMENTS TO THE PRODUCTION ADJUSTMENT REGULATIONS—RECONSTITUTION OF BASES, ALLOTMENTS AND QUOTAS

Legal Authority: 7 USC 1379; The Agricultural Adjustment Act of 1938, sec 379, as amended

CFR Citation: 7 CFR 719

Legal Deadline: None

Abstract: This action is needed to amend the regulations regarding reconstitution of bases, allotments, and quotas in order to 1) clarify them, 2) make them more consistent with the payment limitation regulations, and 3) determine whether a spouse should be considered the "same owner" when determining whether land is under the same ownership. No Federal outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AC99

51. PILOT VOLUNTARY PRODUCTION LIMITATION PROGRAM

Legal Authority: 7 USC 1444f; 7 USC 1445b-3a; The Agricultural Act of 1949, sec 105B(g), as amended

CFR Citation: 7 CFR 1413

Legal Deadline: None

Abstract: This action is needed to implement the Pilot Voluntary Production Limitation Program (PVPLP) for wheat and feed grains, as required by P.L. 101-624. This action will implement regulations to provide for 1) Implementation of the PVPLP in at least 15 states, 2) Limiting the amount of wheat or feed grains that can be disposed of in excess of the production limitation quantity for the marketing year, 3) A production limitation quantity calculation, 4) Terms and conditions for producers who elect to participate, 5) Provisions for excess production, 6) Subsequent year marketing of excess production, and 7) Measures to prevent circumvention of the program, including refunds or forfeitures of commodities. Only minor administrative and program costs are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD00

52. AMENDMENTS TO CCC DEBT SETTLEMENT REGULATIONS REGARDING WAIVER OF RESTRICTION ON PROGRAM ELIGIBILITY AND COLLECTION OF JUDGMENTS BY ADMINISTRATIVE OFFSET

Significance:
Subject to OMB review: Yes

Legal Authority: 28 USC 3201; 15 USC 714b; 15 USC 714c

CFR Citation: None

Legal Deadline: None

Abstract: This action is needed to allow for the waiver of restrictions on program eligibility, as authorized by the Federal Debt Collection Procedures Act of 1990 (the Act), and to facilitate the collection of judgements by administrative offset. The Act provides that debtors who have judgement liens against their property for a debt owed to the United States are not eligible to receive grants or loans made by the United States until the debt is paid in full or otherwise satisfied. However, the Act also permits agencies to waive this restriction. In addition, the Commodity Credit Corporation is authorized to collect debts for other Federal agencies by administrative offset upon receipt of (1) a qualified offset request, (2) a Notice of Levy, or (3) a request or approval by the Department of Justice. This action would authorize ASCS to collect judgements in favor of the United States by administrative offset. This action will result in increased collection of debts owed to the Government.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD09

53. AMENDMENT TO THE U.S. WAREHOUSE ACT REGULATIONS—LICENSE AND INSPECTION FEES

Legal Authority: 7 USC 268

CFR Citation: 07 CFR 736

Legal Deadline: None

Abstract: The Omnibus Budget Reconciliation Act of 1981 required that U.S. Warehouse Act licensing and examination programs be operated on a fee basis. New regulations are required when an increase and/or decrease is warranted. Fixed fees were implemented in 1981 and were last increased in 1985. The interest accumulating in the Warehouse User Fee Account has been the major reason for not having to adjust the fee schedule before now. In more recent years, low interest rates and increased expenses (primarily salaries, travel, and administrative costs), coupled with collections which have not changed significantly over the past 10 years, will result in a deficit in the "fee collection account" by FY 1994 if the fee schedule is not revised, and would thus require a reduction in service. The cost of Government of this action has not yet been determined.

Timetable:

Action	Date	FR Cite
Notice Requesting Comments	08/20/93	58 FR 44320
NPRM	04/00/94	
Final Action	06/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD13

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54. 1994 WOOL AND MOHAIR PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes

Legal Authority: 7 USC 1781 et seq

CFR Citation: 07 CFR 1468

Legal Deadline: None

Abstract: This action is needed to implement the 1994 Wool and Mohair Program, as required by legislation. The purpose of the Program is to encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner that will assure a viable domestic wool industry in the future, by supporting the prices of wool and mohair by means of loans, purchases, payments, or other operations. The support level for wool is set by statutory formula. Payments are to be 75 percent of the amount otherwise determined. The other determinations are to: (1) support mohair at a level not more than 15 percent above or below the comparable percentage of parity at which shorn wool is supported, and (2) support pulled wool through payments based on the liveweight of unshorn lambs marketed for slaughter. The expected cost is $130–150 million.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD19

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55. 1995 FEED GRAIN PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes

Legal Authority: 7 USC 1444 et seq

CFR Citation: 07 CFR 1413

Legal Deadline:
Final, Statutory, September 30, 1994, ARP.
Final, Statutory, November 15, 1994, Adjustments.

Abstract: This action is needed to provide an adequate supply of feed grains for domestic and foreign utilization, support farm income, hold down Federal costs, conserve natural resources, and comply with statutory requirements. The primary determinations are: 1) Loan and purchase rates and 2) the acreage reduction program. Cost to the Government will be $3.0 to $4.5 billion.

Timetable:

Action	Date	FR Cite
NPRM	07/00/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD37

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56. 1995 RICE PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes

Legal Authority: 7 USC 1441-2

CFR Citation: 07 CFR 1413; 07 CFR 1421

Legal Deadline:
NPRM, Statutory, December 1, 1994, Preliminary ARP announcement.
Final, Statutory, January 1, 1995, Final ARP announcement.

Abstract: This action is needed to implement the Rice Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of rice for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) Loan and purchase rate and 2) The acreage reduction program. Cost to the Government will be $0.7 to $1.0 billion.

Timetable:

Action	Date	FR Cite
NPRM	09/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD38

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57. 1995 UPLAND COTTON PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes

Legal Authority: 7 USC 1444-2

CFR Citation: 07 CFR 1413; 07 CFR 1427

Legal Deadline:
NPRM, Statutory, November 1, 1994, Preliminary ARP level.
Final, Statutory, November 1, 1994, Loan rate.
Final, Statutory, January 1, 1995, Final ARP level.

Abstract: This action is needed to implement the Upland Cotton Program as as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of cotton for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) Loan rate 2) Acreage reduction program 3) Marketing loan and 4) Base quality. Cost to the Government will be $1 to $2 billion.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service,

Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD39

58. 1995 WOOL AND MOHAIR PROGRAM

Significance:
Economically significant: Yes

Legal Authority: 7 USC 1781 et seq

CFR Citation: 07 CFR 1468

Legal Deadline: None

Abstract: This action is needed to encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner that will assure a viable domestic wool industry in the future, by supporting the prices of wool and mohair by means of loans, purchases, payments, or other operations. The support level for wool is set by statutory formula. Payments will be 50 percent of the amount otherwise determined. The cost to the Government will be $75 to 125 million.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD40

59. 1995 EXTRA LONG STAPLE COTTON PROGRAM

Significance:
Subject to OMB review: Yes

Legal Authority: 7 USC 1444(h)

CFR Citation: 07 CFR 1413; 07 CFR 1427

Legal Deadline: Final, Statutory, December 1, 1994.
For announcement of the loan rate.

Abstract: This action is needed to implement the ELS Cotton Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of ELS cotton for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) loan rate, and 2) the acreage reduction program. The cost to the Government will be $0 - $5 million.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD42

60. 90-DAY RULE

Significance:
Subject to OMB review: Yes

Legal Authority: 7 USC 1433e

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This action is needed to implement the 90-day rule as provided by the Food, Agriculture, Conservation, and Trade Act of 1990. The 90-day rule provides that decisions of State and county offices shall be final after 90 days and that no action shall be taken to recover payments made in error unless the producer had reason to believe that the decision was erroneous. The cost of this action has not yet been determined.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD43

61. COLORADO RIVER BASIN SALINITY CONTROL PROGRAM AMENDMENTS

Legal Authority: 43 USC 1592(c)

CFR Citation: 07 CFR 702

Legal Deadline: None

Abstract: This action is needed to amend the Colorado River Basin Salinity Control Program regulations to: (1) provide on-farm/off-farm definitions, and (2) clarify SCS technical assistance in planning and completing the Salinity Control Plan. No Government outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD45

62. AMENDMENTS TO REGULATIONS REGARDING PAYMENTS TO PERSONS CONVICTED OF CONTROLLED SUBSTANCE VIOLATIONS

Legal Authority: 21 USC 881a

CFR Citation: 07 CFR 796

Legal Deadline: None

Abstract: This action is necessary to amend the regulations regarding payments to persons convicted of controlled substance violations to reflect recent legislation. Current regulations implement the Food Security Act of 1985 provisions but not the FY 1993 Appropriations Act provisions. This action will thus amend the regulations to implement the statutory provisions regarding controlled substance violations. The primary effect of this action will be to make most conservation programs subject to the controlled substance violation provisions and result in some people being declared ineligible for benefits. No Government outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD47

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63. 1994 OPTIONS PILOT PROGRAM

Legal Authority: 7 USC 1421 Note

CFR Citation: 07 CFR 1413

Legal Deadline: None

Abstract: This action is needed to implement the Options Pilot Program for wheat, corn, and soybeans and possibly other program crops, for the 1994 crop year, as required by legislation. The program: (1) May be expanded to include additional States, counties and crops, in addition to the ones already administering the program. (2) Will provide means for farmers to buy put options that would provide price assurance equivalent to deficiency payments and price support benefits. (3) Provide terms and conditions for producers who elect to participate; (4) Provide provisions for administering the program, and (5) Provide measures to prevent circumvention of the program, including refunds and penalties. Only minor administrative and program costs are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD48

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64. • NONEMERGENCY HAYING AND GRAZING ON CONSERVATION RESERVE PROGRAM GRASSLANDS

Significance: Subject to OMB review: Yes

Legal Authority: 16 USC 3801 et seq

CFR Citation: 07 CFR 1410

Legal Deadline: None

Abstract: This action is needed to revise the regulations governing the Conservation Reserve Program (CRP) to allow the non-emergency haying and grazing of CRP grasslands, under specified conditions. Such haying and grazing can have beneficial impacts on wildlife habitat and cover quality while still achieving the goals of the CRP. Issues to be considered include conditions for allowing haying and grazing, acreage to be allowed, monitoring and enforcement, compensation offset, effects on wildlife habitat and ground cover, and impacts on local markets. A savings to Government would likely result from the compensation offset, while monitoring and enforcement costs would likely increase slightly.

Timetable:

Action	Date	FR Cite
ANPRM	12/20/93	58 FR 66308
ANPRM Comment Period End	01/19/94	58 FR 66308
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD54

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65. • PROGRAM INELIGIBILITY FOR NONCOMPLIANCE WITH BOLL WEEVIL ERADICATION PROGRAM

Legal Authority: 7 USC 1444a

CFR Citation: None

Legal Deadline: None

Abstract: This action is necessary to make producers and landowners ineligible for USDA program benefits when they are not in compliance with the Boll Weevil Eradication Program (BWEP). This will ensure better compliance with the BWEP and contribute to the elimination of boll weevils. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	08/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD57

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66. • 1995-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Legal Authority: 7 USC 1314; 7 USC 1445

CFR Citation: 07 CFR 723; 07 CFR 1464

Legal Deadline: Final, Statutory, December 15, 1994.
Marketing Quotas

Abstract: The flue-cured tobacco marketing quota and price support are required by statute. The purpose of quotas and price support is to balance supply with demand at levels assuring stable supplies for domestic and export use at prices that are considered sufficient for producers. The national quota is based on cigarette manufacturers' intentions, 3-year average exports, a loan stocks adjustment, and discretionary adjustment of plus or minus 3 percent. The quota may not be less than 90 percent of the previous year's quota except this limit may be waived if producer association inventories likely will exceed 150 percent of the reserve stock level. The price support level is based on a formula that averages market prices (2/3 weight) and a cost index (1/3 weight), with discretion to limit any increase to 65 percent of the formula increase. Marketing quotas are implemented if approved by producer in a referendum scheduled for January 1995. Gross loan outlays of $30 million are expected in FY's 1995 and 1996. They will be offset by redemptions and no-net-cost assessments in FY 1996 and later years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD62

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67. • 1995-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Legal Authority: 7 USC 1314

CFR Citation: 07 CFR 723; 07 CFR 1464

Legal Deadline: Final, Statutory, February 1, 1995.
Marketing Quota.

Abstract: The burley tobacco marketing quota and price support are required by statute. The purpose of the quota and price support is to balance supply with demand at levels assuring stable supplies for domestic and export use at prices that are considered sufficient for producers. The national quota is based on cigarette manufacturers' intentions, 3-year average exports, a loan stocks adjustment, and a discretionary adjustment of plus or minus 3 percent. The quota may not be less than 90 percent of the previous year's quota except this limit may be waived if producer association inventories likely will exceed 150 percent of reserve stock level. The price support level is based on a formula that averages market prices (2/3 weight) and a cost index (1/3 weight), plus discretion to limit any increase to 65 percent of the formula increase. Marketing quotas are implemented if approved by producers in a referendum scheduled for February 1995. Gross loan outlays of $30 million are expected in FY 1996. They will be offset by loan redemptions and no-net-cost assessments in FY 1996 and subsequent years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD63

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68. • 1995-CROP MARKET QUOTA AND PRICE SUPPORT LEVELS FOR SIX KINDS OF TOBACCO

Legal Authority: 7 USC 1312; 7 USC 1445

CFR Citation: 07 CFR 723; 07 CFR 1464

Legal Deadline: Final, Statutory, March 1, 1995.
Marketing Quotas.

Abstract: Marketing quotas and acreage allotments are required by statute for these kinds of tobacco: Fire-cured (type 21), Fire-cured (types 22-23), Dark Air-cured (types 35-36), Virginia sun-cured (type 37), Cigar Filler (type 46) and Cigar Filler and Binder (types 42-44 and 53-55). Quotas and allotments are determined by statutory formula to balance supply with demand to assure stable supplies for domestic and export use. Marketing quotas are implemented if approved by producers in referenda. Producers approved quotas for the 1995 crops of cigar filler (type 46) and cigar filler and binder (types 42-44 and 53-55) in March, 1993. Referenda for the other kinds are scheduled for March, 1994 and 1995. Producers of these types have historically voted in favor of quotas. Price support levels are set by statutory formula. The Secretary may reduce the level at the request of producer associations, and may limit increases to 65 percent of the formula increase. Gross loan outlays of $2 million are expected in FY 1996. They will be offset by loan redemptions and no-net-cost assessments in FY 1996 and subsequent years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD64

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69. • 1995-CROP MARKETING QUOTAS FOR THREE KINDS OF TOBACCO

Legal Authority: 7 USC 1312; 7 USC 1445

CFR Citation: 07 CFR 723

Legal Deadline: Final, Statutory, March 1, 1995.

Abstract: Marketing quotas and acreage allotments are required by statute to be announced for these three kinds of tobacco: Maryland (type 32), cigar filler (type 41) and cigar binder (type 51-52). Marketing quotas are implemented, if approved by producers in referenda, to achieve a supply equal to the "reserve supply level" as defined by legislation. No quotas are in effect because producers disapproved quotas for 1992-94 crops, and that status will continue if producers again disapprove quotas for the 1995-97 crops in referenda scheduled for March 1995. Negligible cost to Government is expected.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD65

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70. • 1995-CROP PEANUTS NATIONAL POUNDAGE QUOTA AND MINIMUM COMMODITY CREDIT CORPORATION (CCC) EXPORT-EDIBLE SALES PRICE FOR ADDITIONAL PEANUTS

Legal Authority: 7 USC 1358-1

CFR Citation: 07 CFR 729

Legal Deadline: Final, Statutory, December 15, 1994.

Abstract: This action is needed to implement the national peanut

poundage quota, as required by statute. The purpose of the quota is to balance supply with demand at a level that will assure stable supplies for domestic use and assure producers a stable income. The export-edible sales price for additional peanuts provides price stability for additional peanuts sold under contract and assures handlers that CCC will not undercut export efforts. The primary determinations are: 1) National Poundage Quota--set by statutory formula, based on the Secretary's estimate of the amount of peanuts required for domestic food, seed, and related uses for the 1995 marketing year. The 1995 marketing year is from August 1, 1995, through July 31, 1996. 2) Minimum CCC export-edible sales price for additional peanuts--established at the Secretary's discretion (the level has been set at $400 per ton each of the last 7 years). The peanut program as a whole will result in a net realized loss of about $46.5 million, which will be attributable to loan forfeitures.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD66

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71. • AMENDMENT TO THE PRICE SUPPORT REGULATIONS REGARDING LOSSES TO FARM-STORED LOAN COLLATERAL DUE TO FLOOD

Legal Authority: 7 USC 1444f; 7 USC 1445b-3a

CFR Citation: 07 CFR 1421

Legal Deadline: None

Abstract: This action is needed to amend the price support regulations at 7 CFR 1421.15 to provide relief to producers because of loss of outstanding farm-stored CCC loan collateral during the 1993 floods. Outlays of about $300,000 are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD69

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72. • COOPERATIVE MARKETING ASSOCIATION ELIGIBILITY REQUIREMENTS FOR PRICE SUPPORT

Legal Authority: 7 USC 1441 et seq; 15 USC 714b; 15 USC 714c; 15 USC 714j

CFR Citation: 07 CFR 1425

Legal Deadline: None

Abstract: This action will amend the regulations for cooperatives approved to participate in the price support programs on behalf of their members to: 1) Support 23 handbook requirements that are currently in effect, 2) Allow voting by proxy and under power of attorney in membership meetings, and 3) Require cooperatives to withhold pool distributions from members when notified by CCC that the members have failed to fully comply with regulations, an outstanding claim exists, or an IRS levy has been received. No costs are expected as a result of this action.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	05/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD70

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73. • TECHNICAL CORRECTIONS TO THE WHEAT, FEED GRAIN, COTTON AND RICE PROGRAM REGULATIONS

Legal Authority: 7 USC 1421 et seq

CFR Citation: 07 CFR 718; 07 CFR 719; 07 CFR 1413; 07 CFR 1414

Legal Deadline: None

Abstract: This action is needed to revise the regulations governing the Wheat, Feed Grain, Cotton, and Rice Programs, as follows: 1) Implement the 0,50/85 and 0,50/92 provisions of the updates Budget Reconciliation Act of 1993; 2) Amend the ARP participation contracts to provide for declarations of intention to participate; 3) Amend the Integrated Farm Management provisions for 1994; 4) Clarify the compliance regulations; and 5) Incorporate existing handbook provisions. Implementation of the 0,50/85 and 0,50/92 provisions is expected to save about $95-$100 million annually. The other provisions will have insignificant costs.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	05/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD72

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74. • WOOL AND MOHAIR RECOURSE LOAN PROGRAM

Legal Authority: 7 USC 1782

CFR Citation: 7 CFR 1428

Legal Deadline: None

Abstract: This action is needed to implement a recourse loan program for wool and mohair through December 31, 1995, as required by statute. Determinations are to be made regarding applicability, administration, disbursement of loans, eligibility, loss or damage, liens, fees, charges and interest, loan rates, approved storage, settlement, foreclosure, loan maturity, and producer liability. The program is to be administered at no net cost to the Federal Government. Loan outlays

are estimated at $1 to $20 million from inception to the end of the program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	06/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD75

75. • 1995 WHEAT LOAN RATE AND ACREAGE REDUCTION PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes
Regulatory Plan entry: Yes

Legal Authority: 7 USC 1445b-3a

CFR Citation: 7 CFR 1413; 7 CFR 1421

Legal Deadline: NPRM, Statutory, April 1, 1994. Final, Statutory, June 1, 1994. Other, Statutory, March 31, 1994. Other deadline is for adjustments.

Abstract: This action is needed to implement the Wheat Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of wheat for domestic and export use, maintain adequate carryover stocks, and support farm income. The expected cost is about $1 to $3 billion.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	08/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Regulatory Analyst, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD76

[FR Doc. 94-10583 Filed 5-2-94; 8:45 am]
BILLING CODE 1505-01-F

federal register

Tuesday
May 3, 1994

Part IX

The President

Executive Order 12912—Amendment to Executive Order No. 12878

Federal Register
Vol. 59, No. 84
Tuesday, May 3, 1994

Presidential Documents

Title 3—

The President

Executive Order 12912 of April 29, 1994

Amendment to Executive Order No. 12878

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to extend the reporting period of the Bipartisan Commission on Entitlement Reform from May 1, 1994, to December 15, 1994, it is hereby ordered that section 2(a) of Executive Order No. 12878 is amended by deleting the date "May 1, 1994" and inserting the date "December 15, 1994" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
April 29, 1994.

[FR Doc. 94–10794
Filed 5–2–94; 11:27 am]
Billing code 3195–01–P

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Federal Register

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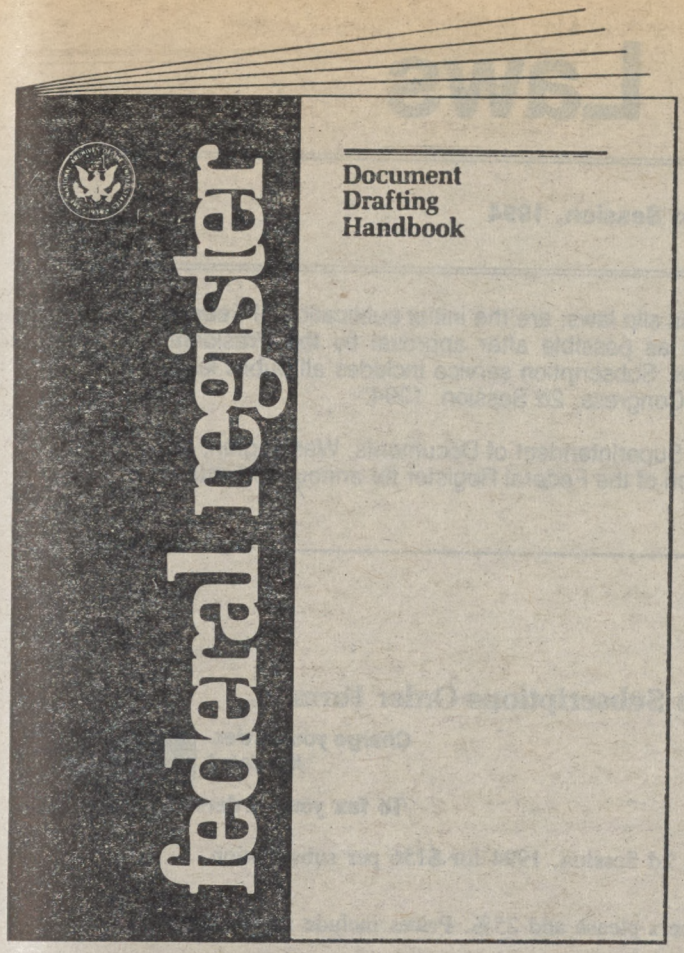

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103d Congress, 2d Session, 1994

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